



BEST PRACTICE GUIDE

# Management of Contract Works for Public Bodies

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## Common abbreviations and defined terms

Abbreviations / terms	Full terminology / definition
<b>Bid</b>	An offer or proposal submitted by a company in response to a Request for Bids to provide the required Works.
<b>Client</b>	Client means the Public Body for whom the works/project is to be undertaken.
<b>CMP</b>	Contract Management Plan
<b>Consultant</b>	Under PPA 2006, “consultant” means a person under contract to provide consultancy services to a public body in relation to a procurement contract.
<b>Contract Manager</b>	<p>“Contract Manager” refer to a legal entity, a natural person/team assigned to/ authorised to/ delegated to manage the execution of a contract. Depending on the contract management arrangements a “Contract Manager” may refer to:</p> <ul style="list-style-type: none"> <li>• Consultants (Private or Public)</li> <li>• Internal team of the Client assigned to manage a contract.</li> </ul>
<b>Contractor</b>	As per PPA 2006, “contractor” means a person who has entered into a procurement contract with a public body.
<b>CPB</b>	Central Procurement Board
<b>CRA</b>	Corruption Risk Assessment
<b>CRM</b>	Corruption Risk Management
<b>ESHS</b>	Environmental, Social, Health and Safety
<b>ICAC</b>	Independent Commission Against Corruption
<b>IRP</b>	Independent Review Panel
<b>KPI</b>	Key Performance Indicators
<b>MoFEPD</b>	Ministry of Finance, Economic Planning and Development
<b>PMIS</b>	Project Management Information System

<b>PoCA</b>	Prevention of Corruption Act 2002, as amended
<b>PPA</b>	Public Procurement Act 2006
<b>PPMU</b>	Project Planning and Monitoring Unit
<b>PPO</b>	Procurement Policy Office
<b>Public Body</b>	<p>As defined in the Prevention of Corruption Act 2002, a “Public body”</p> <p>(a) means a Ministry or Government department, a Commission set up under the Constitution or under the authority of any other law, a local authority, or a statutory corporation; and</p> <p>(b) includes a Government Company.</p>
<b>PSACF</b>	Public Sector Anti-Corruption Framework
<b>UNCAC</b>	United Nations Convention Against Corruption
<b>Works</b>	<p>As per PPA 2006 “works” means any work associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar services.</p>

## **FOREWORD**

Contract management is the post-award phase of the procurement cycle. It mainly aims at ensuring that the contractor delivers the works in accordance with the contract terms and conditions so that best value for money is achieved. However, at times the contract deliverables may not be fully achieved due to mismanagement and corruption. Corruption risks in the management of contract works are particularly high as contract works often involve huge outlay of public funds.

According to Article 9 of the United Nations Convention Against Corruption (UNCAC) which relates to public procurement, *“Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption.”*

In this endeavour, there have been considerable improvements in the area of public procurement in public bodies. The major reforms aiming to promote transparent decision-making, accountability and standard procurement practices and procedures have been undertaken. These include, inter-alia, the enactment of the Public Procurement Act (PPA) 2006, establishment of an institutional framework, the implementation of e-procurement system in public bodies and inclusion of provisions to control contract changes in the PPA 2006.

However, despite these accomplishments, public bodies still face many challenges. One of the challenges is to reinforce corruption resistance in the post-award phase of the procurement cycle.

Corruption in management of contract works not only result into sub-standard works and financial losses but also threatens public safety, jeopardises the reputation of public institutions and undermines public confidence. It is, thus, vital that robust systems, procedures and practices are set in place for effective management of contract works, proper monitoring and evaluation of contractor’s performance in line with contract terms and specifications.

The ICAC has developed this Best Practice Guide on management of contract works to promote integrity and good practices. It aims to guide and empower public bodies to assess their own vulnerabilities to corruption risks and establish the best management systems and controls to reinforce integrity in the management of contract works. This guide recommends safeguards and controls to mitigate corruption risks. It emphasises on the governance framework for effective contract management and provides a checklist of integrity measures to promote a corrupt-free contract management function.

The ICAC sincerely acknowledges the collaboration and efforts from all those who have contributed in the development of this guide.

## **CHAPTER 1**

## **INTRODUCTION**

### **1.0 Management of Contract Works**

Contract works undertaken by public bodies account for a major proportion of public expenditure and are intended to contribute to the socio-economic development of a country and improve quality of life of the general public. The procurement process for contract works involves among others, procurement planning and budgeting, preparation of bidding documents, pre-qualifying bidders, evaluation of bids and management of contract following the award.

The contract management process may be undertaken by the client/public body or by the Ministry of National Infrastructure and Community Development/ Ministry of Energy and Public Utilities, among others. Moreover, in large and complex works projects, public bodies often have recourse to procurement of works consultancy services. Consultants, in form of a person or company, may be appointed under a contract or on a job basis to provide professional services. Such services include geotechnical or topographical study, feasibility study, design work, evaluation and selection of contractors, and monitoring of the implementation of works projects.

Corruption in the post award stage relates mainly to the contract management process. The United Nations Office on Drugs and Crime (UNODC) recognises that the post-award phase is less regulated and thus may also contain fewer safeguards against corruption. More so, legal texts pertaining to public procurement provide little guidance in relation to this stage of the contract. In fact, legal frameworks on public procurement focus more on the prior phase of contract formation rather than the post award phase.

Corruption risks at this post-award stage of the procurement cycle include, among others, altering contract specifications or the scope of work after award of contract and contractors deviating from contract terms and conditions. Corruption risks may also perpetuate due to collusive practices between contractors/consultants and public officials.

Corruption risk management in the area of contract management is crucial due to its associated negative consequences. Corruption risks if left unaddressed can lead to improper infrastructure/development, poor quality constructions and major time and costs overruns. Subsequently, it can cause financial and reputational loss to an organisation, undermine the economic growth of a country and endanger the life and safety of its people.

Policy makers have reaffirmed their commitment to enhance transparency and accountability mechanisms within public institutions, and endeavour to intensify the fight against fraud and corruption with zero tolerance of corrupt practices. Management of public bodies, therefore, have a prime duty to adopt good practices to build

corruption resistance in high risk areas and within their organisations. Irrespective of whether a consultant has been appointed for supervision of contract implementation, management of public bodies have an overall responsibility to ensure that contracts are effectively implemented as per contract terms bearing in mind the principles of transparency, accountability and integrity. There is need to establish a proper mechanism to ensure effective oversight on projects as well as on consultants hired for project monitoring.

Good practice requires that contract works are driven by the principle of integrity and high standards of professionalism and ethical behaviour. Contract works have to be administered through robust systems, procedures and practices. These include essentially the setting-up of an effective system for management and monitoring of contract works and evaluation of contractor's performance. Moreover, the right attitudes and values held by staff, adoption of appropriate strategies to address corruption risks, and ethical leadership are also pre-requisites for curtailing opportunities for corrupt practices.

## **1.1 Regulatory Framework for Public Procurement**

The Public Procurement Act (PPA) 2006 and subsequent regulations issued are meant to regulate public procurement. Subsequently, the establishment of different entities including the Procurement Policy Office (PPO), Central Procurement Board (CPB) and Independent Review Panel (IRP) have contributed in bringing considerable reforms to improve transparency, accountability and standardise practices and procedures in public procurement.

With regard to contract variations, Section 12 (3) (a) of the PPA 2006 requires that the approval of the CPB be sought where any variation in a contract price following award of the contract causes the total contract amount to exceed the prescribed amount by more than 20 per cent. Moreover, according to Section 46 (3) of PPA, *“an amendment to the contract that will increase the contract value by more than 25 percent shall require fresh procurement proceedings except where the amendment must be effected for a reason specified in section 25(2) (c) or (d) of the PPA”*.

Furthermore, Section 46(4) requires that *“no formal amendment of the contract shall be required where the public body wishes to make a variation or invokes a contract price adjustment which is expressly authorised in the contract”*. Whilst in line with Section 46(4A)(b), *“no variation or adjustment under subsection (4); shall be made or carried out, as the case may be, with respect to major contracts that exceed the prescribed amount, without the prior approval of the CPB”*.

### **1.1.1 Directives, Instructions and Guidelines on Public Procurement**

Directives, instructions and guidelines on public procurement have also been issued by the Ministry of Finance, Economic Planning and Development (MoFEPD) and the PPO to assist public bodies in ensuring probity and value for money in public procurement.

These include the evaluation guide for works and goods, evaluation guide for consultancy, guidelines on procurement structure in public bodies and Capital Project Process Manual. As per the Capital Project Process Manual, certain Ministries/Department are required to set up a Project Planning and Monitoring Unit (PPMU). The PPMU is expected to be responsible, among others, to prepare draft Terms of Reference for hiring consultants, assist in project preparation to be submitted to MOFEPD, assist in the preparation of all relevant documents in respect of the procurement process, participate in the evaluation of bids and manage and monitor project implementation.

Moreover, as per Directive 35 of the PPO, a public body is required to set up a performance review system for continuous assessment of the supplier's performance as from the award of a contract, duly record the supplier's performance review during the execution of the contract, notify the supplier of any deficiency for remedial actions and warn the supplier that he may be excluded in a forthcoming bidding exercise in absence of satisfactory remedy, among others.

