

Determining contract management challenges relating to supply chain management in the Eastern Cape Department of Education

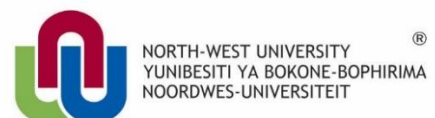
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ABSTRACT

The South African Government depends on procuring goods and services which are necessary to give effect to its service delivery mandate which as such are not available within the public sector or can be insourced. The required goods and services are procured through the supply chain management system which includes the function of managing contracts that have been arranged for the goods and services that have been sourced from external suppliers or service providers. Contract management is essential to ensure that there is control over the contractual arrangements between the public sector institution and the appointed supplier or service provider to promote efficiency, effectiveness and value for money. However, challenges are experienced in the implementation of contract management. Thus, the focus of the study is to identify the potential contract management challenges that the Eastern Cape Department of Education (herein after referred to as the Department) experiences and propose a management framework to form the basis for possible corrective action or improvement.

A literature review and semi-structured interviews with purposively sampled officials were employed to collect. The research instrument utilised for data collection was based on the themes identified during the review of literature and include legislation and prescripts; frameworks; contract management activities; contract management role players; risk management; and contract management tools. The analysis of the data provided overwhelming evidence which confirmed that the Department experiences challenges related to contract management. These challenges are: a lack of capacity, lack of knowledge and skills of the officials involved in contract management activities; poor communication and relationship management across the Department; a lack of staff; absence of a contract management unit; a lack of policies and procedures; a lack of monitoring; and a lack of training.

A management framework for contract management within the Department was proposed based on the data collected and analysed during the empirical investigation. The rules or critical contents which should be incorporated under the various activities to guide the Department in its contract management activities were proposed and will

facilitate the development of a final contract management framework. The study also identified the need for a suitable contract management process flow to ensure uniformity and consistency in the management of contracts. A suitable organisation structure for contract management within the Department was also proposed.

KEY WORDS:

Eastern Cape Department of Education, supply chain management, contract management, legislation, prescripts, framework, role players, activities, risk management and tools/systems.

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CHAPTER 1

ORIENTATION TO THE STUDY

1.1 ORIENTATION AND PROBLEM STATEMENT

The service delivery mandate of the South African government necessitates the procuring of goods and services, as many of these requirements are not available from within public sector institutions or cannot be insourced. As a result, a significant portion of public sector spending goes towards the procuring or outsourcing the provision of goods and services. The public sector spending on goods, services and construction works during the 2013/14 financial year amounted to R 500 billion (National Treasury, 2015a:3). This spending on goods and services is governed by several pieces of legislation which derive their existence from the Constitution of the Republic of South Africa, 1996 (herein after referred to as Constitution, 1996).

In terms of Section 217 of the Constitution, 1996, when an organ of state contracts for goods or services, it must do so in accordance with a system of procurement which is fair, equitable, transparent, competitive and cost-effective. The Public Finance Management Act (1 of 1999) and the Preferential Procurement Policy Framework Act (5 of 2000), supported by regulations issued in terms of the said pieces of legislation, form the basis for the implementation of supply chain management. Section 38 of the Public Finance Management Act (1 of 1999) prescribes the general responsibilities of accounting officers or heads of departments, as they are commonly referred to. These responsibilities include the establishment and maintenance of an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective for the relevant institution as well as the responsibility for management of the institution's assets and liabilities (South Africa, 1999).

Management in terms of Section 38 of the Public Finance Management Act (1 of 1999) refers to the responsibility for the overall running of a department. According to Johannsen and Page (1995:186-187), management is the "effective use and co-ordination of resources such as capital, plant, materials and labour to achieve defined objectives with

maximum efficiency”. Bartol and Martin (1991:6-7) express a similar view defining management as a “process of achieving organisational goals through engaging the four major functions of planning, organising, leading and controlling” and recognises that management is an on-going activity which entails reaching important goals.

Reforms within the public sector procurement environment commenced during 1995, before the promulgation of the Constitution, 1996, but gained impetus in 2000 with, amongst other intentions, the replacing of the outdated procurement and provisioning systems within the public sector with an integrated supply chain management function (National Treasury, 2003:2). Contract management or contract administration was one amongst the various aspects of procurement and provisioning that was identified for reform (National Treasury, 2003:22-23).

To understand the position and context within which contract administration resides in supply chain management, it is important to firstly define contract as a concept. According to Havenga, Havenga, Kelbrick, Mcgregor, Schultz, Van de Linde, and Van der Merwe (2004:45) a contract is “an agreement which is concluded between two or more persons with the serious intention of creating legally enforceable obligations, and which meets the requirements set by law for the formation of a valid contract”. Within the public sector context, the National Treasury, (2010a:4) adopted the meaning of a contract to be “the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein”. Thus, the Eastern Cape Department of Education (herein after referred to as the Department), for instance, is required to enter into contracts for the goods and services that it procures.

Contract management can be described as the process of maintaining control over the contractual arrangements between a department (purchaser) and the appointed supplier (contractor) being the other contracting party by performing the contractual management or administration activities commencing at the conclusion of a contract (Western Cape Government, 2013:4). The contract management function which resides within the supply chain management function includes the following activities (National Treasury, 2010b:22-23 & 51-56):

- negotiations;
- formalising of contracts and document management;
- monitoring of contractual performance milestones;
- risk management;
- price adjustments;
- managing variations to the contract;
- managing and monitoring payments;
- dealing with poor and/or non-performance by contractors;
- enforcement of the terms and conditions of the contract;
- applying contractual default penalties;
- managing cessions of contracts and/or payments;
- providing support during litigation; and
- contract close-out and reporting.

The Department is required to perform the abovementioned activities in order to maintain control over the contractual arrangements with its contractors. The supply chain management system employed in the public sector comprises of four key elements. These are demand management which deals with the planning for procurement phase; acquisition management which deals with the actual process of procuring the goods and services; logistics management which deals with receiving, warehousing, distribution of goods and vendor performance; and disposal management which deals with the planning for and disposal of obsolete or unwanted goods (National Treasury, 2004:10). Contract management resides under the element of logistics management. The activity of vendor performance essentially entails contract management (National Treasury, 2004:11).

To demonstrate the place of contract management within the supply chain management system, Bolton (2007:13-14) describes public sector procurement as primarily comprising of six key events during the bidding process. These events are comprised of: solicitation of bids; submission of bids; receipt and evaluation of bids; award or acceptance of bids; conclusion of contracts; and maintenance and administration of the concluded contracts. Pauw, Woods, Van de Linde, Fourie and Visser (2009:265) re-affirm that the supply chain

management function deals with the whole bidding process as well as contract management and administration. However, they hold the view that the acquisition management element within the supply chain management function should specifically deal with all the administrative tasks pertaining to contract management and administration (Pauw *et al.*, 2009:266).

All reasonable steps must be taken to ensure that a contract procured through the supply chain management function is properly enforced (South Africa, 2003:114). Like all other departments and institutions, the Department is required to implement the contract management function within its supply chain management function in order to deliver on the mandate of providing basic education (National Treasury, 2003:4, National Treasury, 2005:49).

Section 29 of the Bill of Rights, as contained under Chapter 2 of the Constitution, 1996 stipulates that everyone has the right to basic education. In driving this mandate and other priority policy objectives, the government developed the National Development Plan. The objectives of the National Development Plan are articulated in the Vision for 2030 Statement (The Presidency, 2011). One of the critical objectives of the National Development Plan is improving education, training and innovation which is intended to drive the Constitutional mandate that everyone has the right to basic education (Department of Education, 2014:12-14). In order that the Constitutional right to basic education is delivered upon, the government of the country has institutionalised the provision of basic education within the Department of Basic Education at a national sphere which deals mainly with the policy function. This responsibility within the Eastern Cape Province has been entrusted to the Department which deals mainly with the execution of this objective. Hence, these departments are jointly required to execute this objective as well as fulfil the long term objectives of the vision for 2030 (Department of Education, 2003:4; The Presidency, 2011:274-283).

The National Development Plan (The Presidency, 2011:263) espouses that a strong educational system spanning early childhood development, primary, secondary, tertiary and further education is crucial to addressing poverty and inequality. The Department needs to ensure that all children can access and benefit from a high quality education. The

National Development Plan (The Presidency, 2011:264) further asserts that “this requires a range of early childhood development services and programmes that support the holistic development of young children. These services need to be flexible, so that they can be responsive to the needs of children, families and communities. Some services will need to be targeted directly at children; others will provide support to their primary caregivers. To overcome our apartheid legacy, it is essential that everybody has access to services of a consistently high standard regardless of who they are and where they live. This will require that specific consideration be given to the most vulnerable children – those who are living in poverty or with disabilities”. The Department will have to procure additional goods and services to fulfil this mandate. The procurement of such additional goods and services will result in contracts being entered into with the relevant contractors which must then be managed by the Department.

The main focus of the Department is to provide teaching and learning to all school going children within the Province. One of the most strategic functions is to create an environment that is conducive to teaching and learning. For this purpose, the Department must provide such equipment and erect such buildings as may be deemed necessary or expedient (Eastern Cape, 1999:8) and undertake various activities, projects and tasks and implement programmes to ensure that it meets this objective (Department of Education, 2014:19-26). Some of the goods and services required to meet this objective are the provision of LTSM, textbooks, school nutrition programme for underprivileged learners, scholar transport, infrastructure delivery and maintenance (Department of Education, 2014:9-14). Thus, the procurement processes vested within the supply chain management function has to ensure that those goods and services which are not insourced are procured from outside service providers and suppliers in the private sector (Bolton, 2007:2-3).

Contract management has a significant role to play in ensuring that contracts for the goods and services being procured in order to guarantee the right to basic education are executed in terms of the conditions of contract. Contract management must also be aimed at achieving cost efficient and effective utilisation of educational resources whilst eliminating wastage, inefficiency, maladministration and corruption (Eastern Cape, 1999:7). As such, it is important that the Department has a fully-fledged and efficiently

functioning contract management component and an effective contract management function which complies with relevant laws, prescripts and good governance principles (Institute of Directors in Southern Africa (IoD), 2009:31). However, it would appear that there are challenges relating to contract management within the Department.

The requirements of this function are not being fulfilled and as a result there have been serious consequences for the Department. This can be evidenced from the failure of the Department to ensure that goods and services reach the intended beneficiaries within the required time, quality and cost (value for money). Further evidence is the reporting by the Auditor-General during the annual audits of deficiencies in the contract management function of the Department. The Auditor-General (2012:1021-1512, 2013:207-720, 2014:32-672) has consistently reported over the 2011/12, 2012/13 and 2013/14 financial years on issues related to irregular payments, delays in payments, non-compliance with conditions of contract by contractors, under-deliveries, poor quality, poor timeliness of delivery, unauthorised extension of contracts, absence of formal contracts, poor contract document management, poor or no contract close-out and reporting, non-implementation of penalties amongst many other findings.

A typical example of poor contract management in the Department is that of LTSM. The Department faces serious challenges on an annual basis in ensuring that the LTSM materials reach schools timeously and in the correct quantities for the commencement of teaching and learning at the beginning of each academic year (Zuzile, 2014b:1; Zuzile, 2014c:1).

The Department should have learnt from past experiences and therefore improved its systems and processes to ensure that the LTSM materials reach schools timeously. There are several other examples such as school furniture, textbooks, school nutrition programme for underprivileged learners, scholar transport, and infrastructure delivery and maintenance (Carlisle, 2013:4; Boya, 2014:1). The weaknesses within the Department to effectively and timeously procure the services of competent service providers and to effectively manage the supply and delivery these goods and services are being exposed. This also draws negative publicity/criticism in the media and has been the subject of concern and scrutiny by the Legislature as well (Fengu, 2013:5,

Fengu, 2015:2; Zuzile, 2014a:2). Thus, an investigation needed to be undertaken to determine the causes of poor contract management.

The failure of the contract management function can be attributed to (Auditor-General, 2012:926-1512, Auditor-General, 2013:207-720, Auditor-General, 2014:32-672):

- inappropriately structured or established contract management unit;
- understaffed contract management unit;
- lack of suitably skilled officials to perform effective contract management;
- poor specifications;
- poor contracting;
- end users being left to manage contracts on their own;
- poor or under performance by contractors not being addressed timeously;
- punitive measures are not instituted against defaulting suppliers;
- no formal contract close-out and contract close-out reporting;
- failure of the Department to learn from previous experiences and implement corrective measures;
- lack of interest or support from top management;
- lack of accountability; and
- in instances where the Department outsources the responsibility for procurement and contract management, the Department is being let down by its implementing agents. The implementing agents are not being managed by the Department or being held accountable.

The findings of the Auditor-General indicate shortcomings in the contract management function of the Department which need to be addressed. These shortcomings have recurred in the Auditor-General's findings which indicates that remedial action or measures have either not been instituted to or that such measures have not been effective.

Some of the consequences of poor contract management, or lack thereof, which the Department faces are (Auditor-General, 2012:926-1512, Auditor-General, 2013:207-768,

Auditor-General, 2014:32-672; National Treasury, 2010b:85; Nieman, 2008:3; Office of the Premier, 2011:15):

- failure in service delivery, i.e. ensuring that everyone has access to a basic education;
- delays in completion of projects;
- escalation in the cost of completion of projects;
- failure to spend budgets;
- value for money not being obtained;
- loss/surrender of unspent funding;
- exorbitant completion costs of projects where replacement contractors are to be appointed;
- opportunities for fraud and corruption;
- unwarranted litigation;
- wastage;
- timelines/deadlines not being met; and
- poor audit outcomes.

The consequences of poor contract management are wide-ranging and have a direct impact on the Department's ability to deliver on the constitutional right to basic education. There is a need for the Department to implement measures to avoid these consequences. The implementation and functioning of the contract management function in the Department needs to be determined with an aim of identifying specific contract management challenges. This research study aims to investigate the current status of contract management in the Department, identify the reasons for non-compliance or inefficiencies and make recommendations for possible improvement or corrective action.