## **1.2 The Rationale**

The management of contract works is an area vulnerable to corruption and other malpractices. Mismanagement of contract works may result in complaints on alleged cases of corruption/malpractices and may lead to the breach of one or more offences under the PoCA 2002, as amended.

The UNCAC urges State Parties to criminalise and sanction corrupt activities occurring during a procurement process in order to promote integrity in public procurement. The ICAC is mandated under Section 20(f) of the Prevention of Corruption Act (PoCA) 2002, as amended, to enquire into the manner in which contracts for the performance of works are being carried out.

According to Circular letter No 42 of 2020 issued by the Secretary for Public Service, Ministries/Departments are required to conduct two Corruption Risk Assessments (CRAs) per year with a view to strengthen strong governance and institutional arrangements in the public sector. The conduct of CRA is one among the three Key Performance Indicators (KPIs) set by the Government for the financial year 2020/2021. The CRAs therefore need to target areas which are perceived to be highly prone to corruption such as the entire procurement phases including contract management.

Corruption prevention works carried out by the ICAC as well as reports of the National Audit Office have identified numerous loopholes in the management of contract works in public bodies. These mainly include the following:

- Poor governance structures for contract monitoring
- Poor planning and design resulting in additional/variation works, thus resulting to extension of time, delay in project implementation and cost overruns.
- Delays in completion of projects due to inadequate supervision and monitoring



- Contract period extended although extension of time was unjustified
- Extension of time not substantiated and liquidated damages not applied
- Cost of variation works exceeding the contingency sum and leading to cost overruns
- Certification of variations without obtaining prior approval of the public body
- Performance securities and insurance policies not always renewed to cover the contract and defect liability periods
- Payment to the contractor without certification of claims
- Release of retention money before the end of the defect liability period or without issue of Defect Liability Certificates
- Certificates of completion issued although works were incomplete
- No performance review conducted for assessment of contractors' performance
- Contractors failing to submit updated programme of works and to comply with Notices to correct to complete outstanding works and rectify defects
- Despite fundamental breaches of contract, termination procedures and action for disqualification of the defaulting contractor were not initiated/taken
- Poor record management system in contract administration

### **1.3 Scope and Aims of the Guide**

This guide highlights the necessary strategic and operational controls that are vital for promoting integrity throughout the management of public contract works.

The aims of the guide are to:

- promote best practices in the management of contract works
- provide public bodies the opportunity to assess, benchmark and reinforce their existing framework for managing contract works
- enhance transparency, accountability and integrity in the management of contract works
- improve performance of public bodies and public officials and
- provide safeguards from the consequences of corruption and other malpractices.

### **1.4 Methodology**

The following approach has been used for the development of the guide:

- Examination of existing legal frameworks

- Analysis of existing practices and procedures
- Reference to international best practices
- Meetings with different stakeholders including representatives from the PPO, CPB, Construction Industry Development Board, Ministry of National Infrastructure and Community Development and Ministry of Energy and Public Utilities.

## **1.5 Structure of the Guide**

The guide is structured as follows:

Chapter 1: Introduction

Chapter 2: The procurement cycle for works consultancy contract and contract works

Chapter 3: Governance framework for effective management of contract works

Chapter 4: Promoting integrity in the management of contract works

Several guidelines and contract management tools which aim to enhance the monitoring of contract works and performance evaluation of contractors/consultants are also provided in the appendices to the guide.

## **1.6 Monitoring Implementation and Expected Outcome of the use of the Guide**

Contract management is a vital function which requires close attention. It is important that management of public bodies takes ownership for prevention measures and demonstrates its commitment to strengthen their existing governance framework, systems, and procedures and mitigate the risk of corruption through the adoption of best practices.

## **1.7 Disclaimer**

This guide is neither a substitute for the law nor can it take the place of legal advice. The aim of this document is to provide guidance to public bodies to enhance integrity in the management of contract works.

However, areas covered and measures provided in this guide should not be considered as exhaustive. Public bodies involved in the management of contract works have the responsibility to ensure that appropriate and adequate anti-corruption management controls are adopted for implementation. The guide will be further subject to review for improvement following its implementation and feedback from stakeholders.

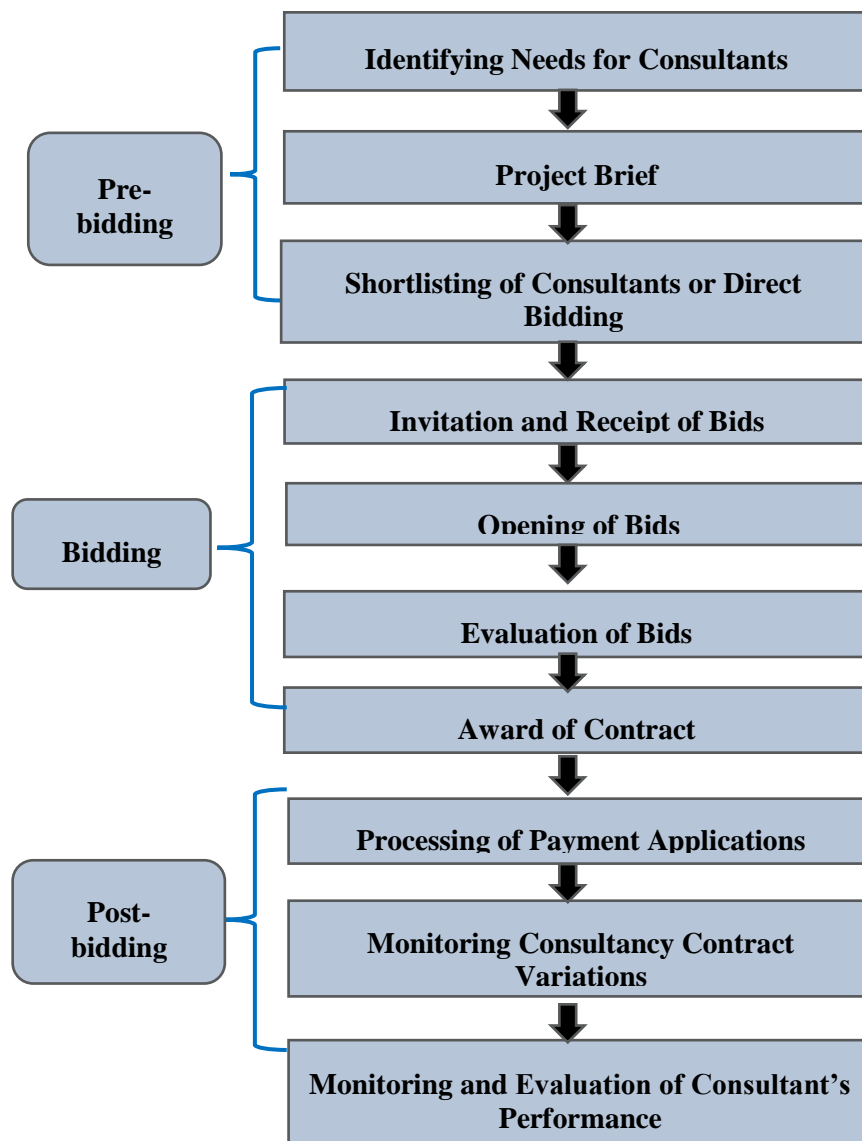
**CHAPTER 2****THE PROCUREMENT CYCLE FOR WORKS  
CONSULTANCY CONTRACT AND CONTRACT  
WORKS****2.0 Overview**

The procurement cycle can be divided into three main stages which include the pre-bidding, bidding and post-bidding stages. The post-bidding stage refers to the contract management phase which starts after the award of the contract.

The key processes in the procurement of works consultancy contract and contract works are listed below.

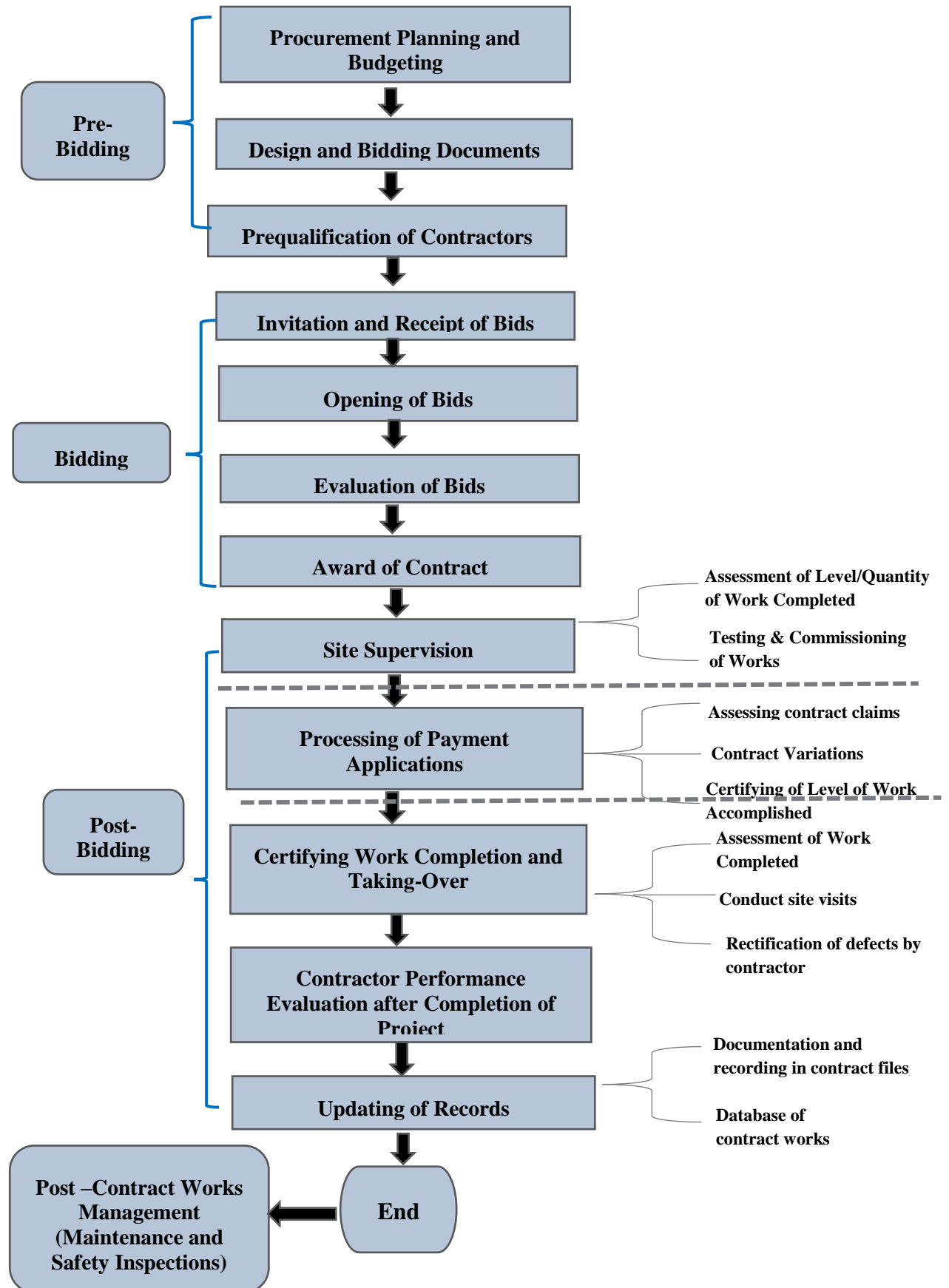
**2.1 Procurement Process for Works Consultancy Contract**

The main processes are illustrated below:



## 2.2 Procurement Process for Contract Works

The flowchart below summarises the stages for procurement of contract works including the post-bidding/ award phase.



**CHAPTER 3****GOVERNANCE FRAMEWORK FOR EFFECTIVE MANAGEMENT OF CONTRACT WORKS****3.0 Overview**

This chapter addresses the governance issues and provides guidelines on the key components for establishing a robust governance framework to ensure effective management of public contract works.

**3.1 Robust Governance Framework for Contract Management**

A robust governance framework for management of contract works is crucial for achieving value for money, promoting the principles of transparency and accountability and for the prevention and detection of risk of malpractices/corrupt practices. The absence of same, can result into improper infrastructure/development, poor quality constructions, and costs and time overruns, among others.

**3.1.1 WRITTEN POLICY AND PROCEDURES**

Written policies and procedures for the management of contract works are critical for promoting transparency, accountability and integrity in decision-making processes and for ensuring consistent practices throughout the contract management phase. Corruption prevention interventions carried out by the ICAC have revealed an overall absence of documented policies and procedures for contract management in public bodies.




*Lack of written policy and procedural guidelines not only undermines transparency and accountability but also provides discretion and opportunities for malpractices/corruption in the management of contract works. Corruption risks may include abuse of office or deviation from procedures in exchange of gratification thus resulting into mismanagement of contract works.*

**INTEGRITY MEASURES****1****Development of written policy and procedures*****Elements of the policy and procedures***

Written policy and procedures need to be consistent with the provisions of the relevant laws, regulations and guidelines and should clearly specify the following:

- Procedures for contract management phases which include handing-over of site, project monitoring, management of variations, certification of payment, commissioning and taking-over/handling over of work, evaluation of contract performance and contractor's/consultant's performance

	<ul style="list-style-type: none"> <li>• Competencies/Duties/responsibilities of staff involved in the different processes</li> <li>• Levels of authorisation</li> <li>• Maintenance of records for all major events/stages in the management of contract works</li> <li>• Policy for retention/archiving of contract documents/records</li> <li>• Policy on management of situations of conflict of interests</li> </ul>
<i>Dissemination of policy and procedures among staff</i>	The documented policy and procedures should be duly approved by the public body and communicated to all staff concerned for compliance.
<b>3.1.2 PLANNING OF CONTRACT MANAGEMENT</b>	
<p>Planning of contract management is an important step to ensure that what is procured will be delivered. A contract management plan (CMP) provides a structured and systematic approach for management of a contract. It is essential to plan how, when, where and by whom a contract will be implemented, monitored, managed and administered to ensure successful execution of contract works.</p>	
	Failure to adequately plan for the transition from award of contract to contract implementation may lead to a chaotic start where adequate arrangements have not been ensured and put in place to allow for successful implementation of the contract. Such a situation may provide a breeding ground for corruption.
<b>INTEGRITY MEASURES 2</b>	<b>Preparation of Contract management plan</b>
<i>Preparation of the CMP</i>	<p>Good contract management involves planning how to manage the project, implementing the plan and then checking the results.</p> <p>Public bodies should develop a CMP. The draft CMP should be prepared during the initial stages of the procurement process so that the document can be promptly finalised after the award/signing of the contract.</p>
<i>Sharing of the CMP with the Contractor</i>	In line with good practice, the CMP must be shared with the contractor, to ensure that there is a common understanding of how the implementation of the contract will be managed.
<i>Update of the CMP</i>	The CMP should be regularly updated to ensure that it is relevant and reflects an up-to-date status of the contract.

<b><i>Elements of the CMP</i></b>	<p>Public bodies should ensure that the contents and details of the CMP is proportionate to the scope, value, risk, complexity and duration of the contract.</p> <p>The CMP may include the following elements, among others:</p> <ul style="list-style-type: none"> <li>• Contract management roles and responsibilities</li> <li>• List of key contacts (e.g. the names and contact details for the public body and the contractor)</li> <li>• Contract management system</li> <li>• Governance structure</li> <li>• Contract documents</li> <li>• Key contract milestones and deliverables (described, and updated with respect to change orders)</li> <li>• KPIs and the standards or measurement process</li> <li>• Communication plan/procedures</li> <li>• Reporting requirements</li> <li>• Payment procedures consistent with contract terms</li> <li>• Record keeping requirements and procedures;</li> <li>• Change management or contract variation procedures;</li> <li>• Key contractual remedies</li> <li>• Risk management plan</li> <li>• Insurance coverage and guarantees and/or securities, if applicable</li> <li>• Contract closure procedures</li> </ul>
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### **3.1.3 CONTRACT MANAGEMENT STRUCTURE**

A proper governance structure is a critical element in contract management. The governance structure should be based on an assessment (as part of the project preparation) of the organisation's contract management capacity such that necessary measures are taken to close any identified gaps. It allows the delegations, responsibilities, decision-making and lines of reporting to be mapped and agreed in advance. It also ensures accountability, probity and adequate control and direction in management of contracts. Poor governance structures for contract management and monitoring is one of the major shortcomings identified during corruption prevention exercises undertaken by the ICAC.



A poor governance structure for management and implementation of contract works may:

- lead to confusion of responsibilities, inadequate control and assurance over the implementation of projects,
- provide overly discretion to certain staff involved
- create the perception/risk of corruption in the management of contract works.

## INTEGRITY MEASURES

3

### Establishing a contract management structure

#### *Appointment of a Contract Manager*

The client/public body should ensure that it has the appropriate governance structure for contract management. In line with the applicable contract, a “Contract Manager” may be a Consultant or an internal team appointed by the client/public body to manage the execution of the contract.

#### *Setting up of Project Planning and Monitoring Unit*

According to Circular no 11 of 2017 issued by the PPO, certain public bodies are required to establish a Project Planning and Monitoring Unit (PPMU), to manage and monitor project implementation. Such a structure will help the Public Bodies in their endeavours to effectively monitor projects being undertaken.

#### *Profile of Contract Manager/ Contract Monitoring Unit/Team*

To ensure effective implementation of projects/contract works, it is important to establish the competencies required for effective conduct of the exercise. The PPMU or the Contract Manager should consist of staff having the necessary technical skills, knowledge and experience.

The roles and responsibilities of each officer involved in project monitoring should be clearly defined and documented. All officers concerned must be duly informed about their roles and responsibilities. This will help to promote transparency and accountability in the project monitoring exercise and ensure the proper functioning of the PPMU.

There must be proper synergy among staff or team members concerned including the Architects, the Quantity Surveyors and the Engineers, among others.

### 3.1.4 PROJECT MANAGEMENT INFORMATION SYSTEM

A Project Management Information System (PMIS) consists of tools and techniques that help to collect, analyse, store and report information and statistics on all projects or contract works. Corruption prevention exercises carried out by the ICAC have shown an inadequate record management system with respect to contract management



and absence of a proper computer system/database on projects in public bodies. Centralised information on transactions performed with respect to projects and their respective status is not readily available.