1.2 RESEARCH OBJECTIVES

The objective of a research study should be to address a particular question or problem with the intention of making a difference or suggesting possible applications or solutions (Leedy & Ormrod, 2009:45) to said question or problem. The objectives of this research study are to:

- describe the theoretical framework, legislation, policies and best practice models relating to public sector contract management;
- ascertain the typical contract management requirements for public sector departments inclusive of structural, human resource, skills and functional or operational requirements;
- determine the current state of contract management within the Department to establish its level of compliance;
- identify the potential contract management challenges; and
- propose a management framework which will form the basis for possible corrective action or improvement of contract management within the Department.

1.3 RESEARCH QUESTIONS

In undertaking a research study, it is important to be focussed precisely and rigorously on what the project aims to achieve (Bryman, 2012:10). Research questions are an essential aid to “narrowing down and focusing more precisely on what it is that you want to know about” (Bryman, 2012:10). This research study seeks to determine:

- What is the theoretical framework for public sector contract management?
- What are the legislative requirements for effective contract management?
- What are the contract management best practices?
- What are the contract management challenges the Department experiences in terms of:
 - structure of the contract management component;
 - adequacy of staff complement;
 - skills levels of staff in terms of academic training and practical experience;
 - management support; and
 - systems, processes and procedures; and
- What is a suitable management framework for contract management within the Department?

1.4 CENTRAL THEORETICAL STATEMENTS

Contract management deals with the formalisation of a contract awarding process by creating and entering into formal contracts or service level agreements. According to Hugo, Van Rooyen and Badenhorst (1997:9) as cited by Nieman (2008:17) contract management also deals with the day-to-day administration of contracts geared towards ensuring compliance by the appointed contractors to the terms and conditions of their contracts which will ensure that the correct goods and services are procured timeously, delivered at the correct address, from the right sources, and ensure those goods and services are of the expected quantity, quality and price.

Contract management deals with the performance of contractors, problem solving, risk management, provides for preventive and corrective measures as well as punitive measures including seeking recourse through the courts and obtaining reparations where such are due (Office of the Premier, 2011:12-22). Nieman (2008:48) contends that supplier performance management takes place to ensure early detection of potential performance failure by a supplier and that early remedial measures are initiated. Contract management governs the reciprocal relationship between the Department as the purchaser and the contractor as the supplier or vendor.

Each government institution should have a dedicated contract manager or team within the contract management component (Office of the Premier, 2011:9). To be effective, the component should be structured in proportion to the size of the Department, its constitutional or strategic mandate, volume and range of contracts and complexity of these contracts. The component should also have an appropriate corps of staff with the requisite skills and systems to perform the function effectively (Provincial Planning & Treasury, 2013:6). The component must ensure that the day-to-day activities of contract management are properly managed in terms of the approved framework and under properly delegated authority (IoD, 2009:30).

1.5 RESEARCH METHODOLOGY

Research methodology, in essence, deals with the research process, the tools and the procedures that will be utilised in undertaking a research study (Babbie & Mouton, 2006:75). The methodology followed in undertaking the research study comprised of a literature review and an empirical investigation as illustrated in the paragraphs that follow.

1.5.1 Literature review

The significance of literature review is that it provides the rationale and justification for the research study (Bryman, 2012:90), as well as the background and context for the research problem (Tlhoalele, Nethonzhe & Lutabingwa, 2007:561). A literature review is a systematic and structured process with several important purposes (Majam & Theron, 2006:603-604). Literature reviews are utilised in preparatory work including obtaining expert knowledge on the topic being researched and writing the research proposal; forms a benchmark against which the findings of the study can be compared; and with which the thesis can be written (Majam & Theron, 2006:603-604).

A literature review was undertaken to unpack the provisions of enabling legislation and existing prescripts to obtain an in-depth conceptual understanding of the proper policy and practical/procedural intentions thereof. The literature review also provided a basis upon which to determine what the requirements for an effective contract management function are against which to benchmark the research in the Department. The review of literature in this research study included prescripts issued by the National Treasury and Provincial Treasury, published literature and previous research findings, international best practices and journals. The reports of the Auditor-General, the Financial Management Maturity Capability Model assessments of the Department, reports on the assessment of contract management readiness and supply chain management compliance assessments were also covered.

The literature review created the context or basis upon which the empirical investigation was conducted, assisted to measure the level of compliance and performance of the

contract management function within the Department, assisted to formulate the questions for inclusion in the interview (Jarbandhan & Schutte, 2006:673; Schutte, 2006:627) and was valuable in analysing the data collected during interviews. The literature review also served as a point of reference and made valuable contributions towards arriving at meaningful recommendations (Bryman, 2012:99).

1.5.2 Empirical investigation

The empirical investigation covered research design, sampling, instrumentation, data collection, data analysis and dealt with limitations and delimitations as they related to primary data collection.

1.5.2.1 Research design

A research design is the manner in which the research study is to be undertaken in order to find the answers to the research question or to find a guideline on how the researcher should attain his/her goals or objectives (Webb & Auriacombe, 2006:589). Babbie and Mouton (2006:104) also agree that “A research design is a plan or structured framework of how you intend conducting the research process in order to solve the research problem”. Qualitative research is widely utilised to investigate real-life situations including organisational situations and provides a contextual analysis of a particular event and/or condition and their relationships (Soy, 1997:1). “Qualitative research is an exploration of what is assumed to be a dynamic reality” (Webb and Auriacombe, 2006:592) “when the focus is on contemporary phenomena within a real-life context” (Schurink & Auriacombe, 2010:436). The research approach adopted is a qualitative research approach.

Case studies are often preferred in qualitative research studies (Bryman, 2012:67-68). According to Schurink and Auriacombe, (2010:436) the importance of case studies are that they attempt to present empirical evidence in a fair and rigorous manner. Lee (1999:61) contends that a case study is well-suited to organisational related research studies as it lends itself to causal inference and is less disruptive to the institution. The research entailed a detailed study of a specific component or unit within the Department (Leedy & Ormrod, 2009:108 & 137). The study was also aimed at understanding the

behaviour or culture of the component and was not extended to or benchmarked against other departments or institutions and thus lends itself to the case study methodology. Consequently, the research study entailed a case study of the contract management function within the Department.

1.5.2.2 *Sampling*

The engagement of the entire population in a research study is not always possible for practical and economic reasons and it therefore becomes necessary to reduce the number of participants to a reasonable number or a subset of the entire population (Burger & Silima, 2006:656-667). In such instances it becomes necessary to utilise a sample of the population for the purposes of data collection. Purposive sampling was adopted as a technique for this research study. Purposive sampling is based on the judgement and purpose of the research study founded on the researcher's knowledge of the population, its elements and the nature of the study (Babbie & Mouton, 2006:166). According to Bryman (2012:418) an important objective of purposive sampling is to also ensure that the individuals being sampled are relevant to the research question.

The Department is large in comparison to most government departments and has a head office component as well as 24 district offices and further education and training colleges spread over a large geographical area (Department of Education, 2014:32-33). All of these components are beneficiaries of the services of the contract management function to varying degrees. The research study did not cover the entire population of the Department as it would be impractical, time consuming and costly.

The research study was confined to the Department's head office component which is based in Zwelitsha, King Williams Town. The extent of service benefit and the level of satisfaction in contract management experienced by officials vary within the different levels of the Department. The individual participants therefore comprised of chief directors, directors and deputy directors from the Supply Chain Management Unit within which the contract management function resides as well as end users being the actual owners or beneficiaries of the contracts. The officials from the Supply Chain Management Unit have a direct relationship with contract management as they are the officials who are responsible

for arranging and managing the departmental contracts. The other participants were able to attest to the level of support, successes and/or failures they experience relating to contract management which has a direct impact on their ability to fulfil their responsibilities within the Department. There are 15 chief directors, 35 directors and 299 deputy directors at the Department's head office (National Treasury, 2015b). There was a total of twenty participants comprising of 3 chief directors, 7 directors and 10 deputy directors. Seven of the participants were from the Supply Chain Management Unit and 13 were end users. An attempt was made to foster a balance in the sample to ensure a broad and objective perspective which represents the views of the entire department (Leedy & Ormrod, 2009:149).

1.5.2.3 *Instrumentation and data collection*

A conversational interview forms the basis for data collection in qualitative research and is implemented by way of semi-structured interviews (Lee, 1999:63). A semi-structured interview is normally utilised when the researcher is certain of his/her research objectives, but is open to further exploration during the interview process (Auriacombe, 2010:477). Bryman (2012:212) also supports the view that there is room for further questions in response to "what are seen as significant replies". Interviews also provide a valuable opportunity to obtain data from people who would be reluctant to participate because they may have difficulty in understanding written questions or if there are varying levels of literacy within the sample of participants (Ceris, s.a.:17).

The interview was prefaced by a background indicating the purpose of the research study and provided instructions or directions on how the interview process would unfold (Babbie & Mouton, 2006:243-244). A "face sheet" was also developed wherein personal data of the participants and the details of the interview were recorded (Neuman, 2011:402). These details included the name, age, gender, position within the Department, qualifications and date and place of the interview. An interview guide was compiled to guide the flow of the interview and which also ensured that questions that were skipped or not answered previously were not overlooked (Bailey, 2007:100).

There was an intention to pilot the interviews with 3 participants from the Supply Chain Management Office within Provincial Treasury to ensure relevance and context to prescripts and the intended outcomes of the research study. The process of conducting pilot interviews is supported by Bryman (2012:474) and Neuman (2011:191). The pilot interviews were not conducted as it was determined that they would not be in a position to respond to the questions due to a lack of knowledge of the specifics of the internal contract management function of the Department. The interview guide was, however, reviewed by the 3 participants to the relevance and context. These participants comprised 1 chief director, 1 director and 1 deputy director who deal with contract management matters at a transversal level. There was also an intention, if it was deemed necessary, to conduct pilot interviews with officials from the National Treasury. The need to conduct these pilot interviews did not materialise.

Data collection was undertaken by means of face-to-face interviews. Interviews are a reliable means of obtaining valid information from the interviewee on the research topic (Jarbandhan & Schutte, 2006:674). Face-to-face interviews provide the researcher with the advantage of establishing a rapport with the participants and the researcher is in turn able to obtain greater cooperation (Leedy & Ormrod, 2009:88). The principles of informed consent were applied to the interviews whereby the participants were informed of the research goals and methods and that the identity of the participants would not be divulged (Lutabingwa & Nethonzhe, 2006:697 and Babbie & Mouton, 2006:546).

The interviews were scheduled in advance and the participants were notified prior to the actual date and time thereof. The interviews were conducted by the researcher at a venue outside of the participant's place of work, but within close proximity for convenience and to minimise disruption from normal work routines. The duration of the interviews was anticipated to be 20 minutes, but were of varying duration extending up to 49 minutes to allow participants the latitude of time and especially where there was a general interest in the research topic (Jarbandhan & Schutte, 2006:678-679). The use of an outside venue avoided any interruption or distraction of the participants (Leedy & Ormrod, 2009:149) and also averted the possibility of any misconceptions or opinions being formed by their colleagues should they become aware that interviews were being conducted with selected officials.

The interview process commenced with the setting of a framework wherein the participants were given a briefing of the purpose of the research study; proof that the head of the Department had granted permission for the staff to participate in the research study; an overview of the topic and questions; the nature of response, extent of informality and follow-up questions; debriefing at the end of the interview; and a forewarning that the interviews will be recorded and notes taken (Lee, 1999:83-84). The participants were afforded an opportunity to complete the “face sheet” and the interviews relating to the remaining questions were conducted thereafter. Being semi-structured interviews, there was flexibility in the interview process to allow for follow-up questions to probe into interesting or ambiguous responses, to change the order of the questions and the participants were given an opportunity to add further input at the end of the interviews (Bryman, 2012:487).

There were audio recordings of the interviews which were transcribed to accurately document the responses or data collected which facilitated data analysis (Bryman, 2012:482). The recording of the interviews permitted the interviewer to be alert and pay greater attention to the responses of the participants, to follow-up on interesting or ambiguous responses, keep the attention of the participants and not be distracted by the continuous taking of notes (Bryman, 2012:482). Review and validation of the transcripts was also conducted to ensure reliability and validity (Lee, 1999:87-88).

1.5.2.4 *Data analysis*

Data analysis is the process of searching through the data that has been collected to identify patterns of recurrent “behaviours, objects, phases, or ideas” (Neuman, 2011:467). Neuman (2011:467) further explains that “data analysis involves examining, sorting, categorizing, evaluating, comparing, synthesizing, and contemplating the coded data as well as reviewing the raw and recorded data”. Data analysis is an ongoing process which takes place from the inception of data collection (Auriacombe & Mouton, 2007:455).

In qualitative research, data is generally categorised into themes, concepts or ideas (Neuman, 2011:459-460), thus, the concept of thematic analysis. According to Bryman (2012:578-579), thematic analysis is one of the most commonly utilised approaches to data

analysis in qualitative research. Themes were identified during data analysis which are directly related to the research study, which build on the codes identified in transcripts and provided a basis for the theoretical understanding of data (Bryman, 2012:580). Cloete (2007:515) is, however, of the view that the thematic framework begins to emerge from the problem statement and research objectives and is refined during data analysis.

The process of coding the collected data and identifying themes was undertaken on a two-fold basis. Firstly, the “face sheet” or personal data relating to name, age, gender, position within the Department, qualifications and date and place of the interview was analysed to demonstrate the diversity of the participants in the research study. The extrapolated data assisted to demonstrate the different levels of maturity, the levels of management and provided a correlation to the themes emerging from the data collected during the interviews. Furthermore, it assisted to demonstrate the degree of importance placed by the relevant groupings on the contract management function within the Department and how it impacts on them individually and as a group.

The second part of the analysis dealt with the responses to the open interview questions. The responses were analysed on the basis of each question and also cross-analysed through a process of coding to identify common themes or trends in the responses.

The results of the data analysis were then measured against the findings and context created during the literature review. The outcome thereof provided a basis upon which recommendations were formulated.