*The absence of a PMIS may lead to ineffective management of contract works and provide opportunities for malpractices. A well-established PMIS allows Management of public bodies to effectively*

- *monitor and supervise contract implementation*
- *exercise an oversight role to prevent and detect malpractices/corruption.*
- *establish relevant and measurable objectives*
- *monitor and assess results and performance of consultants and contractors*
- *detect major deviations between results and pre-established objectives and budgets.*

#### **INTEGRITY MEASURES**

**4**

#### **Implementation of Project Management Information System**

##### ***Essential features in the PMIS***

The PMIS need to contain all pertinent details/records of the contract, from start to completion. The following elements, amongst others, should be considered:

- Project overview (project status, contract status, organisation, web camera)
- Progress management (work schedule, progress rate, construction photos)
- Progress reporting (daily/weekly/monthly work progress report, delay report)
- Safety management (safety inspection, construction machinery safety check)
- Project document management (document management including the Contract implementation/management plan, electronic approval, as-built drawings)
- History and record management (performance evaluation, accident history, penalty management)
- Search and notices (notices from contractor, notices for rectifications, integrated search and help desk).

<b><i>Integration of the PMIS with e-procurement system</i></b>	<p>To further enhance the contract management process and probity in the process, the PMIS have to be integrated with the e-procurement system through an automatic linkage. This will enable the automatic transfer and registration of basic information (name of project, payments, and scheduled completion date) for each contract/ project on the PMIS.</p> <p>Additional information pertaining to the project objectives and construction/works management and progress, among others are then input on the PMIS by users which include the contractor, contract manager/contract management team and the client.</p> <p>For instance, the contractor can use the PMIS to register the approved work schedule and submit the work progress reports on a periodic basis. Project directives and instructions can also be issued to the contractors through the PMIS.</p>
<b><i>Inbuilt IT security controls</i></b>	Adequate IT security controls should be integrated in the PMIS to safeguard integrity and prevent manipulation of data/wrong use of data.
<b><i>Generating periodic management information report</i></b>	Periodic ‘Management Information Report’ should be generated from the PMIS to facilitate effective decision-making, review and initiation of corrective actions.

### 3.1.5 CORRUPTION RISK MANAGEMENT

Corruption risk management (CRM) is increasingly recognised as an integral part of good governance. It is an ongoing process that can help an organisation to identify, assess and proactively address corruption risks in response to changes in organisational features and circumstances that may have an impact on its operations.

CRM exercise in the management and implementation of contract works would help public bodies to identify key performance areas and associated risks such as non-compliance with contract requirements, fraud and corruption and develop appropriate strategies/plan for successful implementation of contracts.



*In absence of a proper risk management framework it is difficult for public bodies to have enough assurance on the adequacy of control being exercised during the monitoring and implementation of contract works. Moreover, the risk of corruption/malpractices or any perception thereof may remain covered and unaddressed.*

<b>INTEGRITY MEASURES</b>	<b>5</b>	<b>Conduct of corruption risk management exercise</b>
<b>Implementing the Public Sector Anti-Corruption Framework</b>	<b>of risk</b>	<p>Public bodies should take ownership of corruption prevention by consider implementing the Public Sector Anti-Corruption Framework (PSACF). The framework advocates the:</p> <ul style="list-style-type: none"> <li>• setting up of an Anti-Corruption Committee to reinforce existing anti-corruption mechanism</li> <li>• development of an Anti-Corruption Policy to communicate the anti-corruption stance of the organisation</li> <li>• conduct of CRM exercises</li> </ul> <p>The implementation of the PSACF aims at reinforcing the public sector integrity through internalisation of corruption prevention structures and mechanism.</p>
		<p>In the above respect, the Circular Letter No 42 of 2020 from the Secretary for Public Service highlights that the Government has approved three KPIs for Ministries and Departments which include the conduct of two corruption risk assessments.</p> <p>CRM is an on-going process which has to be regularly undertaken by Management of public bodies to address the risks of corruption in corruption prone areas including contract management.</p> <p>Once corruption risks are identified and assessed, a CRM plan needs to be developed for effective implementation of anti-corruption strategies/measures.</p> <p>Taking into consideration the dynamic nature of corruption, the anti-corruption measures implemented should also be reviewed and evaluated to ensure their effectiveness and relevance.</p>

### 3.1.6 EFFECTIVE OVERSIGHT AND REPORTING MECHANISMS

Effective oversight mechanisms are essential for the detection and deterrence of malpractices/corrupt practices. Oversight mechanisms namely the Internal Audit, External Audit and Audit Committee provide assurance of the soundness of control systems in place for the prevention and detection of malpractices.

An effective oversight mechanism coupled with a feedback mechanism with regard to management of contract works are vital for the timely detection and identification of any irregularities or weaknesses including corruption risks in the above area. A robust control mechanism would help to ensure:

- regular review and assessment of the adequacy of internal checks and balances in the procurement process including the post-award phase
- compliance with the relevant laws and regulations
- effective use of applicable guidelines
- prompt detection and prevention of any irregularities and malpractices.



*Malpractices/corrupt practices can go undetected because of an inadequate oversight mechanism. The risk of occurrence of corruption/ malpractices is high in instance of lack of control and oversight.*

## INTEGRITY MEASURES

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### Effective oversight and reporting mechanisms

#### ***Strong oversight mechanisms***

Internal Auditors/Internal Control Officers have an important role to assess the adequacy of the internal control system in place to prevent and detect the risk of corruption, fraud or any malpractice. Internal Audit/ Internal Control plan should cater for the review of the contract management function.

It will be helpful if External Auditors could conduct both financial and system audits in relation to corruption prone areas including management of contract works.

The Audit Committee has an important oversight role to ensure the establishment of a robust risk management framework within the organisation. The Committee must follow-up on effective implementation of recommendations provided by the Internal and External auditors and those contained in CPR reports issued by the ICAC.


#### ***Reporting mechanism***

The establishment of a system for public disclosure of relevant, reliable and accurate project information should be considered to promote transparency and accountability whilst taking into account confidentiality of information.

The reporting of any suspected malpractice or acts of corruption to the law enforcement authorities should also be encouraged to promote integrity during the contract implementation.

### 3.1.7 ETHICS AND INTEGRITY

Promoting ethics and integrity is an integral part of corruption prevention strategy. Besides a proper system in the contract management process, ethical behaviour and professionalism of public officials and contractors/consultants are equally important in countering corruption/malpractices. Establishing a strong ethics and integrity framework is thus vital for fostering a culture of integrity within an organisation.

	<p><i>A poor ethics and integrity infrastructure not only give rise to risk of malpractices/corruption or perception thereof but may also undermine public trust and confidence in an organisation.</i></p>
<b>INTEGRITY MEASURES 7</b>	<b>Implementing a robust ethics and integrity framework</b>
<b><i>Conduct of ethics and integrity training programmes</i></b>	<p>The conduct of periodic ethics and integrity training programmes and briefing sessions are essential medium for fostering a culture of integrity among public officials and contractors/consultants involved in the implementation of contract works.</p>
<b><i>Mechanism for managing conflict of interests</i></b>	<p>Conflict of interests is a criminal offence punishable under Section 13 of the PoCA 2002. Adequate mechanisms should be established to ensure proper management of any potential or actual situations of conflict of interests<sup>1</sup>.</p> <p>Management must communicate the policy to all staff concerned for its effective application. This will ensure that staff:</p> <ul style="list-style-type: none"> <li>• take cognisance of Section 13 of PoCA 2002;</li> <li>• disclose and declare their interests or any situation of conflict of interests in writing during the project monitoring process;</li> <li>• abstain from participating in such process whenever situations of conflict of interests arise, in line with Section 13 of PoCA 2002; and</li> <li>• record all cases of situations of conflict of interests.</li> </ul>
<b><i>Establishing a no-gift policy</i></b>	<p>An appropriate mechanism needs to be put in place for dealing with gifts, benefits and hospitality<sup>2</sup>. Public bodies must introduce a no-gift policy to prohibit staff from accepting gifts or other benefits from persons with whom they have official dealings, as this may constitute an offence under Section 15 of the PoCA 2002.</p>
<b><i>Promoting ethical behaviour of contractors/consultants</i></b>	<p>Public bodies should ensure that contractors/consultants act in ethical manner in the business dealings with the organisation. Contractors/consultants should be encouraged</p>

<sup>1</sup> - For further guidance please refer to *Guide on Managing Conflict of Interests* (developed by the ICAC).

<sup>2</sup> - The *Guidelines on Gifts and Gratifications for Public Officials* (developed by the ICAC) provide further guidance on acceptance of gifts.

	<p>to adopt a zero tolerance stance towards corruption during the bidding phase. The following can be considered:</p> <ul style="list-style-type: none"><li>- Contractors/consultants can be required to sign a ‘Statement of Business Ethics’<sup>3</sup></li><li>- In line with best practice, an Integrity Pact<sup>4</sup> can be signed for a particular project between the public body undertaking the project and the successful bidder. The document commits the public body and the successful bidder to comply with best practice and towards ensuring maximum transparency.</li></ul>
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<sup>3</sup> - Refer to the Model Statement of Business Ethics by Contractors/Consultants Appendix I.

<sup>4</sup> - Integrity Pacts (IP) are tools developed by the Transparency International for tackling corruption in public procurement. IP are contracts establishing the rights and obligations of all the parties to a public contracting process.

**CHAPTER 4****PROMOTING INTEGRITY IN MANAGEMENT OF CONTRACT WORKS****4.0 Overview**

Contract management involves several key processes namely site supervision for the monitoring of contractors' works, testing of works/materials, processing of payment, management of variations, and certification of payment, among others. The nature of these activities involving outdoor works and frequent interactions among public officials, consultants and contractors combined with inadequate oversight by the Client Ministry/Department or public body may provide corruption opportunities. These include, among others, risk of collusion between contractor and consultant as well as risk of collusion between the public officers and contractor/consultants.

The adoption of best practices is vital to ensure transparency, accountability and integrity in management of contract works and works consultancy agreement whilst ensuring strict compliance with the contract terms and conditions by contractors and consultants.

**4.1 Measures to Promote Integrity in Management of Contract Works****4.1.1 PROJECT MONITORING/SITE SUPERVISION**

It is important to emphasise that project monitoring/ site inspection is a crucial phase of the contract implementation process. The objectives of project monitoring are to ensure that construction contracts are progressing satisfactorily according to relevant regulations and quality standards and are completed on time within budget. One of the problems identified in contract management in public bodies is inadequate monitoring and lax supervision leading to delay in completion of projects and subsequent costs and time overruns.



*Failure to build formal controls into a system of project monitoring can expose an organisation to considerable risks including corruption. These include:*

- *turning a blind eye to use of sub-standards materials*
- *collusion between staff of contractor and consultant for covering up fictitious works, non-execution of works or sub-standard works.*

**INTEGRITY MEASURES****8****Project Monitoring and Site Supervision*****Use of Gantt Charts***

Gantt charts have to be prepared prior to start of works for proper planning and control of activities or project phases. The Gantt charts should be updated as and when required to show schedule changes and their implications, or to communicate works in progress/completed.




<b><i>Preparation/ Submission of Contract Monitoring Plan</i></b>	<p>Where monitoring of works are done by Consultants, it is advisable that prior to commencement of works the latter submit for approval a site supervision/contract monitoring plan. A well-designed contract monitoring plan from Consultants would normally include the following:</p> <ul style="list-style-type: none"> <li>• List of the works items to be inspected.</li> <li>• The frequency of inspection (inspection for piling works, and periodic supervision for finishing works).</li> <li>• The level of staff to be deployed.</li> <li>• The time limit to carry out the inspection following notification from contractor.</li> </ul>
<b><i>Submission of programme of works</i></b>	<p>The submission of programme of works by contractors prior to the start of the work is important for ensuring proper control over contractor's work.</p>
<b><i>Request for inspection of works</i></b>	<p>Contractors must be required to submit a request for inspection of works in advance. This will allow for prompt planning of site supervision and effective monitoring of contract implementation.</p>
<b><i>Conduct of joint site visits</i></b>	<p>Public bodies should maintain a good understanding of works on site through inspections. The Contract Manager (internal contract management team or the consultant) should undertake regular site inspections to ensure activities are progressing in accordance with the contract requirements. The site visits should be performed jointly with the contractor.</p> <p>Where a consultant has been appointed as Contract Manager, the representative of the client/public body should be actively involved in the site visits and undertake joint site visits with the Contract Manager.</p> <p>This will ensure that any issues identified during the site visits are discussed with the Contract Manager and appropriate action agreed.</p>
<b><i>Promoting compliance with contract terms and conditions</i></b>	<p>Prompt and appropriate corrective actions need to be initiated against contractors who fail to comply with contract terms and conditions.</p>
<b><i>Contract clauses</i></b>	<p>To ensure adequate checks and balances during construction works, it is imperative for contracts to clearly highlight instances where;</p> <ul style="list-style-type: none"> <li>(i) site inspection will be mandatory and</li> <li>(ii) the contractor cannot proceed without a site inspection/approval.</li> </ul>



<b><i>Record management system</i></b>	<p>Proper records and documentation of site visits and meetings are required to promote accountability and transparency in site inspection activities.</p> <p>In line with best practice, site inspection reports should provide for the following details:</p> <ul style="list-style-type: none"> <li>• the dates and times of the site inspections</li> <li>• weather conditions on site (if applicable)</li> <li>• the workers and equipment available on site</li> <li>• the works being performed and inspected</li> <li>• the outcome of inspection (any defective work, non-compliance)</li> <li>• instructions issued to contractors or information received from contractors</li> <li>• documents and discussions exchanged on site</li> <li>• documentary evidence or photographs (where applicable)</li> <li>• name and signature of officer who performed the inspection and who supervises monitoring exercises.</li> </ul> <p>Public bodies must also ensure that instructions issued to contractors are formalised as far as possible and properly documented.</p>
<b><i>Supervisory controls</i></b>	<p>The exercise of proper supervisory control over the project monitoring function will not only ensure compliance with contract terms and conditions but also help to prevent and detect any malpractice or wrong doings.</p> <p>Supervisory controls can take the form of random checks by superiors to ascertain veracity of site visits reports/outcomes reported by junior staff following inspections of site works.</p> <p>Public bodies should also generate periodic management reports on progress and quality of works, and any irregularities or non-compliance by the contractor for effective control on contract implementation and decision-making purposes.</p>

#### 4.1.2 TESTING AND INSPECTION OF MATERIALS AND WORKS

The testing and inspection of materials and works is an important phase of the contract management process. This stage is vulnerable to corruption owing to the high cost of material and workmanship in construction projects. Corruption prevention works have shown the absence of an appropriate legislation and regulatory body to address material testing issues. An effective legislative and regulatory framework is crucial as it will not only ensure proper regulatory control over construction quality and increase reliability of material test results but help to reduce corruption risk in material testing.

	<p>The absence of robust legal framework and inadequate control mechanism to ensure integrity in the testing and inspection of materials/works may provide risks of structural failures and opportunities for malpractices/corrupt practices. Corruption risks may include non-performance of tests to check quality of works, cover-up of substandard materials, manipulation of sample of materials for testing, substitution of test samples and falsification of tests reports in return for gratification.</p>
<div data-bbox="245 600 438 667"><b>INTEGRITY MEASURES</b></div> <div data-bbox="464 633 488 667"><b>9</b></div> <div data-bbox="245 680 549 748"><i>Legal and regulatory framework</i></div> <div data-bbox="245 1211 549 1279"><i>Setting up of a regulatory body</i></div>	<div data-bbox="577 622 1225 656"><b>Testing and Inspection of Materials and Works</b></div> <p>A robust legal and regulatory framework is essential for effective regulation of quality control of contract works/construction works. The setting up of a legislative and regulatory framework will help to:</p> <ul style="list-style-type: none"> <li>• enhance transparency, compliance and best practices over material testing and construction standards</li> <li>• ensure safe buildings and limit environmental damage</li> <li>• reduce corruption opportunities and substandard works</li> </ul> <p>To promote transparency, compliance and best practices over material testing it is important to have an appropriate body/authority to address material testing issues. The regulatory body should be equipped with technical and professional staff who are mandated to ensure integrity of material testing and compliance with construction standards. The authority should:</p> <ul style="list-style-type: none"> <li>• set best practices with regard to material testing and monitoring to ensure genuineness of samples taken and used for testing</li> <li>• ensure enforcement actions are taken against building professionals who defraud the material testing process or test results</li> <li>• address reports on any irregularities observed in material testing and construction standards from building professionals and members of the public</li> <li>• establish robust, transparent and accountable systems of checks and balances that will help to reduce substandard construction and corruption opportunities.</li> </ul>

<b><i>Establishment of adequate legislative provisions</i></b>	According to best practices, it is imperative to have a proper regulatory framework so that the required construction quality and material standards for construction works are achieved and maintained. Such regulations should emphasise on the quality of materials to be used in construction works and the construction standards/benchmark for compliance.
<b><i>Implementation of quality control system</i></b>	<p>Public bodies have to ensure that necessary systems and procedures are in place so that the quality of works is adequately and independently tested/certified.</p> <p>An effective quality control systems should be established to cater for the following:</p> <ul style="list-style-type: none"> <li>• Construction materials are examined and approved as per the specifications and the laid down procedures.</li> <li>• Periodic management reports are compiled on any case of delayed material approval together with justifications and follow-up measures taken.</li> <li>• Evidence of all checks and tests performed including sample of the approved materials are kept.</li> <li>• Samples are taken, whenever appropriate, from the materials delivered on site for quality control testing before use.</li> <li>• Random checks are effected to ensure the authenticity of the make and origin of the delivered materials (e.g. cross-verification with suppliers or manufacturers).</li> </ul>
<b><i>Development of procedural guidelines for quality control of materials</i></b>	In line with the above, clear procedural guidelines have to be established to ensure transparency and accountability in the quality control of materials. This should include the responsibilities for examination and testing, authority and timeframe for the approval of architectural and structural construction materials.