There was concern that during the analysis of the data collected it might become necessary revert to the participants for further information and in such event, the participants would have to be contacted or follow-up interviews conducted to ensure that all relevant data had been collected and is available for analysis (Cloete, 2007:513). However, the need to revert to the participants for further information did not materialise.

1.5.2.5 *Limitations and delimitations*

Limitations and delimitations are inherent in research studies (Tlhoalele *et al*, 2007:559). Some limitations may occur during the data collection phase of the research study. All such limitations were not immediately known or identifiable. The following limitations were anticipated:

- reluctance by some of the selected to participants be involved in the research study;
- scepticism as to the intention of the research study;
- fear of victimisation if the outcomes of the research study expose weaknesses and/or result in negative findings; and
- lack of sufficient detail in the responses of the participants as well as providing responses that will be more desirable than factual.

These limitations were addressed in letters of notice of selection to participate in the research study as well as during the framework briefing at the commencement of each interview.

There was concern that there might be reluctance by the Head of Department in granting permission for the research study to be conducted in his Department. This was attributed to the fear of inefficiencies and lack of competence in his Department being exposed. A letter was issued to the head of the Department informing him of the basis for the research study, the objectives and timeframes also seeking his approval to conduct the research study in his Department. Approval to conduct the research study was granted without any challenges.

Delimitations deal with the manner in which the research study has been bounded or constrained to focus on particular aspects whilst not dealing with others (Tlhoalele *et al*, 2007:559). The most significant delimitation related to the size of the sample. The Department comprises of a head office component, 24 district offices and six further education and training colleges. The geographical spread across the Province is also very vast. The area to be covered, travelling distances, time and sample of participants would have been too extensive if the research study was to cover the head office component and the district offices. In order to undertake a more focussed and in-depth research, the

research study was confined to the head office component only. However, the impact on the district offices will not be neglected as they take their policy and procedure directions from and report to head office on contract management matters. Similarly, the number of participants was narrowed to ensure a more meaningful research study whilst not detracting from the focus of the research study.

The four distinct ethical considerations in undertaking interviews are informed consent, harm to the participants, deception and privacy (Lutabingwa & Nethonzhe, 2006:695). Although the participants were selected through purposive sampling, on the basis of direct interaction with the contract management function, participation was on a voluntary basis and through informed consent. Participants who were reluctant to or refused to participate were replaced with other officials of similar credentials to ensure that the balance of the group was not upset.

As data collection was undertaken through interviews, there was no harm to the individual that was perceived. The interviews were also to be conducted away from their places of work which also ensured that their privacy in their personal and official capacities was not invaded. The participants were assured that their identities will not be divulged which promoted full participation and allayed any fears of victimisation. There were no instances during the interviews of a participant becoming uneasy thus necessitating the interview to be suspended and re-convened at a later date. The participants were debriefed at the end of the interviews in order to allay any fears of deception.

1.6 SIGNIFICANCE OF THE STUDY

Previous research studies of the contract management function within the Eastern Cape provincial departments are not documented. This research study provides insight into the current state of contract management within the Department and the publication of the findings will cause the Department to undertake an internal review of its contract management function which will provide a platform from which to then initiate improvements. The management of the Department will be encouraged to take note of the importance of the contract management function and consequently provide the necessary support that is required to enhance and sustain the efficiency of the function. In essence,

the research study provides a framework upon which the Department can chart a way forward in making improvements to the current status of contract management.

The Provincial Treasury can also utilise the research outputs to develop or enhance prescripts related to contract management in the Eastern Cape Province, develop system descriptions that are relevant and in keeping with modern/global best practice, drive automation, implement initiatives for improvement of skills and capabilities of contract management officials through training programmes, set appropriate standards for recruitment, amongst other gains that can be derived. Similarly, the National Treasury could utilise the findings of the research study to drive improvements in contract management across the country.

There will be an overall improvement in the administrative efficiencies related to the contract management function, compliance, governance, audit outcomes, performance of contractors and service delivery within the Eastern Cape Province. The research study provides a basis for further research studies on contract management from both a general public sector administration as well as a departmental or institutional specific perspective.

1.7 PROVISIONAL CHAPTER LAYOUT

The findings of the research study are published in the form of a research dissertation which covers in the following chapters:

Chapter 1 - Introduction: This chapter provides a background to the research study, the purpose or rationale and methodology as contained in the research proposal.

Chapter 2 - Literature review: This chapter provides details of the different literature sources that were reviewed and a summation of the contents in relation to the research study and created the context and basis for the investigation and source against which to benchmark and analyse the data that was collected.

Chapter 3 - Review of legislation and policy framework: This review provides details of the different legislation, prescripts, and other literature sources which were reviewed and

created the context and basis for the investigation and source against which to benchmark and analyse the data that was be collected.

Chapter 4 - Contract management challenges in the Eastern Cape Department of Education: This chapter provides details of the data collected and observations made during the research study. The challenges that were identified, what was confirmed and the outcomes are also detailed.

Chapter 5 - Management framework for contract management in the Eastern Cape Department of Education: This chapter provides details of the management framework being proposed for contract management in the Department.

Chapter 6 - Conclusions and recommendations: This chapter contains the conclusions that arose from the findings, as well as the implications thereof. Recommendations have also been made which provide a framework upon which the Department can chart a way forward in making improvements to the current status of contract management and will provide a basis from which policy reforms and further research can emanate.

The list of references consulted during the research study are included in the Bibliography.

1.8 CONCLUSION

This chapter provided a background to the mandate of the Department emanating from the Constitution, 1996, as well as the general responsibilities of accounting officers in terms of the Section 38 of the Public Finance Management Act (1 of 1999). The requirement for the establishment of a procurement system was recognised and that such is the supply chain management system of government. The necessity for contract management was identified and recognised to reside within the supply chain management system. The activities that should be undertaken during contract management were also identified. The problem statement articulates the contract management challenges being experienced by the Department and the potential causes and consequences have also been identified and provide the backdrop for the empirical investigation.

The problem statement offered the basis for the formulation of the research objectives and questions as well as determining the research methodology. The research methodology expresses the process that was followed in undertaking the empirical investigation. The limitations and delimitations were identified as well as the possible solutions to overcome such. The overall improvement in contract management within the Department has been expressed as being a significant outcome of the study.

The provisional chapter layout was determined and formed the basis of constructing the final research dissertation. The outcomes of the literature review are presented in the following chapter.

CHAPTER 2

LITERATURE REVIEW OF CONTRACT MANAGEMENT IN THE PUBLIC SECTOR

2.1 INTRODUCTION

Goods and services are essential requirements for government to function (Bolton, 2007:1). Government purchases a wide variety of goods, services and works from the private sector that range from basic requirements to major infrastructure works through its supply chain management system (Organisation for Economic Co-operation and Development (OECD), 2009:9). The execution of government programmes to ensure service delivery is largely dependent on contracting with persons or entities in the private sector. Contracting, accordingly, forms an integral part of conducting business in the public sector (Western Cape Government, 2013:1).

Contract management takes place during the operational phase of the contract; i.e. after the contract has been awarded to the preferred supplier or service provider and the goods delivered and service/s are up and running (National Audit Office (NAO), 2008:7). Effective contract management should be aligned to the strategic goals and objectives of the relevant institution of government as well as risk mitigation strategies and supported by an established framework and policy (Government of Canada, 2015:2, 11). An effective contract management system is critical to protecting the interests of the organisation which include “establishing standards and evaluation criteria for assessment; ensuring the various stakeholders know what their roles and responsibilities are; measuring, monitoring and evaluating performance; collecting reliable data for decision-making; documenting poor performance; and establishing a process to apply corrective measures” (Government of Canada, 2015:11).

The primary purpose of a contract management system, as a business process within supply chain management, is to provide a comprehensive solution which will ensure that all contracts are performed in compliance with the terms and conditions thereof (Centafont, 2014:41). Brown and Potoski, (cited by Joaquin & Greitens, 2012:807) also

confirm that effective contract management mitigates against specific problems that plague the contract process.

Contract management activities ensure that the relevant parties to a legally binding agreement fulfil their obligations efficiently and effectively thus delivering the required business and operational outputs whilst providing value for money and reducing the potential for irregular and/or fruitless and wasteful expenditure (Bartsiotas, 2014:1). Government departments and institutions should thus manage contracts in such a manner that their successful execution in accordance with the agreed terms of time, cost and performance are ensured (Government of Canada, 2015:3). Government departments are also expected to “establish governance structures and measures of accountability to ensure efficient and effective management of contracts and minimise the risk of fraud, corruption and mismanagement (Bartsiotas, 2014:iii).

The literature review in this chapter was aimed at addressing the research objectives determining the theoretical framework and public sector contract management best practice models as well as ascertaining the typical contract management requirements for public sector departments inclusive of structural, human resource, skills and functional or operational requirements. The review is based on contract management within the Organisation of Economic Co-Operation and Development, Australian Government, United Nations system and the Government of the United Kingdom inclusive of structural, human resource, skills and functional or operational requirements. The review covered the supply chain management value chain, the role of frameworks in contract management, the activities that take place within the contract management business process, the role players within contract management, risk management and the utilisation of contract management tools. The review of legislation and the prescripts for contract management within the South African public sector environment is dealt with in chapter three.

2.2 THE SUPPLY CHAIN MANAGEMENT VALUE CHAIN

Vrijhoef and Koskela (2000:170) propose that “the basic idea of SCM is to recognise the interdependency in the supply chain, and thereby improve its configuration and

control based on such factors as integration of business processes". A value chain is a series of business processes within an organisation, each adding value to the product or service for the intended customers (Baltzan, Phillips and Haag, 2009:21-22). Baltzan *et al.* (2009:299) expand this view contending that each of the steps in the process should be adding value to the preceding step thereby making a contribution to the manufacture or delivery of products and services. A business process is a set of standardised activities aimed at accomplishing a specific task and can be viewed as a "value chain" (Baltzan *et al.*, 2009:21). It is therefore necessary to understand the supply chain management value chain and where contract management as a business process fits into the value chain.

Different authors and organisations, as will be described below, propose different supply chain management value chain models which comprise of different phases and activities. The aim of the literature review was to identify a typical supply chain management value chain, demonstrate where ~~would~~ contract management would fit into the value chain and what are the requirements for a typical contract management framework. The literature review determined the basis upon which to measure contract management in the Department during the empirical investigation and will cover the supply chain management value chain and the contract management process models.

The supply chain management value chain is generally the customary procurement process which is expressed in the policy and procedure manual of the organisation or in specific legislation (Nieman, 2008:10). Nieman (2008:10) contends that the supply chain management value chain comprises of four phases which are planning, organising, directing and controlling that constitute the procurement and contracting process, as depicted in Figure 2.1. The planning phase deals with the responsibilities of the user of the goods or services to be procured and the development of documentation required for the bidding process; whilst organising deals with the selection of the successful bidder or contract awarding and finalising the contracting process which will pave the way for the management of the contract. The directing and control phases relate to the execution of the contract wherein coordination and effective management of the contract are imperative to ensure that the deliverables are executed according to plan (Nieman, 2008:10-11).

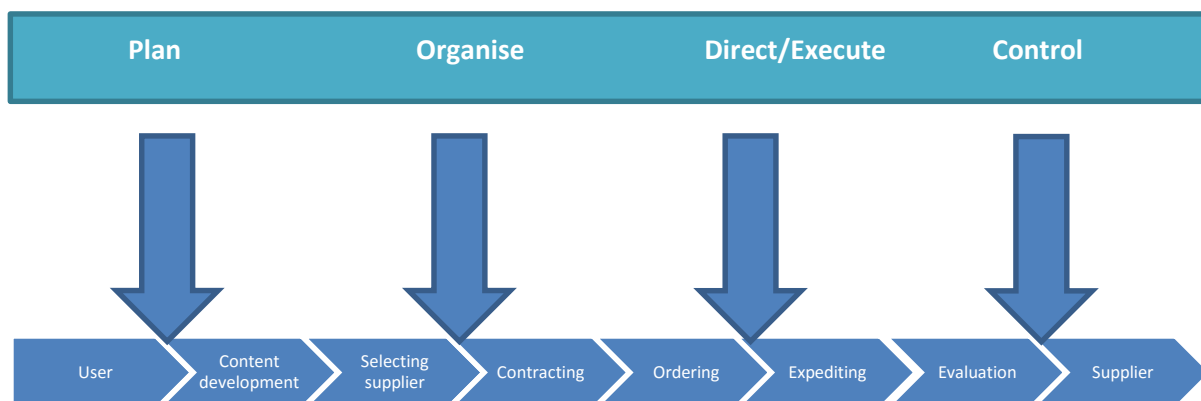


Figure 2.1: Supply chain management value chain

(Source: Nieman, 2008:10)

In contrast, the OECD (2009:52) proposes that the supply chain management value chain within public procurement spans over three phases which comprise of pre-tendering, tendering and post-award, as depicted in Figure 2.2. The pre-tendering phase deals with needs assessment, planning and budgeting, definition of requirements and choice of procedures; whilst the tendering phase deals with the invitation to tender, evaluation of the tenders received and awarding of the contract. The post-award phase deals with contract management, ordering and payment for goods and services (OECD, 2009:52).