#### **4.1.3 PROCESSING OF PAYMENT CLAIMS**

The processing of payment is a vital stage of the contract management phase. This area is vulnerable to corruption risks due to the disbursement of public funds. Certain shortcomings have been highlighted by auditors and noted during the conduct of prevention works. These include absence of defined timeframes for processing of

contractor's claims and payment to the contractor without certification of claims. Implementing adequate controls during the processing of contractor's claim are thus vital to address corruption risks and ensure that payment is made for completed works, based on reasonable verification and certification.



*Lack of proper system, procedures and controls in the processing of claims may lead to overpayment and risk of corruption in the payment process. Typical corruption risks include the issue of payment without measurement and certification of works and verification of contractor's claim.*

## **INTEGRITY MEASURES**

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### **Reinforcing Controls over Processing of Claims**

#### ***Elements of the Guidelines***

Clear guidelines on processing of claims have to be established to ensure adherence to the contract conditions relating to payment and to promote consistent practices by contract monitoring team or consultants. The guidelines should include the following elements:

- The designated officer/ authority for processing, verification and certifying payment to the contractor.
- The timeframe for processing of claims and making payment to the contractor.
- The method for assessing works completed and evidences required (e.g. by milestone payment or percentage of completed works), during processing of claims, in particular, for interim payment.
- Verification of contractor's claims against contract clauses, work certificates, site inspection reports to prevent any unjustified payment or overpayment.

#### ***Ensuring transparency and proper segregation of duties***

- To promote adequate checks and balances in the payment system, the responsibilities for processing, verification and approval of certificate of payments should be properly segregated.
- The contractor/consultant should be required to provide billing details for payment of claims. This will help to promote accountability and situate responsibilities during the processing and approval of claims.

#### ***Oversight and control over payment***

Public bodies should ensure that stringent controls are exercised over payment of claims.

- Internal Auditors should conduct an independent examination of payments to contractors on a sample or recurrent basis. This will help to assess the adequacy and compliance with established controls and ensure validity of payments.

- To further mitigate the risks of overpayment/cost overruns and ensure the exercise of proper control on contract implementation, periodic expenditure reports on contracts should be compiled. The expenditure reports should provide details about the latest project cost estimate/fees charged, interim payments made, and total amount paid, among others.

#### 4.1.4 CONTRACT VARIATIONS

One area of major concern during the implementation of contract is the management of contract variations. As per best practice, contract variations/changes should be permitted only where such possibility is catered in the contract or the law by a clear and pre-established monetary cap on the contract's value, or if those changes will not substantially change the essence of the contract.

Although, the procurement law provides for important safeguards in line with best practices, the management of contract variations is still subject to criticism due to:

- undocumented procedures for approval and payments of variations
- variation works exceeding the contingency sum and
- certification of variations effected by consultants without obtaining approval of the Client/public body.



*Contract variations if not properly managed can substantially increase the cost of the originally approved contract and lead to dispute between clients and contractors. Poor management of variation of works can also create an ideal platform for corruption thereby leading to misuse of public funds. Corruption risks may include, among others:*

- *wrongly designed projects and incomplete works specifications to provide for variations*
- *ordering of unjustified/unnecessary work variations or abuse of variation orders*
- *approving false or excessive claims for variations.*

#### **INTEGRITY** **MEASURES**

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#### **Implementation of Robust Controls for Effective Management of Contract Variations**

##### ***Proper planning and design of projects/contract works***

Public bodies should put in place necessary measures to minimise potential variations and subsequent claims. In line with best practices, the contract/project must be properly planned so that uncertainties are eliminated before awarding the contract. The following should be considered:

- Thorough site investigations and condition surveys should be undertaken

	<ul style="list-style-type: none"> <li>• The project brief should be comprehensive and supported by stakeholders including, among others, members of the organisation, user groups, funders/shareholders, and relevant authorities)</li> <li>• Legislative/environmental requirements must be properly integrated into the project design</li> <li>• All risks should be properly identified and remedial actions undertaken</li> <li>• Designs must be properly coordinated among the different designers such as architects and engineers before bidding</li> <li>• The contract must be unambiguous and explicit.</li> <li>• The contractor's rates should be clear</li> <li>• Concise drawings, bills of quantities and specifications, must be prepared to provide for all situations which are reasonably foreseeable.</li> </ul>
<b><i>Formalising procedures for proper management of variations</i></b>	<p>The establishment of formal procedures is important for proper management and processing of contract variations. To promote transparency and accountability in the management of variations, the procedures must include and emphasise on the following:</p> <ul style="list-style-type: none"> <li>• The governance structure /authorities for approval of variations which should be independent of the Contract Manager/ consultant</li> <li>• All contract variations should be analysed to ensure that same are justified and are in accordance with contract conditions and the variation amount does not exceed the threshold specified in the contract before agreeing</li> <li>• The issue of variation orders should be justified in writing</li> <li>• Written approval must be obtained prior to execution of contract variation by contractors</li> <li>• Documentation of all contract variations including detailed records of the variation orders, assessment and valuation of the contract variations and approval of variation orders must be kept</li> <li>• Procedures to be followed in case of emergency</li> <li>• Periodic management reports on the issue of contract variations, including the time and cost implications should be generated.</li> </ul>

<b><i>Clauses in the contract</i></b>	<p>Necessary provisions to allow and regulate reasonable contract variations, where applicable, needs to be included in the contract. In this vein, essential clauses have to be incorporated in the contract so as to:</p> <ul style="list-style-type: none"> <li>• provide for latent conditions that clearly place the onus on the contractor to inform the contracting organisation of the discovery of a latent condition</li> <li>• set out the procedures to follow with regards to determining costs for variations</li> <li>• stipulate clearly who bears the responsibility for delay costs, such as those associated with bad weather, equipment failure, etc.</li> </ul>
<b><i>Ensuring adequate controls on extension of works</i></b>	<p>Public bodies should exercise proper controls on extension of works by:</p> <ul style="list-style-type: none"> <li>• establishing procedures to be followed in case of extension of works according to the legal provisions or established policies</li> <li>• setting the limits for extension of contracts for works</li> <li>• defining the different authorisations.</li> </ul>

#### 4.1.5 CERTIFYING WORK COMPLETION, COMMISSIONING AND TAKING-OVER

Proper procedures for certifying work completion, commissioning and handing or taking-over are important for successful implementation of contract works and for ensuring value for money. However, shortcomings have been identified during prevention works. These include for instance issuance of certificates of completion despite works were incomplete and release of retention money before end of defect liability period.



*Lack of procedures for certifying work completion, commissioning and taking over of projects may lead to specific losses being incurred by the client/public body as well as provide opportunities for malpractices/corruption as follows:*

- *Issue of practical completion certificate without snag list*
- *Intentionally issue inflated snag lists to delay final clearance, payment and taking over of works*
- *Accepting poor quality of works*
- *Release of payment without measurement of actual work done against contract terms and conditions*



	<ul style="list-style-type: none"> <li>• Release of payment for incomplete work</li> <li>• Defects not remedied within the defect liability period</li> <li>• Full payment released despite of defective works.</li> <li>• Retention money not offset against specific losses incurred due to non-compliance with contract terms and conditions.</li> </ul>
<b>INTEGRITY MEASURES 12</b>	<b>Implementing Proper Procedures and Controls for Certifying Work Completion, Commissioning and Taking-over</b>
<b>Certifying work completion</b>	
<i>Procedures for certification of work completion</i>	<p>Public bodies should put in place adequate procedures for proper certification of work completion. The procedures should:</p> <ul style="list-style-type: none"> <li>• define the levels of authority responsible for certifying work completion</li> <li>• specify the time limit for responding to the contractor's application for certification of work completion (i.e. to either certify completion or reject the work with reason within the specified time limit)</li> <li>• ensure the conduct of joint inspection with the representatives from the user department and the contractor upon notification of work completion</li> <li>• state the reporting requirements with respect to outcomes of inspections carried out following notification of work completion.</li> </ul>
<b>Commissioning and taking-over</b>	
<i>Establishment of procedures for commissioning and taking over</i>	<p>The establishment of proper procedures for taking/handing over of completed works and commissioning for plant are vital given that at completion, the defect liability period starts and the responsibility for care and custody and the risk of loss normally passes to the public body.</p>
<i>Exercise of controls prior to taking- over</i>	<p>The Contract Manager or contract management team has the responsibility to ensure substantial performance by the contractor prior to the taking-over. Necessary controls to be exercised include inter-alia, the following:</p> <ul style="list-style-type: none"> <li>• required tests successfully completed and the works or plant are substantially completed</li> <li>• contractual requirements have been met</li> <li>• contractually required documentation (such as operation and maintenance manuals, as-built</li> </ul>



	<p>records/drawings, guarantee certificate etc.) have been handed over by the contractor and are acceptable</p> <ul style="list-style-type: none"> <li>• the site is clean of debris and any required reinstatement</li> <li>• any change orders have been completed</li> <li>• all requests have been attended.</li> </ul>
<b><i>Proper management of Defect Liability Period</i></b>	<p>The management of the defect liability period is important as it is the opportunity to have any outstanding works completed and to have the contractor repair, replace or make good any defects concealed in the works and which may become apparent during the defect liability period.</p> <p>Public bodies should put in place necessary controls for proper application of the defect liability period. These include, among others, the following:</p> <ul style="list-style-type: none"> <li>• Contractor's application/ notification for work completion should be adjusted/amended with reasons in case of major defects or outstanding works which should be rectified before certification of work completion.</li> <li>• The completion certificate should be accompanied with snag list and timeframe for rectification in case of defects.</li> <li>• Contractors should be formally notified to rectify defects within the defect liability period.</li> <li>• Retention money must not be released prior to or without the issue of the Defect Liability Certificates.</li> </ul>
<b><i>Verification of insurance policies and performance security bonds</i></b>	<p>The Client/ Contract Manager has to ensure that insurance policies and performance security bonds are submitted, renewed and hence valid up to the issue of certificate of making good.</p> <p>The authenticity of the performance security must be checked with the issuing financing institution before making the advance payment in case of any suspicion.</p> <p>The insurance provisions are considered as important risk management tools and as such the Client/ Contract Manager has to ensure that:</p>

- insurance policies are in accordance with the contract and caters for all vital elements such as coverage, duration, applicability, among others
- the insurance covers are adequate and within the thresholds established in the contract
- due diligence is made to ascertain the authenticity of the insurance document and payment of insurance premiums.

#### 4.1.6 MONITORING CONTRACT AND CONTRACTORS/ CONSULTANTS PERFORMANCE

A sound performance evaluation system is vital for ensuring compliance with contract requirements and successful completion of the contract works. A proper and formal evaluation system will help to promote the effective handling of any disagreements between contractors and clients and mitigate the risk of corrupt/ malpractices in the evaluation process. Corruption prevention works revealed the absence of proper system for performance appraisal of contractors as no performance review were conducted for assessment of contractors' performance.



*The performance evaluation process is vulnerable to risk of corruption if not properly managed. Poor performance of contractors/consultants which are normally subject to penalties and punitive actions may be covered for corrupt motives.*

#### INTEGRITY MEASURES

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#### Establishing System for Evaluation of Contract and Contractor's/Consultant's Performance

##### ***Establish formal system and procedures***

Public bodies must monitor and continuously evaluate the performance of the contractor in order to ensure that value for money is achieved in every project undertaken.

In line with Directive 35 of the PPO, certain Public bodies should establish a formal system and procedures for systematic monitoring and reporting of the contractors'/consultant's performance.

##### ***Contract Performance Review mechanism***

An appropriate Contract Performance Review mechanism is important to effectively manage the processing and reporting of consultants and contractors performance evaluation.

Such a mechanism will ensure adequate checks and balances in the appraisal system and mitigate the risk of any malpractice.

<p><b><i>Development of KPIs to monitor contract performance</i></b></p>	<p>KPIs<sup>5</sup> are vital tools which can facilitate monitoring of contract performance and ensure successful implementation of the contract.</p> <p>It must be noted that KPIs are only a monitoring tool and it is essential to monitor contracts against contract provisions. The contract implementation activities should be monitored in accordance with the contract and relevant elements of the contract management plan.</p> <p>KPIs vary depending on the specific contract and the performance measures normally include, among others:</p> <ul style="list-style-type: none"> <li>• cost</li> <li>• time</li> <li>• environmental, social, health and safety (ESHS) performance (for infrastructure contracts)</li> <li>• stakeholder (end users/ community) satisfaction.</li> </ul> <p>Public bodies can use several tools to monitor KPIs. These include, among others, Gantt chart; Contract Management Plan reports/ updates, disbursement reports and progress meeting minutes/ reports.</p>
<p><b><i>Performance Evaluation of contractors/ consultants</i></b></p>	<p>To ensure compliance with contract terms and conditions, contractor's/consultant's performance should be monitored through periodic and end-of-contract appraisals whilst taking into consideration all performance records in the preceding period.</p> <p>In the above respect, public bodies should:</p> <ul style="list-style-type: none"> <li>• develop objective performance evaluation criteria to ensure an impartial and fair evaluation of contractors/consultants' performance<sup>6</sup>.</li> <li>• set clear procedural guidelines on actions to be taken regarding the overall contractor's performance evaluation rating<sup>6</sup></li> <li>• formally inform the Contractor/Consultant in advance of the performance evaluation exercise and the performance standards/criteria which will be used.</li> </ul>
<p><b><i>Records Management</i></b></p>	<p>A proper record management system should be put in place for proper monitoring of the contract implementation activities. The following measures should be considered:</p>

5 - Guidelines on Key Performance Indicators for Monitoring of Contract at Appendix II

6 - Guidelines on Contractor/Consultant Performance Evaluation at Appendix III

	<ul style="list-style-type: none"> <li>• The performance evaluation exercise must be properly documented through the use of a proper performance evaluation report form<sup>7</sup> to promote transparency and accountability in the process.</li> <li>• A database containing the details of each works contract and works consultancy contract and records of each contractor's/consultant's performance including any adverse record and disciplinary action taken should be maintained for reference during future selection exercises. These have to be catered for in the PMIS.</li> </ul>
<b><i>Contract and Contractor's performance reports</i></b>	<p>Public bodies should compile management reports on project progress and the contractors'/consultants' performance at regular period and upon completion of the contract.</p> <p>The reports should be submitted to management for necessary actions and consideration during future evaluation, where applicable.</p>

*7-Model of Contractor and Consultant Performance Evaluation Report Forms are provided at Appendix IV and Appendix V*

**APPENDIX I: Statement of Business Ethics for Contractors/Consultants**

**As a Contractor/Consultant, I shall:**

1. Act professionally, ethically and in an impartial manner.
2. Strive to uphold the reputation and competence of contractors.
3. Not give any bribe, gratification, gift or any other benefit to any interested party.
4. Not be involved in any corrupt practice as per provision made in the Prevention of Corruption Act (PoCA) 2002.
5. Always be accountable and act in the public interest.
6. Not accept to bid for contracts that I am not competent to execute.
7. Not collude with any Public Official in activities involving bidding exercises.
8. Not represent any conflict of interests and shall disclose to my Client any relationship that may influence my judgment.
9. Not intentionally communicate false, insider or misleading information that may compromise the integrity of the bidding exercise.
10. Duly report to the ICAC any act of corruption/malpractices.

**Name of Contractor/Consultant:** .....

**Signature:** .....

**Date:** .....

## APPENDIX II: Guidelines on Key Performance Indicators for Monitoring of Contract

### Guidelines on Key Performance Indicators (KPI)

KPIs may vary depending on the specific contract. The performance measures normally include cost, time and ESHS as follows:

#### Time

1. Measure of physical progress =  $\% \text{ of actual physical completion vs. contractual physical completion over the period}$

2. Measure of time over run =  $\text{actual contract period} - \text{contract period} \times 100 (\%)$

#### Contract period

3. Measure of contractor's default: un-excusable delays percentage =  $\text{un-excusable delays} \times 100 (\%)$

#### Total delays

4. Measure of the Public Body's default: excusable delays percentage =  $\text{excusable delays} \times 100 (\%)$

#### Cost

1. Measure of financial progress =  $\% \text{ of actual paid vs. contractual expected payment over the period}$

2. Cost overrun =  $\text{actual contract price} \times 100 (\%) \div \text{original contract price}$

#### ESHS

1. Lost time due to safety related incidents (%) =  $\text{lost time} \times 100 (\%) / \text{contract period}$

2. Number of environmental related breaches.

*(Source: The World Bank, 2018, Procurement guidance, Contract management practice )*

## APPENDIX III: Contractor/Consultant Performance Evaluation Guidelines

### Guidelines on performance standards

The performance standards which may be considered to evaluate the performance of contractors and consultants for works contract are proposed below. These criteria are based on international practices and good governance suggests that same be applied for objective and fair evaluation of contractor's/consultant's performance.

Performance Standards/Criteria	
Contractor	Consultant
Quality/Standard of work	Quality of Service
Planning and Time Management	Planning and Time Management
Quality Management System	Quality Management Systems
Contractor's personnel	Management and suitability of Consultant's Personnel
Contract administration	Cost
Co-operative relations	Co-operative relations

### Guidelines for conduct of the Contractor/ Consultant Performance Evaluation

According to best practices the contractor performance evaluation is an on-going exercise and a Contractor Performance Evaluation Report can be prepared on the following instances:

- Periodic reporting as required under the performance evaluation policy of the contracting organisation. This includes final completion of work and time of issuance of interim/final payment.
- At specific key stages in the project delivery process pre-established in the contract document (e.g. for Consultants this could be at the different stages of completion of design and construction)
- Prior to completion of the work an interim Performance Evaluation Report Form can be issued and in case of clear unsatisfactory performance, including excessive delay in remedying project deficiencies.
- In exceptional circumstances such as termination of contract and abandonment of the work, among others.