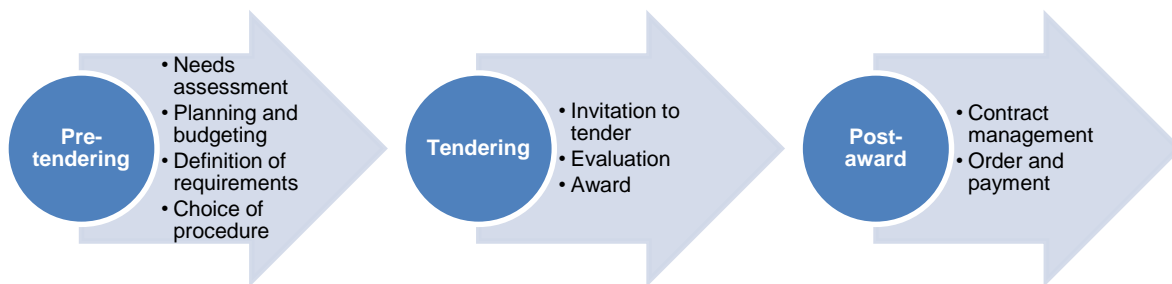


Figure 2.2: OECD supply chain management value chain

(Source: OECD, 2009:52)

The Australian National Audit Office (ANAO) (2012:i) proposes that the supply chain management value chain within public procurement commences at the point when the decision to engage a contractor is taken during the contract development phase. The public procurement value chain comprises of four phases which are developing, formalising, managing and ending the contract, as depicted in Figure 2.3 (ANAO, 2012:v). Developing the contract essentially covers all the activities that entail planning for the contract and embarking on the tender process whilst formalising of the contract deals with the awarding, negotiating and signing of the contract (ANAO, 2012:16, 56). The managing phase deals with the activities that relate to the contractual relationships and ensure deliverables are fulfilled as agreed to (ANAO, 2012:84). The ending of the contract phase deals with the finalisation of administrative requirements, transition arrangements, contract performance evaluation including lessons learnt and recording keeping (ANAO, 2012:112-119).

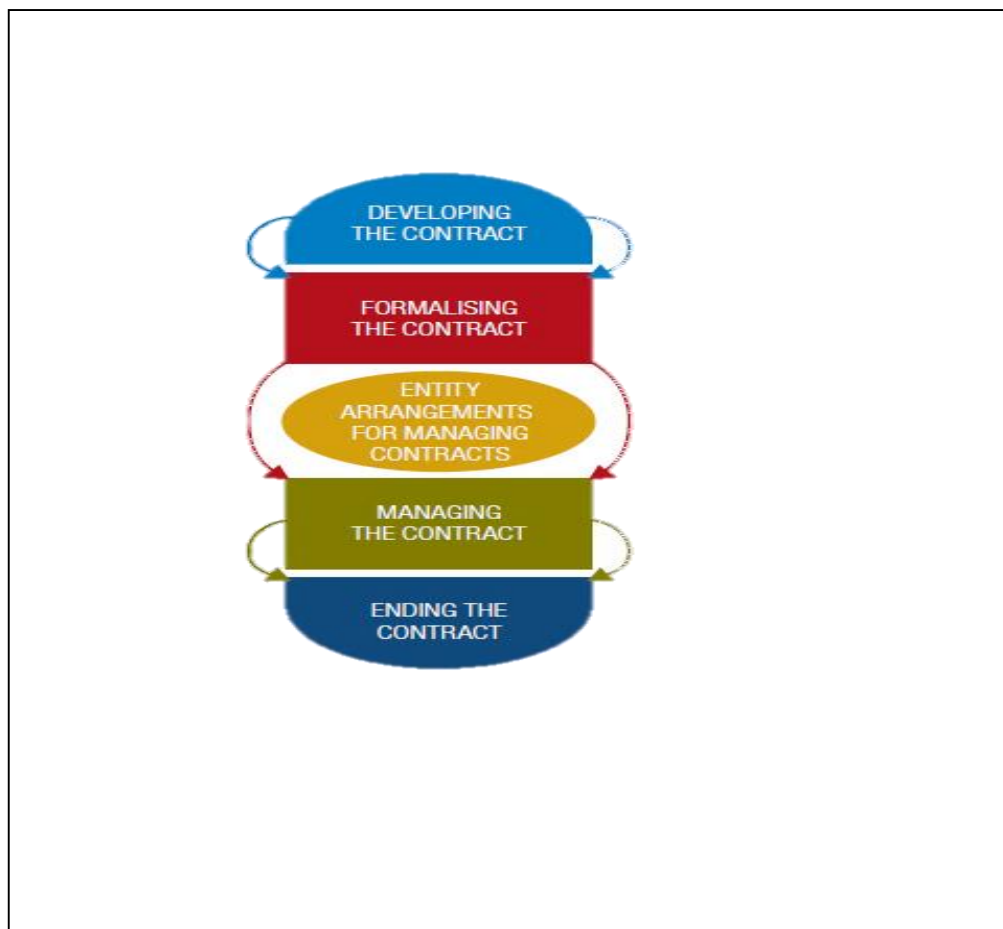


Figure 2.3: ANAO supply chain management value chain

(Source: ANAO, 2012:3)

Bartsiotas (2014:1) in his review of contract management and administration in the United Nations system proposes that the supply chain management value chain within public procurement spans over two phases which comprise of pre-award and post-award, as depicted in Figure 2.4. The pre-award phase constitutes the requisitioning and procurement activities whilst the post-award phase deals with contract management comprising of the “contract monitoring and reporting, change management, dispute resolution, financial management and contract completion activities” (Bartsiotas, 2014:1).

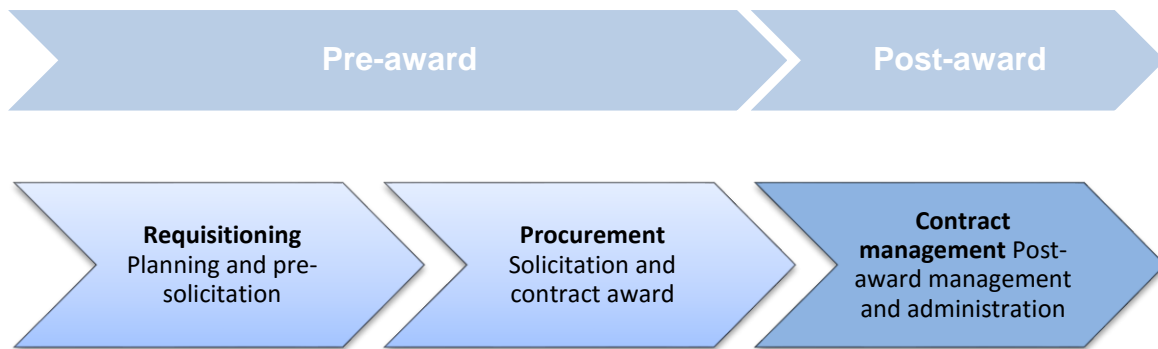


Figure 2.4: United Nations supply chain management value chain

(Source: Bartsiotas, 2014:1)

The NAO (2008:6-7) proposes that the supply chain management value chain within public procurement comprises of two phases which are the tendering/contract award and operational phases. The tendering/contract award phase deals with strategy and structure and resources whilst the operational phase deals with delivery and development. The activities that relate to supplier relationship management and market management fall under strategy whilst planning and governance, people and administration fall under structure and resources. The activities that relate to relationships, performance, payment and risk fall under delivery whilst contract development and supplier development fall under development (NAO, 2008:6). The supply chain management value chain proposed by the NAO is depicted in Figure 2.5.

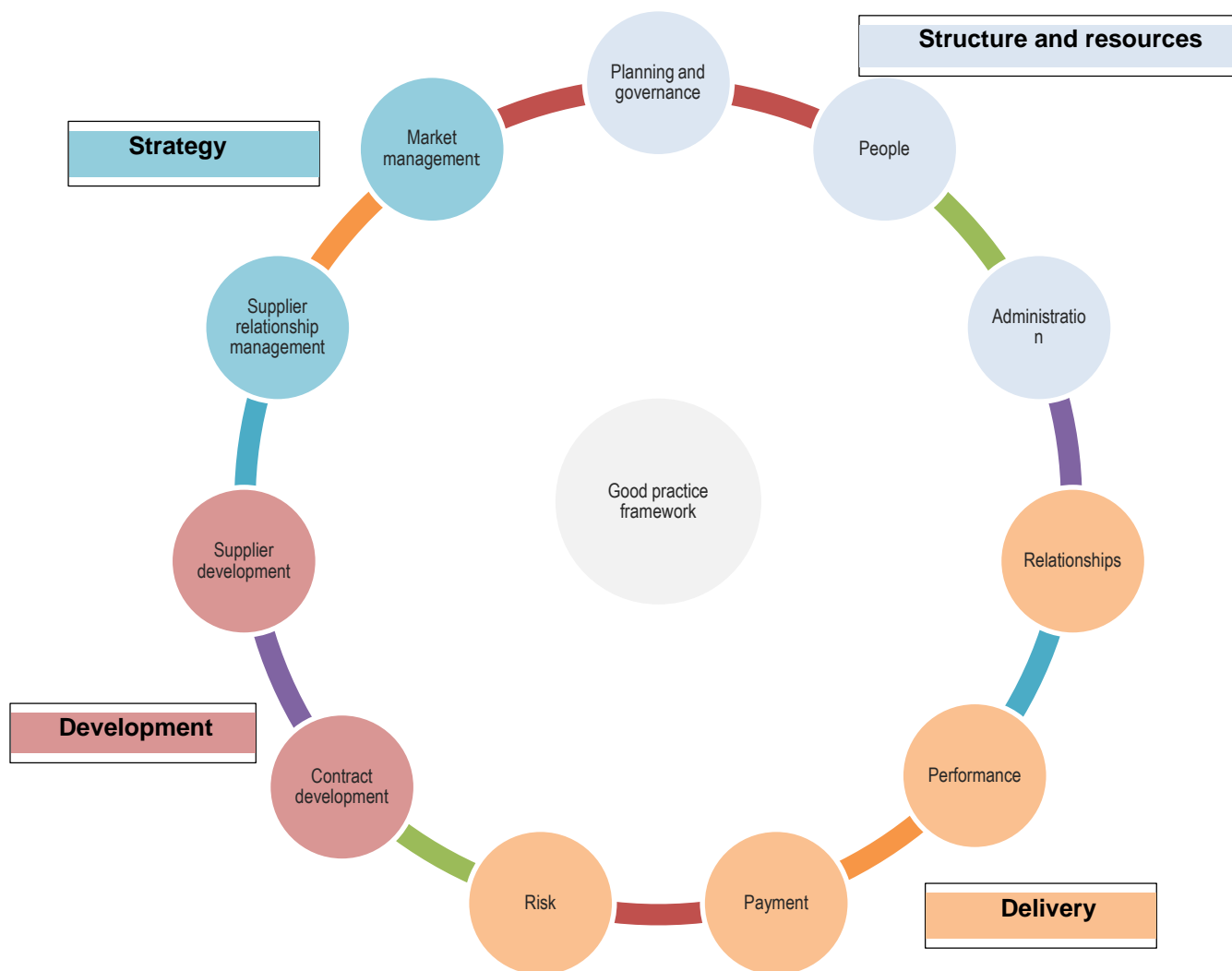


Figure 2.5: NAO supply chain management value chain

(Source: Adapted from NAO, 2008:6)

From the above models, Nieman (2008:10), the OECD (2009:52) and the ANAO (2012:3) are of the common postulation that the supply chain management value chain broadly comprises of three phases which are pre-tendering, tendering and post-award as discussed above. Bartsiotas (2014:1) and the NAO (2008:6) share the view that the supply chain management value chain broadly comprises of two phases, however, contend that the phases are pre-award or the tendering and contract award phase and the post-award or operational phase. All the literatures sources reviewed, however, share the position that contract management takes place in the post-award phase of the supply chain management value chain.

The view that contract management takes place in the post-award phase will be analysed during the empirical investigation to determine whether contract management in the Department is appropriately placed. The study argues that by positioning contract management as part of the post-award phase there will be coordination and effective management of contract management activities including management of contractual relationships, assurance that agreed upon deliverables are fulfilled, effective monitoring and reporting, change management, dispute resolution and financial management. Recommendations based on the findings in this regard are made in chapter six to assist the Department in making improvements to the current status of contract management. The relevance and the role of frameworks in contract management are discussed in the following section.

2.3 THE ROLE OF FRAMEWORKS IN CONTRACT MANAGEMENT

Having a framework in place is important for the successful execution of the contract management function and to ensure contractor performance (Government of Canada, 2015:7). Frameworks facilitate “proper planning, control and continuous improvement of the buyer-supplier relationship” (Momme & Hvolby, 2002:194). A framework can be defined as a “broad overview, outline, or skeleton of interlinked items which supports a particular approach to a specific objective, and serves as a guide that can be modified as required by adding or deleting items” (Business Dictionary, 2015).

Mclvor (2000:24) suggests that a framework is a guide or set of elements which prescribes the manner in which officials should carry out their functions. A framework also comprises of logical, sequential steps, prescriptive elements and explanatory elements on what should be done, why it should be done and how it should be done (Mclvor, 2000:24). The prescriptive elements advocated by Mclvor are those elements of a framework which are mandatory and cannot be excluded whilst the explanatory elements will illustrate the manner in which the prescriptive elements should be accomplished. Momme and Hvolby (2002:192) also advance the view that a framework functions as a steering tool which would guide officials with essential decisions and actions relating to contract management. Furthermore, the framework assists in developing a knowledge base on outsourcing within an organisation.

The contract management framework could include several elements including a contractor performance policy, processes and procedures to be followed, use of automated systems and reporting and feedback mechanisms. The framework will allow an organisation the opportunity to ensure alignment of its contractor performance programme with the organisational objectives and risk management strategies at a strategic level. The framework will promote cohesiveness in the operations of the organisation and provide organisation-wide decision making information. The success of a framework will depend on the effectiveness of the linkage of the various elements to one another as well as the level of support and commitment of senior management and other stakeholders (Government of Canada, 2015:7). The empirical investigation aims to ascertain whether the Department has a contract management framework and the relevance thereof to support effective contract management. The study argues that the specific support of senior management in contract management will ensure successful implementation of the contract management framework, contractor performance and achievement of organisational objectives. The contract management framework of the Western Cape Government deals with contract management at a provincial sphere of government administration as is the case with the Department. Thus the contract management framework of the Western Cape Government is reviewed in the sub-section that follows to determine the typical requirements for a public sector contract management framework.

2.3.1 Review of the contract management framework of the Western Cape Government

During 2013 the Western Cape Government developed and issued the Contract Management Best Practice Guidelines which serves as the framework for the management of contracts within its administration. The following aspects relating to contract management are dealt with in the guidelines (Western Cape Government, 2013:7-45):

- regulatory framework;
- understanding and defining (contextualising) contract management;

- contract implementation;
- ongoing management;
- contract succession planning;
- ending of the contract; and
- transversal contracts.

The section on the regulatory framework broadly provides the background and role of legislation in contract management. Some of the pertinent pieces of legislation (as will be analysed in the following chapter) are referred to in this section also highlighting the fact that in some instances there will be sector specific legislation which will influence the management of contracts (Western Cape Government, 2013:6-7). The importance of regulating public sector procurement in South Africa, including contract management, is demonstrated by the fact that it enjoys constitutional status (South Africa, 1996:123). Bolton (2007:5) supports the regulation of public sector procurement asserting that corruption, inefficiencies and wastages will be avoided.

The section relating to understanding and defining contract management attempts to contextualise contract management and importantly, identify where contract management fits into the supply chain management value chain. Contract management is identified to take place in the post-award phase of the supply chain management value chain. The contract management activities which have been adopted from those identified by the ANAO (2012) and the functions of the contract manager are alluded to on a high level and are recognised to take place within the four stages of contract management. The four stages of contract management are identified as being contract implementation, on-going contract management, contract succession planning and ending the contract (Western Cape Government, 2013:7-10). Elsey (2007:3) contends that contract management includes the entire range of activities that constitute both the pre-award and post-award phases of the supply chain management value chain. However, Elsey (2007:26) agrees that the management of the contract itself takes place in the post-award phase and comprises of three stages being service delivery, relationship management and lastly contract administration which deals with the formal management of the contract. The study argues that contract management takes place

in the post-award phase of the supply chain management value chain and is categorised into stages.

The contract implementation stage deals with matters related to the operationalisation of a contract. These include the appointment of a contract manager and team, the attributes (knowledge and skills) that the contract manager should possess, determining that the contract exists and the legal basis therefor, document management, risk management and also proposes that a procedure manual should be developed to guide the process of managing a contract (Western Cape Government, 2013:10-16). Eley (2007:5-11) concurs that there should be a contract management team, risk management must take place and that there should be a procedure manual strategy for each contract. The contract management team would, however, manage the entire process from contract initiation through to contract close-out. The study argues that a contract manager or team, document management, risk management and a procedure or strategy are essential elements of managing contracts.

The on-going contract management stage deals with the seven contract management activities. These activities deal with service level agreements, monitoring and management of performance, management of payments, amendments or variations to the contract, management of confidential information, management of intellectual property rights and managing non- or poor performance (Western Cape Government, 2013:17-29). Eley (2007:26-35) concurs with the contract management activities identified adding that in addition to monitoring the performance of the contractor, there should be a review of the effectiveness and efficiency of the contract management function within the organisation for the purpose of future enhancement as well as training and development of individual officials. Thus, the study argues that in addition to identifying and implementing appropriate activities for the effective contract management and the performance of the contractor, it is equally necessary and important to measure the performance of the organisation.

The service level agreement activity deals with the issues related to negotiating the terms and conditions, drafting and signing of the service level agreement. The monitoring and management of performance defines the roles and responsibilities of

the contract manager and team in terms of monitoring and measuring the performance of the contractor against the terms and conditions agreed upon in the service level agreement. This also includes monitoring of the contract management performance of the department and reporting. The management of payments relates to the day-to-day management and governance over payments due to the contractor based on actual performance measured against the agreed to terms and conditions of the contract (Western Cape Government, 2013:18-23).

The activity relating to amendments or variations to a contract provides guidance on the manner in which the contract manager should deal with amendments to a contract including negotiations, compliance to prescribed governance measures and formalising the amendments by amending the service level agreements. The activity relating to confidential information highlights the necessity for the maintenance of confidentiality of information relating to contracts from the perspective of both the organisation and the contractor and the manner in which breaches of confidentiality should be dealt with. The activity relating to intellectual property rights provides guidance on the procedure to be followed when dealing with intellectual property rights (Western Cape Government, 2013:23-25).

The activity that relates to the management of non- or poor performance provides guidance on the manner in which the contract manager should deal with a contractor who performs poorly or not at all. These relate to both minor breaches and major breaches of contract that could result in termination of the contract. Guidance is provided in terms of the precautions and consequences of cancellation of a contract (Western Cape Government, 2013:25-29).

The contract management framework of the Western Cape Government serves as a theoretical basis for the empirical investigation as it deals with contract management at a provincial sphere. The activities relating to contract management are explored further in the following section.

2.4 ACTIVITIES WITHIN THE CONTRACT MANAGEMENT BUSINESS PROCESS

According to Havenga *et al.* (2004:111), “the primary purpose when creating contracts is their fulfilment or discharge by due and proper performance”. Implementation of a system for the monitoring of adherence to a contractual agreement by a contractor is an essential requirement to assist accounting officers to manage contracts arranged by a department and protect the interests of the state (KwaZulu-Natal Provincial Treasury, 2006:145). The contract management business process which will also ensure due and proper performance thus comprises of various activities.

As argued previously, contract management comprises of two stages which are managing contract content and managing contract process (Nieman, 2008:1-2). The former relates directly to contract management whilst the latter deals with the procurement activities that lead up to the conclusion of a contract. One of the key determinants of successful contracts is managing the content which deals with the deliverables, term of the contract, pricing or compensation arrangements and dispute prevention as depicted in the Figure 2.6 (Nieman, 2008:4).

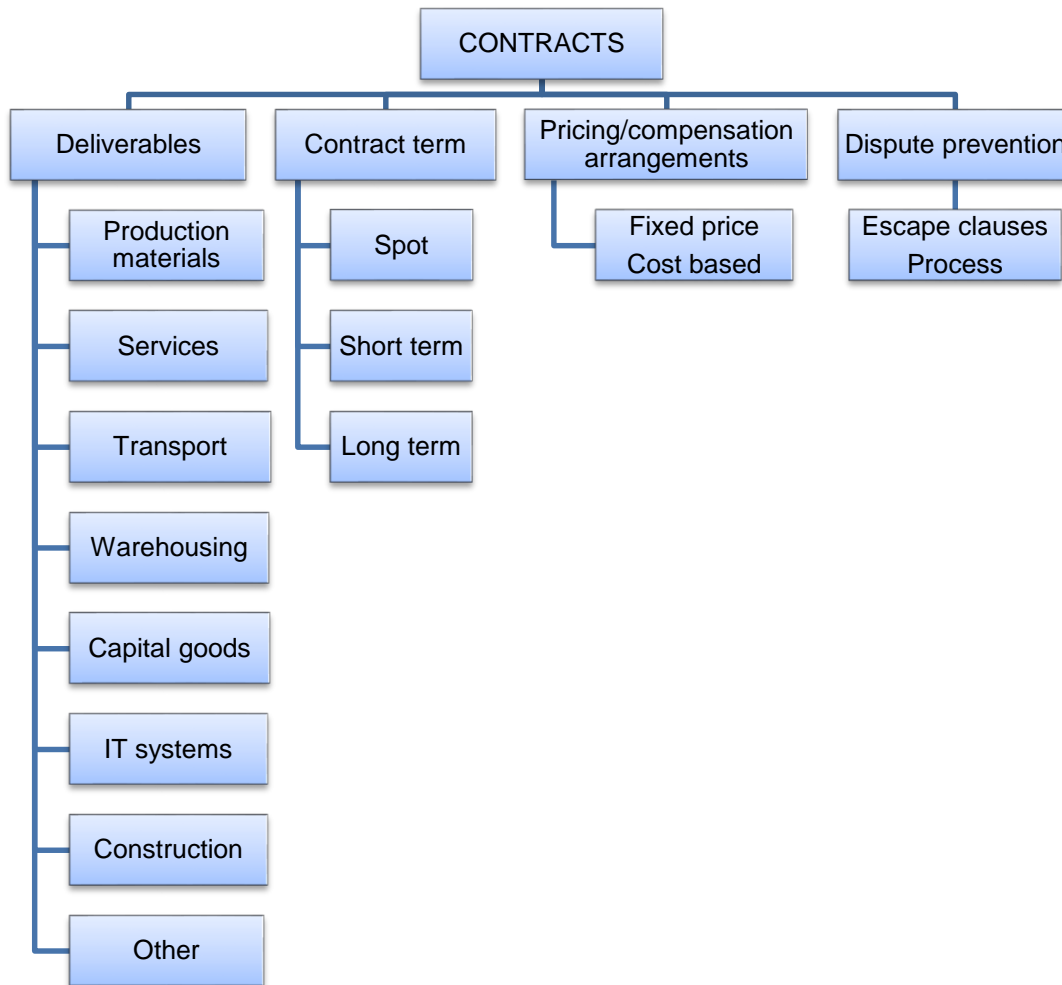


Figure 2.6: Contract management process model

(Source: Nieman, 2008:4)

The deliverables of a contract deal with what goods or services are to be delivered or rendered according the technical norms and standards, quantities and other criteria that are specified in the contract. The question of when, where and how the goods or services are to be delivered or rendered are also dealt with. The contract term relates to the duration of the contract. The three generally recognised contract terms are once off or spot contracts which are concluded for non-recurring purchases, short-term contracts which are for relatively short periods, usually less than one year in duration, and long-term contracts which are for recurring purchases or projects whose duration usually exceed one year (Nieman, 2008:4-6).

The pricing or compensation arrangements deals with the rates, intervals or milestones at which the payments will be made, the documentary requirements and how the payments will be made. The mechanism for price adjustments will also be stipulated (Nieman, 2008:7-8). Hugo, Badenhorst-Weiss and Van Biljon (2006:289) support the view of Nieman (2008:7-8) that the contracts entered into by organisations are broadly categorised into fixed-price or cost-based contracts.

As part of contract management dispute prevention deals with the mechanism that is prescribed for dealing with contractual disputes and could include prevention, negotiation, mediation, or arbitration with litigation being the last resort. Escape or exit mechanisms could also be built into the contract as a means to prevent or resolve disputes (Nieman, 2008:7-9).

The four elements of the contract management process model form the basis upon which contracts should be managed. The empirical investigation will seek to identify whether the Department utilises the elements of the contract management process model for management of its contracts. The study argues that utilising a contract management model provides a structured approach to managing contracts within an organisation. A contract management model assists to identify the activities that should be undertaken in managing a specific contract which in turn ensures that the deliverables, milestones and timelines are identified and managed. The utilisation of a contract management model will ensure the success of contract management within an organisation. Nieman (2008:7-11) identified the following activities that should be undertaken in order to effectively manage the contract content:

- establish the channels of communication with the contractor;
- schedule dates for monthly progress meetings;
- integration of contract requirements and milestones into the project plan and schedule;
- establish the procedures for submission of contractual deliverables;
- establish mechanisms for monthly reporting on the status of the contract;
- executing the contract;
- follow-up and expediting contractual deliverables;

- contract compensation;
- ensuring quality control;
- monitoring and reporting;
- holding regular progress meetings with the contractor;
- maintaining recordings of meetings;
- dispute prevention and resolution;
- management of contract files and documentation;
- evaluation and contract closure; and
- contractor performance evaluation.

The contract management activities that have been identified form the basis for a typical contract management function within an organisation. The employment of the contract management activities by the Department will ensure that it has a comprehensive and efficient contract management system. The effectiveness of managing contracts will also be enhanced. Thus, the aim of the empirical investigation is to determine whether these activities are carried out by the Department during contract management. The review of contract management activities in international organisations is undertaken in the sub-sections that follow to corroborate the views espoused by Nieman (2008). The review is also aimed at determining whether there is alignment to established contract management best practices that are utilised by the international organisations and that the contract management system of the Department is abreast of developments internationally. These organisations are recognised as being at the forefront of developments in contract administration.

2.4.1 Organisation of Economic Co-Operation and Development

The OECD (2009:10) focuses on the common risks that need to be managed during the contract management phase. These risks include contract performance abuse by the contractor relating to quality, price and time; collusion between officials and contractors; poor choice of sub-contractors or their lack of accountability; lack of supervision by officials; and inadequate separation of financial duties relating to payment (OECD, 2009:69). The OECD (2009:70-73) identified the following activities

that should be undertaken in order to effectively manage contracts and their related risks:

- clarification of roles, responsibilities and expectations;
- supervision of the contractor's performance and integrity;
- control over changes to the contract;
- enable scrutiny of contracts by stakeholders including civil society and the wider public;
- verification of goods/services against expected standards;
- final accounting or audit of the contract;
- ensuring timeous release of funds for payments; and
- post-contract assessment.

Although the OECD has identified the contract management activities from a risk perspective, there is alignment to the contract management activities identified by Nieman (2008). Risk pervades the entire spectrum of management within and organisation including contract management (IoD, 2009:11). Thus, the aim of the study is to determine whether the contract management activities of the Department are risk based. Risk management is discussed in a following section of the review. The views of Nieman (2008) and the OECD (2009) are further scrutinised against the postulation of the ANAO in the following sub-section.

2.4.2 Australian National Audit Office

The ANAO (2012:84) advocates that satisfactory contractor performance, keeping stakeholders informed and ensuring that contractual requirements are fulfilled are important and can be achieved by active management of the contract throughout its lifecycle. The varying size, complexity, nature and risk profile of a contract will determine the nature and extent of the contract management activities required to effectively manage a contract (ANAO, 2012:i). The ANAO (2012:84-119) identified the following key activities that should be considered in order to effectively manage contracts:

- identify and manage risks;
- identify and involve stakeholders;
- manage relationships;
- identify and access the relevant skills and experience required;
- identify and assign responsibilities;
- manage contract start-up;
- administer the contract;
- manage contractor performance;
- manage contract variations;
- manage contract extensions;
- manage contract disputes;
- record keeping;
- ethical behaviour;
- finalise administrative requirements;
- manage transition arrangements; and
- contract performance evaluation.

The contract management activities identified by the ANAO (2012) correlate with those which have been identified by Nieman (2008) and the OECD (2009) demonstrating the relevance thereof for the purpose of effective contract management. The study argues that the correlation emphasises that contract management activities employed within government system across the world are common and that they essentially constitute best practice. A review of the contract management activities within a multiple-organisation system, that of the United Nations System, is assessed in the following sub-section.