### Guidelines on Performance Evaluation Process

Good practices require that an appropriate performance rating system be established for objective performance evaluation. A performance rating system with the following grades and corresponding scores can be used to assess and rate each evaluation criteria:

Grading		Scores
Very Good	Well above the acceptable standard of performance	9 - 10
Good	Often exceeds the acceptable standard of performance	7 - 8
Satisfactory	Meets the acceptable standard of performance	5 - 6
Fair	Mostly meet the acceptable standard of performance but has some weaknesses	3 - 4
Unacceptable	Does not meet the acceptable standard of performance	0 - 2

### Example 1: Periodic/Interim Performance Evaluation

Evaluation criteria for Contractor	Maximum Possible rating	Rates Scored	Grading
Quality/Standard of work	10	7	Good
Planning and Time Management	10	5	Satisfactory
Quality Management System	10	5	Satisfactory
Contractor's personnel	10	7	Good
Contract administration	10	7	Good
Co-operative relations	10	7	Good
<b>Totals</b>	<b>60</b>	<b>38</b>	
<b>Performance score = <math>100 \times (38/60) = 63.3\%</math></b>			

### Guidelines on Contractor/ Consultant Performance Evaluation Ratings and Consequences

The recommended actions to be taken with regard to the performance score achieved must be clearly defined. The recommended actions must be in line with the relevant laws and the contract agreement. Proposed actions are as follows:

Performance Score	Overall Grading	Recommended Action
85% or above	Excellent	<ul style="list-style-type: none"> <li>• Issue of letter</li> </ul>
71% to 84%	Good	<ul style="list-style-type: none"> <li>• Issue of letter</li> </ul>
51% to 70 %	Satisfactory	<ul style="list-style-type: none"> <li>• Issue of letter and close monitoring</li> </ul>
30% to 50%	Fair	<ul style="list-style-type: none"> <li>• Issue of formal instructions</li> <li>• Issue of warning letter indicating action to be taken in case of unsatisfactory performance next time</li> <li>• Deduction of payment as provided under contract agreement</li> </ul>
Below 30%	Unacceptable	<ul style="list-style-type: none"> <li>• Disqualification</li> <li>• Suspension from invitation to bid in the future</li> <li>• Termination of contract agreement</li> </ul>

*With a performance score of 63.3% achieved during the periodic/ interim performance evaluation, the contractor overall performance is satisfactory. Hence, the recommended action would be to apprise the contractor of its performance through the issue of a letter.*



**APPENDIX IV: Model Contractor Performance Evaluation Report Form**

<b>PROJECT DETAILS</b>						
Project Title:		Project Reference:				
Description of Works:						
<b>CONTRACTOR DETAILS</b>						
Contractor's Business Name:		Contractors Business Number:				
Contractor's Representative Name :		Representative Contact Details				
Position:		Tel/Mobile Number:				
		Email:				
<b>CONTRACT COST DETAILS</b>						
Contract Number:		Actual Liquidated Damages:				
Contract Award Amount:						
Final Contract Amount:						
<b>TIME DETAILS</b>						
Contract Award Date:		Date of start of work:				
Original Completion Date:		Total extensions of time approved : (days)				
Actual Completion Date:		Extended completion date:				
<b>PROJECT MANAGER</b>						
Name:		Tel/ Mobile Number:				
		Email:				
<b>FEEDBACK ON PERFORMANCE OF CONTRACTOR ON PREVIOUS WORKS</b>						
<hr/> <hr/>						
<b>REPORTING PERIOD</b>						
Report Date (date at end of reporting period)						
% of total contract work completed ( at reporting date)					..... %	
Report Reason	<input type="checkbox"/> Periodic reporting <input type="checkbox"/> Unsatisfactory performance <input type="checkbox"/> Completion of engagement <input type="checkbox"/> Termination of engagement <input type="checkbox"/> Completion of construction /implementation					
	Excellent (9-10)	Good (7 - 8)	Satisfactory (5-6)	Fair (3 - 4)	Unacceptable (0-2)	Scores obtained
Quality of Work						
Planning and Time Management						
Quality Management Systems						
Contractor's Personnel						
Contract Administration						
Co-operative Relations						
<b>Total Scores</b>						

Actual performance score = (Total score/ Maximum Score) x 100 = .....%	
<b>Overall comments on actual performance</b>	
<hr/> <hr/> <p><i>* Additional comments to support your response to any item above (include additional page if needed)</i></p>	
<b>Open discussion with Contractor</b>	
<p>I confirm that open discussion with the Contractor in the preparation of this report has been held and a copy of the completed report has been sent to the Contractor on ...../...../.....</p> <p>The Contractor has <input type="checkbox"/> Accepted <input type="checkbox"/> Not Accepted</p> <p>Contractor's Remarks received on ...../...../..... (as per annex letter)</p>	
<b>Officer completing this form</b>	
<b>Name and title:</b>	<b>Signature:</b>
	<b>Date:</b>
<b>Supervisor's comments</b>	
<hr/> <hr/> <hr/> <hr/>	
<b>Name and title:</b>	<b>Signature:</b>
	<b>Date:</b>

## APPENDIX V: Model Consultant Performance Evaluation Report Form

<b>PROJECT DETAILS</b>						
Project Title:		Project Reference:				
Description of Works:						
<b>CONSULTANT DETAILS</b>						
Consultant's Business Name:		Consultant's Business Number:				
Consultant's Representative: Name :		Tel/Mobile Number:				
Position:		Email:				
<b>CONTRACT COST DETAILS</b>						
Contract Number:						
Contract Award Amount:		Final Contract Amount:				
<b>PROJECT STATUS</b>						
Approved date of Completion:		Actual Completion Date:				
<b>PROJECT MANAGER</b>						
Name:		Tel/ Mobile Number:				
		Email:				
<b>FEEDBACK ON PERFORMANCE OF CONSULTANT ON PREVIOUS WORKS</b>						
<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div>						
<b>REPORTING PERIOD</b>						
Report Date (date at end of reporting period)						
% of total contract work completed ( at reporting date)						..... %
<b>Report Reason</b>	<input type="checkbox"/> Periodic reporting <input type="checkbox"/> Unsatisfactory performance					
	<input type="checkbox"/> Completion of engagement <input type="checkbox"/> Termination of engagement					
<input type="checkbox"/> Completion of construction /implementation						
	Excellent (9-10)	Good (7 - 8)	Satisfactory (5-6)	Fair (3 - 4)	Unacceptable (0-2)	Score obtained
Quality of Service						
Planning and Time Management						
Management and suitability of Consultant's Personnel						
Quality Management Systems						
Cost						
Co-operative Relations						

<b>Total Score</b>	
<p>Performance score = (Total score/ Maximum Score) x 100 = .....%</p>	
<b>Overall comments on performance</b>	
<hr/> <hr/> <hr/>	
<p><i>* Additional comments to support your response to any item above (include additional page if needed)</i></p>	
<b>Open discussion with Consultant</b>	
<p>I confirm that open discussion with the Consultant in the preparation of this report has been held and a copy of the completed report has been sent to the Consultant on ...../...../.....</p> <p>The Consultant has <input type="checkbox"/> Accepted <input type="checkbox"/> Not Accepted</p> <p>Consultant's Remarks received on ...../...../..... (as per annex letter)</p>	
<b>Officer completing this form</b>	
<b>Name and title:</b>	<b>Signature:</b>
	<b>Date:</b>
<b>Supervisor's comments</b>	
<hr/> <hr/> <hr/>	
<b>Name and title:</b>	<b>Signature:</b>
	<b>Date:</b>

## References

Construction Sector Transport Initiatives (CoST). 2018, “*Better Values from Public Infrastructure Investments*”, CoST, London.

[http://infrastructuretransparency.org/wp-content/uploads/2018/06/165\\_CoST-Better-value-from-public-infrastructure-investments-online.pdf](http://infrastructuretransparency.org/wp-content/uploads/2018/06/165_CoST-Better-value-from-public-infrastructure-investments-online.pdf)

Government of Canada, “*Consultant and Contractor Performance Evaluations*”, Public Services and Procurement Canada, Canada.

<https://www.tpsgc-pwgsc.gc.ca/biens-property/sngp-npms/bi-rp/conn-know/qualite-quality/eval-eng.html>

New South Wales (NSW) Government (2014), “*Performance Management, Consultant Performance Report*”, Department of Finance, Services and Innovation, NSW.

New South Wales (NSW) Government (2013), “*Performance Management, Contractor Performance Report*”, NSW.

OECD (Organisation for Economic Co-Operation and Development). April 2007 “*Integrity in Public Procurement- Good Practice from A to Z*”, OECD Publishing, Paris.

<https://www.oecd.org/gov/ethics/integrityinpublicprocurementgoodpracticefromatoz.htm>

OECD (Organisation for Economic Co-Operation and Development). 2016: “*Preventing Corruption in Public Procurement*”, OECD Publishing.

<http://www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf>

Prevention of Corruption Act, 2002, Mauritius.

R D Elsey .October 2007, “*Contract Management Guide*”, Chartered Institute of Procurement and Supply (CIPS).

Transparency International (TI). 2006, “*Handbook for Curbing Corruption in Public Procurement*”, Published by Transparency International, Berlin Germany.

Transparency International (TI). 2013, “*Integrity Pacts in Public Procurement, An implementation guide*”, TI, Berlin.

United Nations Convention Against Corruption (UNCAC)

Victorian Civil Construction Industry. May 2008, “*Best Practice Guide for Tendering and Contract Management*”, Institute of Public Works Engineering Australia.

World Bank. September 2018, “*Contract Management Practice*”, World Bank, Washington.



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