2.4.3 United Nations system

Bartsiotas (2014:iii) maintains that notwithstanding the soundness of the contract sourcing and awarding process, the effectiveness of achievement of contract objectives and level of compliance to performance standards, timeliness, quality and cost are determined by the post-contract award activities. The key contract

management activities identified by Bartsiotas (2014:37-47) are categorised as follows:

- governance/enabling environment;
- risk management;
- performance monitoring, evaluation and reporting;
- change management;
- financial;
- dispute management and resolution;
- contract close-out and lessons learned;
- information systems;
- human resources and capacity building; and
- assurance systems and control.

The contract management activities that have been identified within the United Nations System, being a multiple-organisational system, are fundamentally the same as those within individual organisations. The study argues that irrespective of whether an organisation is singular in nature or made up of multiple units or sub-organisations, there must be consistency in the application of contract management. The activities may be termed or grouped differently, but essentially deal with the same requirements for effective contract management as espoused by the other sources reviewed earlier. A review of the activities that constitute contract management within the National Audit Office of the Government of the United Kingdom is reviewed in the following subsection.

2.4.4 National Audit Office for the Government of the United Kingdom

The NAO (2008:4) advocates that improved contract management will realise financial savings, improve the quantity and/or quality of services, avoid service delivery failures and improve the management of risks. The NAO (2008:8-16) outlines the following activities that should be undertaken by organisations during contract management:

- preparation for contract management and providing oversight;

- appointment of the right people to undertake contract management activities;
- managing the physical contract and setting a timetable for making critical decisions;
- strengthening internal and external relationships;
- ensuring that the service is rendered in accordance with the contract;
- ensure that payments are in accordance with the contract and incentive mechanisms have been established and are managed effectively;
- managing contract and supplier risks;
- effective management of contract changes;
- implementing measures to improve supplier performance and capability;
- implement a programme for the development and management of supplier relationships; and
- manage the wider market issues that have an impact on the contract and lie beyond suppliers.

The contract management activities identified within the various sources reviewed in the sub-sections above are clearly similar in nature and relevant for inclusion in a contract management system. Thus, it is evident that the above contract management activities are essential for the Department to ensure effective contract management takes place. These activities will be utilised as a basis to determine the comprehensive nature of contract management within the Department during the empirical investigation as the inclusion of these activities will have enhanced the efficiency of contract management within the Department. The contract management activities within an organisation should be formalised within the organisational structure and be staffed with the requisite number of officials with the relevant skills, training and capacity to execute the function.

2.5 ROLE PLAYERS WITHIN CONTRACT MANAGEMENT

An organisation must have the capacity to monitor the performance of its contractors and make them accountable for the service levels that they were contracted for (Hugos, 2006:69). “Research indicates that successful government contracting depends on sufficient internal management capacity” (Joaquin & Greitens, 2012:807).

Bartsiotas (2014:15) identified that, notwithstanding the improvement in practices, organisations face the risk of not having sufficient people with the appropriate skills to manage procurements especially in the post-contract award phase.

Nieman (2008:3-11) identifies four role players within contract management being the end user or user department, procurement manager, contract manager and supplier or contractor. The end user is responsible for determining the requirements and providing the technical requirements for inclusion in specifications, the procurement manager is responsible for undertaking the procurement activities or that contracting takes place, the contract manager is responsible for monitoring and managing the contract throughout its duration and the supplier or contractor is responsible for executing the contract deliverables (Nieman, 2008:3-11).

The OECD (2009:76-80) suggests that there are three role players within contract management being the decision maker, public procurement practitioner and successful tenderer. The inference is that the decision maker is both the end user and also responsible for managing the contract whilst the public procurement practitioner is responsible for the procurement or contracting process and the successful tenderer is responsible for the execution of the contract (OECD, 2009:76-80). The ANAO (2012:30-37, 51) has also identified three role players within contract management being the contract manager or contract management team who is/are the end user/s and also responsible for managing the contract, the contract developer which may also include negotiation teams who is/are responsible for arranging or developing the contract and the contractor who is responsible for the execution of the contract (ANAO 2012:30-52).

The United Nations system distinguishes four categories of contract management role players within its organisations. Contract development activities are undertaken by procurement officers within delegated limits whilst contract committees have been established to undertake the arrangement of contracts for higher threshold value complex requirements (Bartsiotas, 2014:8,13). Requisitioners, project managers or programme officers constitute the end users, however, they have been found to be relied upon to perform contract management functions in addition to their functional

responsibilities (Bartsiotas, 2014:8-9). Contract management units have been institutionalised in some organisations to monitor and manage contracts in the post-award phase whilst the fourth category of role player is the contractors (Bartsiotas, 2014:11).

The NAO (2008:7-11) identifies four role players within contract management being the contract manager or contract management staff who is/are responsible for managing the contract, the tendering staff who are responsible for arranging or developing the contract, the customer organisations which constitute the end users and the supplier/s (contractors) who are responsible for the execution of the contract.

The above review has essentially identified four categories of role players in contract management. They are the end user, procurement or tendering officials/staff, contract managers and contractors. The OECD (2009:76-80) and the ANAO (2012:30-37, 51) do not identify contract managers as separate role players, but view the end users as the contract managers. Bartsiotas (2014:8-11) identified contract management as being the responsibility of both the end user and the contract manager.

Although the four categories of role players identified function within specifically defined stand-alone phases with their own business processes, critically, their actions and responsibilities are channelled towards a single ultimate objective of successful delivery of goods and services which include fulfilment of legal obligations, making sure that value for money is derived and protecting the interest of government (Government of Canada, 2015:1-3; Bartsiotas, 2014:1). The ultimate responsibility for contract management rests with the role players in the post-award phase, however, coordination and cooperation between the various role players have mutual advantages for both the role players and the organisation (Hugo, Badenhorst-Weiss & van Biljon, 2006:38). Saunders (1997:289) also acknowledges the necessity for specialisation however emphasises that coordination is an imperative especially if the environment within the organisation is not stable. The study, therefore, argues that there should be segregation of functions and role players specifically allocated for such functions. Such segregation of functions will also promote accountability by the relevant role players.

Bartsiotas (2014:10-13) proposes that designated officials should be appointed and/or contract management units should be created to perform contract management responsibilities and that the function should be professionalised. Hugo, Badenhorst-Weis and van Biljon (2004:6) identifies the need for extreme proficiency by supply chain managers to manage supplier relationships. Handfield, Monczka, Giunipero and Patterson (2009:132) assert that careful consideration must be given to the training requirements of supply chain managers. The National Treasury (2015a:51-52) has also recognised the need for adequately knowledgeable, skilled and professional officials to perform contract management responsibilities within appropriate structures. According to Saunders (1997:294-295), officials with the desired capabilities are either recruited externally or cultivated within the organisation through skills development programmes. The Financial and Fiscal Commission (2015:15) recognises the strategic importance of contract management, especially in infrastructure projects and asserts that all the critical skills required must be available or a plan should be in place to source them. The study argues that there is a need for specialisation in respect of the contract management function and that knowledgeable and skilled officials should be recruited to perform the contract management function or officials should be trained to be knowledgeable, skilled and professional in the contract management functions.

Effective organisational structures are essential for organisations to deliver on the mandates and priorities that have been set (Department of Public Service and Administration, 2006:2-3). Stanford (2015:24) holds the view that the objective of designing an organisation is to create alignment of all the elements of the organisation thus improving performance and delivering the business strategy. Organisational structures “reflect economies of scale and standardisation of work” (Stanford, 2015:54). The standardisation of work and creation of specialised functions are undertaken through the utilisation of structures. The organisation and allocation of work or tasks are also guided by organisational structures. A structure provides managers with a vehicle through which to “plan, organise, direct and control the activities” of an organisation or specific unit (Department of Public Service and Administration, 2006:2-1). According to Handfield, Monczka, Giunipero and Patterson (2009:156) organisational structures define the assignment of work, authority,

communication and also integrates decision making amongst the units that comprise the organisational structure. Saunders (1997:287) maintains the view that organisational structures demonstrate the basic separation of officials and “the relationships within groups and within the organisation as a whole” as well as “divisions on the basis of functional specialisation and vertical relationships between the different levels in the structure”.

From the above it can be argued that, notwithstanding the fact that there are various role players in contract management, the ultimate responsibility for contract management vests in the post-award phase. The contract management function needs to be formalised within the organisational structure of the Department and be staffed with the requisite number of officials with the relevant skills, training and capacity to execute the function. The aim of the empirical investigation is to determine whether the Department fulfils these requirements. As has been argued and evidenced from the above discussions, a formalised and adequately resourced contract management component will facilitate the risk management function and minimise the contract management risks that an organisation may be exposed to. The role of risk management within contract management is described in more detail in the following sub-section.

2.6 RISK MANAGEMENT IN CONTRACT MANAGEMENT

The Business Dictionary (2015) defines a risk as “a probability or threat of damage, injury, liability, loss, or any other negative occurrence that is caused by external or internal vulnerabilities, and that may be avoided through pre-emptive action”. Hugo, Badenhorst-Weiss and van Biljon (2006:213) define risk “as the deviation or variability of actual results from desired or expected results”. According to the IoD (2009:105), “risk can be defined as uncertain future events that could influence, both in a negative and a positive manner, the achievement of a company’s objectives”. The Project Management Institute (cited by Schwalbe, 2006:153) supports the view that risk is “an uncertainty that can have a negative or positive effect on meeting project objectives”. For the purpose of the study, risk is the potential occurrence of incidents or actions

that will result in failure to comply with the terms and conditions of a contract or failure to fulfil the requirements of a contract.

The concluding of a contract between an organisation and the contractor could result in many potential risks being created (Hugo *et al*, 2006:284). Such risks must be managed. Risk management is defined as “the identification, analysis, assessment, control, and avoidance, minimization, or elimination of unacceptable risks” (Business Dictionary, 2015). Risk management is a process which is designed to identify any potential event or events that may have an effect on the organisation and manage such risk/s to within the organisation’s risk appetite, thus providing reasonable assurance with regards to the achievement of the organisation’s objectives (Committee of sponsoring organisations of the Treadway Commission (COSO), 2004:2). A risk appetite relates to the risk limits or levels of tolerance that are desirable or which an organisation is willing to take (IoD, 2009:63).

Thus, risk management forms an integral part of good management and should be embedded in the business practices or processes of an organisation (ANAO, 2012:6). Risk management during procurement is aimed at examining and controlling risks which will ensure that the programmes, projects and activities of an organisation are delivered successfully (Bartsiotas, 2014:17). The NAO (2008:22) argues that “the purpose of contract management is to manage the risks and exploit the opportunities inherent in a contract”. Risk management commences early in the supply chain management process. Risks associated with contracts should be assessed during the earlier phases of the supply chain management value chain as well as during the contract management phase to mitigate against the failure of addressing unexpected situations (Bartsiotas, 2014:17). The study argues that by recognising risk management as inherent to contract management the relevant measures or systems to timeously identify and control, avoid, minimise or eliminate risks will be built into the contract management process thus making contract management more effective.

The NAO (2008:22-23) identified four categories of risk management activities which constitute risk reduction, risk elimination, risk acceptance and risk transfer. Risk reduction entails taking appropriate steps to minimise the likelihood of the risk

occurring during contract management and/or the negative impact of the risk. Risk elimination entails implementing measures that will diminish the likelihood of the risk occurring altogether or to negate its impact. Risk acceptance is the acknowledgment that the risk will occur, however, no action is necessary as the risk is unavoidable. Furthermore, the likelihood of the risk occurring or the severity of its impact is minimal. Risk transfer entails transferring the burden of the risk of the contractor or a third party through insurance (NAO, 2008:22-23). The IoD (209:108) cautions that the transfer of risks may result in the modification of the risks whilst legislation may “limit, prohibit or mandate the transfer of certain risks”. The following risks associated with contract management and fall within the above categories have been identified (Bartsiotas, 2014:17; ANOA, 2012:18-113; OECD, 2009:69; NAO, 2008:18):

- lack of clarity of roles and responsibilities/contract deliverables;
- resourcing;
- insufficient human and financial capacity;
- contract performance measurement;
- contractor performance;
- changes to the contract requirements;
- payments;
- conflict of interest;
- stakeholder relationships;
- systems, procedures and guidance;
- payments;
- document management;
- service failure;
- reputational risk; and
- additional cost.

There is a common supposition that risk management is a critical aspect of contract management which extends beyond compliance to good governance or management principles. The effectiveness of a contract is to a large extent dependent on effective risk management from the perspective of both the organisation and the contractor. The

empirical investigation encompasses a review of the extent of the implementation of risk management by the Department within its contract management function as the study argues that risk management is inherent in contract management as well as the benefits thereof for effective contract management. Contract management tools are an essential element to the effectiveness of the contract management function including managing contract risks, as is described below.

2.7 CONTRACT MANAGEMENT TOOLS

The utilisation of formal tools to manage contractor performance is a common practice in organisations (Government of Canada, 2015:8). The need to satisfy the increasing demand for contract management compliance and analysis has given rise to the growth in utilisation of formal and structured contract management procedures (Eelsey, 2007:3). Organisations institute formal contract management systems which are utilised by contract management officials during the course of their work. Effective contract management systems assist in contract oversight; provide a central repository of contract information relating to critical dates, terms, cost, document management and access to closed contracts; and supports compliance. The central repositories within contract management systems also provide a valuable source of information during reviews and audits (Centafont, 2014:41-42). Contract management systems enable organisations to enhance contract management processes, assist to measure and analyse contractor performance and provide management reports timeously (Handfield *et al*, 2009:693).

The personal effectiveness of the officials and collaboration to conduct contract management activities within an organisation will also be enhanced (Handfield *et al*, 2009:754). The Financial and Fiscal Commission (2015:93) supports the view of Handfield *et al* (2009:754) affirming that there will be an improvement in the services rendered by those officials who are equipped with better tools to undertake their tasks. The procurement toolkit utilised by the Government of Ontario (2015) has clearly defined processes that should be followed during the execution of contracts and include tools designed specifically to manage contractor performance. These tools include milestones, progress meetings, technical review meetings, checklists, forms,

templates, user guides and manuals (Government of Canada, 2015:8). The study argues that contract management should be a formal and structured process supported by a formal tool rather than an ad hoc process. Furthermore, contract management tools improve the effectiveness and efficiency of officials and enhance the contract management function within an organisation including reporting and document management. The aim of the empirical investigation is to determine whether the Department utilises contract management tools and the level of efficacy of the tool or tools being utilised.

There is a growing trend amongst organisations to implement automated or electronic contractor performance management systems to facilitate monitoring, evaluation and contractor performance reporting. The burden of effectively managing the performance of a large number of contractors is lessened by the utilisation of automated systems, especially in cases where the software is customised to suit the organisation's specific needs (Government of Canada, 2015:9). Eley (2007:3) supports the view that there is a growing need for automation of contract management to improve contractual processes. Hugo *et al.* (2004:87) support the utilisation of software packages and emphasise the need for customisation to suit the specific requirements of the contract or organisation.

Handfield *et al.* (2009:692-693) argue that manual contract management systems lack the capability to maintain the currency of information related to compliance to pricing, amendments to contracts, volume discount thresholds, payment schedules, compliance to deadlines and contingencies related to non-performance. Electronic contract management systems have the benefit of streamlining the contract management process (Handfield *et al.*, 2009:754) and generating timely management reports (Handfield *et al.*, 2009:693). The study argues that electronic contract management systems promote the efficiency of monitoring contractor performance and real time reporting within an organisation. An attempt is also made during the empirical investigation to determine whether the tools utilised by the Department are automated, thus keeping up with the advancement of government administration to technological advancements.

2.8 CONCLUSION

The literature review demonstrates that a value chain for supply chain management exists. The value chain comprises of a series of business processes undertaken by individual business units. Each of the business processes adds value towards achieving the ultimate goals of the organisation. There is an interconnectivity/interdependency between the individual business units within the supply chain management value chain, including contract management. The literature review has confirmed that contract management resides within the post-award phase of the supply chain management value chain.

The importance of frameworks in contract management is supported by the literature review. A framework assists with planning, decision making, control, and promotes cohesiveness in managing the performance of contractors. A contract management framework should include elements such as legislation and policy imperatives, processes and procedures, tools and reporting mechanisms that will guide the successful implementation, management and close-out of contracts.

A wide range of activities that are critical to successful management of contracts have been identified. The literature reviewed has revealed that even though there may be differences in the manner in which organisations are structured or the nature of their business, the contract management activities are fundamentally the same. This also holds true when comparing contract management activities within the South African context in comparison to other international organisations and governments. The activities may be termed or grouped differently but essentially deal with the same requirements for effective contract management.

The literature review has recognised that there are essentially four role players in contract management. These role players are the end user or user department, the procurement managers, contract managers or contract management units and the supplier or contractor. Although the end user or user department and procurement manager play a significant role in the supply chain management value chain leading up to the post-award phase, the responsibility for contract management primarily rests

with the contract manager or contract management unit in managing the performance of the contractor in terms of the provisions and obligations of a contract.

The prevalence of risks that arise in concluding contracts have been confirmed through the literature review. The potential risks have also been identified and are commonly acknowledged in the various literature sources reviewed. The necessity to identify, analyse, assess, control, avoid, minimise or eliminate risks has been recognised in order to ensure that the programmes, projects and activities of an organisation are delivered successfully.

The relevance of formal contract management systems or tools, including automated systems, to facilitate monitoring, evaluation and reporting for successful management of the performance of contractors has been accepted. Effective contract management systems assist in contract oversight; provide a central repository of contract information relating to critical dates, terms, cost, document management and access to closed contracts, and supports compliance.

A review of legislation and the prescripts that govern contract management within the South African public sector environment is dealt with in the next chapter.

CHAPTER 3

REVIEW OF LEGISLATION AND POLICY FRAMEWORKS

3.1 INTRODUCTION

Policy making is a common phenomenon to individuals, organisations and governments (Oyadiran, 2014:3). Policy making as a process entails formulation and articulation of the policy as well as the actions to be undertaken, by whom, when and other directives related to its operationalisation (Fox, Bayat & Ferreira, 2006:19). According to Cloete, Wissink and De Coning (2006:3) policy is “a statement of intent” and “specifies the basic principles to be pursued in attaining specific goals”. According to Anderson (1997:9) (cited by Roux, 2002:425) policy is defined as “a proposed course of action of a person, group, or government within a given environment providing obstacles and opportunities which the policy was proposed to utilise and overcome in an effort to reach a goal or realise an objective”.

Fox *et al.* (2006:X) espouse the view that what a government decides to do or not to do constitutes public policy. They also contend that at all spheres of government, their administrations, bodies created by the government and parastatals make public policy by virtue of authority that has been vested in them. Gumede (2008:9) broadly defines public policy “as all formal and publicly known decisions of governments that come about through pre-determined channels in a particular administration”.

The Education and Training Unit (ETU) (s.a.:1) concurs that government outlines what goals it hopes to accomplish and the methodology and principles that will be utilised to realise such goals in its policies. According to Roux (2002:425), policies contain broad guidelines or courses of action that will be undertaken by government. Thus public policy can be considered to be the articulation of the commitment of a government to a particular line of action to deliver services to society which comprises the citizens of the country. For the purpose of the study public policies relate to the public sector contract management function, as conceptualised in the previous chapter.

Policies by themselves do not constitute laws or legislation. After formulation, policies are authorised through the parliamentary processes for conversion into legislation (Roux, 2002:421). The process of policy formulation is only concluded after the policy decision or intent has been expressed in legislation (Anderson, 2003:209). ETU (s.a.:1) supports the view that policies are not legislation, but that they may necessitate the promulgation of new legislation to achieve their goals. Thus, not all policies need to be formalised in legislation. Fox *et al.* (2006:X) however, caution that legislation is a reflection of policy, but cannot by itself be regarded as policy. Thus, it can be deduced that legislation is guided by the policies of the government of the day which serve as the institutional and legal frameworks to achieve their objectives.

Roux (2002:424) and Anderson (2003:209) concur that the functions of government departments and institutions encompass the implementation and administration of policies and legislation in the normal course of their functions. In addition, the legal authority to implement a specific policy is derived from legislation (Anderson, 2003:225). Hughes (2003:240) acknowledges that government departments and institutions are the implementers of government policy and that they should do so in a responsible manner without exceeding their powers on the basis that their powers are soundly based in legislation. Thus, legislation provides government departments and institutions with the mandate to execute policies and prescribes the manner in which officials should act in order to achieve the outcomes of the policies.

The literature review in this chapter is aimed at addressing the research objective of determining the legislation, policies and best practice models as well as ascertaining the typical contract management requirements for public sector departments inclusive of structural, human resource, skills and functional or operational requirements. The review covers the current applicable legislation, the policy frameworks and other prescripts issued by the National and Provincial Treasuries that are relevant to or influence contract management. The review of legislation is discussed in the following section.

3.2 LEGISLATION PERTAINING TO PUBLIC SECTOR CONTRACT MANAGEMENT

Roux (2002:421) argues that policy will only be significant for the purpose of public administration after it is passed into legislation. Parliament enacts legislation which establishes a framework within which government, its institutions and officials must operate for the purpose of providing services to society. The various pieces of legislation prescribe the functions that will be performed by the different departments and institutions (Kuye, Thornhill, Fourie, Brynard, Crous, Mafunisa, Roux, Van Dijk & Van Rooyen, 2002:37-39).

Legislation in South Africa serves as one of the sources of law (Du Plessis, 2011:92-95). Legislation which governs the conduct of departments, institutions and individuals in performing their tasks relating to public policies falls into the branch of law known as administrative law. Administrative law enables government to perform its functions and confers powers upon departments and institutions to action the policies of government (Wade & Bradley, 1993:603-604). Wade and Bradley (1993:603) define administrative law as “a branch of public law concerned with the composition, procedures, powers, duties, rights, and liabilities of the various organs of government which are engaged in administering public policies”.

Gildenhuis (2004:94) endorses the view of Wade and Bradley (1993:603) adding that “administrative law deals with the functions of government” and “the state in motion”, i.e. the manner in which governmental authority is exercised in the day-to-day operations of departments and institutions. Wiechers (1985:1-2) defines administrative law as being “that part of public law that rules the organisation, authority and functions of the public administration”. Gildenhuis (2004:94), in citing Baxter (1996:50-51), emphasises that public administration is regulated by the general principals of administrative law. Matters such as “authority and power, the devolution of authority and autonomy and the delegation of functional and decision making authority and all its ramifications” are regulated by administrative law (Gildenhuis, 2004:94).

South Africa is a democratic state ruled by law. The South African democracy embodies a host of legislation which govern the actions of all the organs that constitute government. Public sector procurement of goods and services is also governed by legislation (Venter, 2013:52). Bolton (2008:783) concurs adding that “the general rules of constitutional and administrative law have application to public procurement in South Africa”. The study argues that the authority and conduct of departments, institutions and individuals in the performance of their functions are founded in legislation and regulated in the branch of law known as administrative law. The role of the Constitution of the Republic of South Africa, 1996, is reviewed in the following sub-section.

3.2.1 Constitution of the Republic of South Africa, 1996

Procurement within the South African public sector enjoys constitutional status (Bolton, 2007:33). Section 217 of the Constitution, 1996, provides the mandate for procurement by government departments and institutions and also stipulates the tenets upon which the procurement processes should be based. Bolton (2008:782) recognises that the uniqueness of the South African public sector procurement system is demonstrated by virtue of the governing principles of procurement being encapsulated in the Constitution, 1996. Section 217 stipulates that “when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation contracts for goods and services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective”. Furthermore, provision is made for social redress through the procurement processes for the “protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination” and that categories of preference should be allocated during the awarding of contracts to achieve this objective of social redress. Bolton (2006a:193-194) confirms that public sector procurement in South Africa was acknowledged as a vehicle or policy tool to address the discriminatory policies and practices of the past. Provision is also made for legislation to be promulgated which must prescribe the framework within which the social redress objectives that are contemplated in Section 217 will be implemented. The legislation promulgated in this regard are the Broad-Based Black Economic Empowerment Act (53 of 2003) and the Preferential

Procurement Policy Framework Act (5 of 2000) as well as the Preferential Procurement Regulations of 2011 issued in terms of the latter, which are discussed later.

The reference to “an organ of state in the national, provincial ...” demonstrates that the Department is not exempt from the provisions of Section 217 of the Constitution, 1996. This section also talks of the contracting for goods and services which links to the pre-award phase of the supply chain management value chain. The study argues that some of the principles being espoused also apply equally to the contract management activities that take place in the post-award phase although not specifically provided for. Fairness should also prevail in the management of contracts and contractors should be treated fairly in all matters relating to the management of a contract. There should be transparency in the manner in which government departments and institutions manage their contracts, especially with regards to decision making. Contractors should be advised of or consulted on decisions to be taken regarding the management of contracts, such should be communicated timeously and reasons therefor should be provided. The study also argues that management of contracts should be undertaken in a manner that will ensure cost-effectiveness. This entails effective monitoring of contracts and contractor performance, acting timeously to address possible shortcomings or risks, effecting payments timeously and avoiding corruption. In so doing, the sustainability of the contract and cost-effectiveness will also be ensured. The study argues that Section 217 of the Constitution, 1996, applies to the Department and that the principles of fairness, transparency and cost-effectiveness also apply to contract management in the post-award phase of the supply chain management value chain.

The allocation of preferences takes place during the awarding of contracts. However, the management of the contract must also include the monitoring of who is executing the contract. This will ensure that the appointed contractor who benefitted from the allocation of preferences undertakes the execution of the contract and does not outsource or sub-contract portions of the contract to other parties who are not of equal standing in terms of the preferences allocated. Unacceptable practices such as fronting will be detected and can then be dealt with timeously (Bolton, 2007:57). Bolton (2006a:212) explains further that contractors who have obtained contracts by

engaging in fronting are guilty of fraud and the relevant contracts will be declared invalid. Although the allocation of preferences is intended purely for the awarding of contracts, the study argues that it is an important aspect which should be included in the management of contracts to ensure that the social redress objectives are achieved and to avoid abuse and corruption during the execution of contracts.

Section 195 of the Constitution, 1996, articulates the basic values and principles that should govern the public administration and also provides for the promulgation of national legislation to promote the said values and principles. The values and principles that specifically apply to contract management are the promotion and maintenance of a high standard of professional ethics, accountable public administration and promotion of efficient, economic and effective utilisation of resources. The Public Finance Management Act (1 of 1999), one of the pieces of legislation promulgated to govern the public administration, is discussed in the following sub-section.

3.2.2 Public Finance Management Act (1 of 1999)

The purpose of the Public Finance Management Act (1 of 1999) is stated “to regulate financial management in the national and provincial governments”. Section 1 defines the executive authority of a provincial department as “the member of the executive council of a province who is accountable to the provincial legislature for that department” whilst Section 36 provides for departments and institutions to have an accounting officer and that the head of department must be the accounting officer. Section 38 entrusts the constitutional obligations relating to procurement to the accounting officer of a department. Section 38 stipulates that “(1) the accounting officer for a department, trading entity or constitutional institution (a) must ensure that that department, trading entity or constitutional institution has and maintains (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective”. Pauw *et al.* (2009:230) express the view that this is a move from the previous system of authoritarian external rules under the tender board system and provides heads of departments and institutions more scope for decision-making which is consistent with the overriding philosophy of the Public Finance

Management Act (1 of 1999). Section 38 further stipulates that “(1) the accounting officer for a department, trading entity or constitutional institution (f) must settle all contractual obligations and pay all money owing, ..., within the prescribed or agreed period”. Pauw *et al.* (2009:221) argue that departments and institutions are morally obliged to honour the terms of the contract that were agreed to and that failure to do so is unlawful and constitutes financial misconduct. Consequently, the Constitutional obligations relating to procurement are specifically entrusted upon departments, including departments at a provincial sphere, and assigned to accounting officers. The responsibility for the management of contracts, which arise out of procurement processes, is entrusted to the head of department. The stipulation in Section 38(1)(f) relating to the settlement of payments in lieu of contractual obligations further endorses the obligation of the Department to fulfil the Constitutional obligations relating to procurement as well as contract management. Section 38(1)(a)(1) also places an obligation on the accounting officer to implement and maintain an effective, efficient and transparent system for risk management. The study thus argues that the Constitutional obligations relating to procurement are applicable to the Department and it is bound by the provisions of the Public Finance Management Act (1 of 1999). The study argues further that the Head of the Department is obliged to implement a system of procurement that is fair, equitable, transparent, competitive and cost-effective including managing matters relating to contract management and risk management.

Section 76 makes provisions for the National Treasury to make regulations or issue instructions relating to matters regulated by the Public Finance Management Act (1 of 1999). These regulations and instructions relate to, amongst other matters, cancellation and variation of contracts as well as determining a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective. The Treasury Regulations, 2005, issued in terms of Section 76 is discussed in following sub-section.

3.2.3 TREASURY REGULATIONS

Supply chain management is primarily dealt with under Treasury Regulation 16A issued in terms Section 76 of the Public Finance Management Act (1 of 1999). Regulation 16A provides the framework for the implementation of supply chain management for departments, public entities and constitutional institutions. In terms of Regulation 16A3, an accounting officer is required to “develop and implement an effective and efficient supply chain management system for his or her institution” and such system must comply with the constitutional obligations relating to fairness, equity, transparency, competitiveness and cost-effectiveness. The supply chain management system is required to be consistent with the Preferential Procurement Policy Framework Act (5 of 2000) and the Broad Based Black Economic Empowerment Act (53 of 2003) which will be discussed in later sub-sections. A further requirement is that the supply chain management system must at least include demand management, acquisition management, logistics management, disposal management, risk management and regular assessment of supply chain performance (South Africa, 2005: Regulation 16A3.2(d)). There is no specific reference to contract management, however, contract management is inherent within logistics management and risk management. Thus, accounting officers are obliged to implement contract management in their departments.

Regulation 16A8 promotes the compliance to ethical standards. In terms of Regulations 16A8.1 and 16A8.2, officials and role players in the supply chain management system are expected to promote “mutual trust and respect” as well as “an environment where business can be conducted with integrity and in a fair and reasonable manner” and adhere to the code of conduct issued by the National Treasury. Supply chain management officials and role players are compelled by Regulation 16A8.3 to (South Africa, 2005):

- recognise and disclose conflicts of interest;
- treat suppliers (contractors) and potential suppliers equitably;
- refrain from using their positions for private benefit or for the improper benefit of other persons;

- to refrain from accepting gifts, hospitality or any other act which will compromise the credibility or integrity of the supply chain management system;
- be scrupulous when utilising public property; and
- assist the accounting officer to combat fraud and corruption.

The study argues that the ethical standards being promoted by Regulation 16A8 should also be applied to contract management. Supply chain management officials and other contract management role players should conduct themselves in an ethical manner and combat fraud and corruption.

Regulation 16A9 entrusts the accounting officer with the responsibility of preventing abuse of the supply chain management system and exercising oversight on the conduct of officials and role players. Regulation 16A9.1(f) provides the accounting officer with specific powers to cancel a contract if the contractor, an official or role player is found to have committed a fraudulent or corrupt act relating to the specific contract. Such an act could either have been committed during the pre-award or post-award phase and would have benefitted the contractor. In addition, Regulation 16A9.2(a)(iii) provides for the disregard or disqualification of the bid of a bidder on the basis that the said bidder had failed to perform according to the terms and conditions of any previous contract (South Africa, 2005). Contract management is thus important in assisting with the monitoring and documentation of the contractor performance for future reference. The study argues that there is an obligation on the part of officials and role players to uphold ethical standards during the management of contracts. This includes the compliance to ethical standards by the contractor. Accounting officers should be vigilant and implement measures that will ensure that the supply chain management system is not abused, especially during contract management and that the performance of contractors is documented.

The Treasury Regulations, 2005, prescribe measures relating to the payments due to contractors. Regulation 8.2.3 requires that all contractual payments be effected within 30 days of receipt of an invoice of a contractor. Prepayments are however, discouraged by Regulation 15.10.1.2(c) unless necessitated by the terms and conditions of a contract (South Africa, 2005). The study argues that departments and

institutions must be cognisant of the requirements relating to timeous payments and pre-payments and that unless required otherwise by the contractual terms and conditions, there should at all times adhere to the requirements of the Treasury Regulations, 2005.

Regulation 16 makes provision for a department or institution to enter into a commercial transaction with a private party. The private party would, in terms of the transaction, either perform the functions of the department or institution on behalf of the contracting department or institution, and/or utilise state property for its own commercial purposes. The private party would also have to shoulder the financial, technical and operational risks allied to the performance of the departmental or institutional function and/or utilisation of the state property. The private party would derive benefit from the partnership either through payment from the department or institution, levy charges or fees for the services rendered to users or customers and/or from the payments derived and charges or fees levied. This commercial transaction is known as a public private partnership (South Africa, 2005).

Regulation 16.6.1 makes provision for the accounting officer to develop and implement an approved management plan for the effective management of the public private partnership agreement. Regulation 16.7.1 specifically charges the accounting officer with this responsibility in relation to the following (South Africa, 2005):

- assessing the outputs of the agreement;
- monitoring the implementation and performance in terms of the agreement;
- liaison with the private party;
- resolving disputes;
- general oversight of the day-to-day management of the agreement; and
- reporting on the agreement in the annual report.

The study argues that in addition to the supply chain management contracting processes prescribed in Regulation 16A, departments and institutions may also enter into public private partnership agreements and that there is also an obligation to manage such contracts in terms of the agreements entered into. Regulation 16A3.2

stipulates that the supply chain management system must be consistent with the Broad Based Black Economic Empowerment Act (53 of 2003). The Broad Based Black Economic Empowerment Act (53 of 2003) being one of the pieces of legislation promulgated in terms of Section 217 of the Constitution, 1996, to give effect to the constitutional objective of social redress through the procurement processes, is discussed in the following sub-section.

3.2.4 Broad-Based Black Economic Empowerment Act (53 of 2003)

Preferential procurement as contemplated by Section 217 of the Constitution, 1996, is one of the strategies, amongst others, for the economic empowerment of all black people. According to Bolton (2008:800), the meaningful participation of black people in the South African economy since 1994, notwithstanding the Constitutional and other legislative initiatives, remained limited. One of the purposes of the Broad-Based Black Economic Empowerment Act (53 of 2003) is to legislate a framework for the promotion of black economic empowerment. The Broad-Based Black Economic Empowerment Act (53 of 2003) defines black people as a “generic term which means Africans, Coloureds and Indians”. However, women, workers (employees of a business enterprise), youth, people with disabilities and people living in rural areas have been included in the definition of broad-based black economic empowerment. Section 9(1) of the Broad-Based Black Economic Empowerment Act (53 of 2003) empowers the Minister for Trade and Industry to issue codes of good practice on black economic empowerment which may include the criteria for qualification for preferences for procurement purposes. Contract management should therefore include monitoring whether the contractor who was awarded the contract taking into consideration the preferences qualified for, is executing the contract (South Africa, 2003). The framework for the allocation of preferences is enacted through the Preferential Procurement Policy Framework Act (5 of 2000) which is discussed in the following sub-section.

3.2.5 Preferential Procurement Policy Framework Act (5 of 2000)

The Preferential Procurement Policy Framework Act (5 of 2000) was promulgated to give effect to Section 217 of the Constitution, 1996. Section 2 of the Preferential

Procurement Policy Framework Act (5 of 2000) prescribes the framework for the preferential procurement policy. The framework provides for two preference points systems which are the 80/20 and 90/10 preference points systems with the bid scoring the highest number of points then being awarded the contract. Bids are scored out of 80 and 90 points for price on a comparative basis benchmarked against the lowest acceptable bid price and 20 and 10 points for the social redress goals which have been stipulated in the bid evaluation criteria (South Africa, 2000a: Section 2(1)(b)).

Section 2(1)(g) of the Preferential Procurement Policy Framework Act (5 of 2000) makes provision for the cancellation of a contract should it be determined that the contract was awarded on the basis of false information submitted by a bidder without prejudice to any other remedies that the procuring department or institution may have. Section 2(2) stipulates that the social redress goals should be measureable, quantifiable and monitored for compliance (South Africa, 2000a). Thus the study argues that monitoring during the contract management phase is relevant to ensure that the information submitted in the bid document by the contractor is valid and relevant to and during the execution of the contract and that the social redress goals are monitored to ensure compliance thereto. Non-compliance will tantamount to the submission of false information and should result in the cancellation of the contract. Section 5(1) makes provision for the Minister of Finance to issue regulations in order that the objectives of the Preferential Procurement Policy Framework Act (5 of 2000) can be achieved. Such are the Preferential Procurement Regulations of 2011 which is discussed in the following sub-section.

3.2.6 Preferential Procurement Regulations of 2011

The Preferential Procurement Regulations of 2011 were issued to provide departments and institutions with an implementation guideline of the framework for preferential procurement in terms of Section 2 of the Preferential Procurement Policy Framework Act (5 of 2000). The framework deals primarily with the implementation of the 80/20 and 90/10 preference points systems and matters allied thereto. These matters relate to the pre-award activities leading up to the final award of a contract. The matters that are provided for include planning for a procurement process and

determining which preference points system is to be utilised for granting recognition of a bidder's broad-based black economic empowerment status, evaluation of bids in terms of pre-determined functionality criteria, awarding of contracts and the cancellation and re-invitation of bids (South Africa, 2011: Regulations 3-8). The implementation of local production and content for the protection of locally produced goods, services and works in respect of designated sectors, management of broad-based black economic empowerment certificates, declarations, remedies for abuse of the procurement system and matters related to tax clearance are also provided for (South Africa, 2011: Regulations 9-14).

Although the Preferential Procurement Regulations of 2011 focuses primarily on matters relating to the pre-award phase of procurement, there are certain provisions that relate to contract management matters in the post-award phase. Regulation 9 makes provision for bids in respect of designated sectors to be advertised with specific conditions of bid that only those bids that meet the stipulated minimum thresholds relating to local production and content will be considered. The appointed contractor is compelled to comply with the requirements for local production and content for the specific designated sector for the duration of the contract. Regulation 11(10) also prohibits the contractor from sub-contracting portions of the contract in any manner that would result in the minimum thresholds for local production and content not being complied with (South Africa, 2011). Thus, the department or institution must ensure that the performance of the contractor is effectively and adequately monitored to ensure compliance to the minimum thresholds as any deviation will be a violation of the regulation and constitute a breach of contract and appropriate remedial action must accordingly be instituted (South Africa, 2011).

There are instances when bidders will offer conditional discounts to the rates or prices offered in their bids. Regulation 11(3) of the Preferential Procurement Regulations of 2011 makes provision for departments and institutions to implement such discounts when payments are effected. In instances where discounts are offered, such must be recorded for contract management purposes and advantage should as far as is possible be taken of such discounts. Regulation 11(9) permits sub-contracting of portions of a contract but that such sub-contracting be limited to 25% of the value of

the contract if the sub-contractor does not have an equal or higher broad-based black economic empowerment status than the principle contractor. However, Regulation 11(8) permits sub-contracting if the intended sub-contractor is an exempted micro enterprise with the required capability and ability to execute the portion of the contract being sub-contracted. The provisions of the contract entered into should clearly stipulate the parameters and conditions that will apply with regards to sub-contracting to facilitate monitoring during contract management. The contractor and sub-contractor must be carefully monitored and the work performed must be accurately measured to ensure that where sub-contracting takes place, the provisions of Regulation 11(9) are not transgressed (South Africa, 2011).

Regulation 13 of the Preferential Procurement Regulations of 2011 makes provision for remedies in instances where the broad-based black economic empowerment status has been fraudulently claimed or obtained or the contractor has failed to fulfil the contractual conditions. In terms of Regulation 13(1)(b), a department or institution is compelled to act against a contractor who fails to fulfil the conditions of his/her contract. Regulation 13(2)(c) makes provision for the cancellation of contracts and recovery of damages suffered resulting from less favourable arrangements being made owing to the cancellation of the contract. Bolton (2008: 798) however cautions that the cancellation of a contract on the grounds of corruption could defeat the principle of cost effectiveness and that financial penalties should be considered as an alternative. Regulation 13(2)(d) makes provision for the restriction of a “contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis” and Regulation 13(2)(e) provides for criminal prosecution in addition to the other remedies provided for (South Africa, 2011). Thus, effective contract management is imperative in order to document evidence that would justify implementation of the remedies, quantify damages that will be claimed and provide evidence in the event of criminal prosecution as contemplated in Regulation 13 (South Africa, 2011). The study argues that effective and adequate monitoring of contractor performance and management of contracts are critical to ensure that the provisions of the Preferential Procurement Regulations of 2011 relating to allocation of preferences, local production and content, sub-contracting, discounts and remedies are complied with. Thus, the Department has a duty to perform contract management. Information

technology is critical for the efficient functioning of government. The state procures information technology related goods and services from the private sector. The State Information Technology Agency Act (88 of 1998) which was promulgated to govern the procurement of such goods and services is discussed in the following sub-section.

3.2.7 State Information Technology Agency Act (88 of 1998)

The State Information Technology Agency Act (88 of 1998) was promulgated to facilitate the “establishment of a company responsible for the provision of information technology services to the public administration and to provide for matters connected therewith”. The company established in terms of the State Information Technology Agency Act (88 of 1998) is the State Information Technology Agency (Pty) Ltd (the Agency). Section 20 of the State Information Technology Agency Act (88 of 1998) requires that departments and institutions enter into business and service level agreements with the Agency to legalise and govern their relationship relating to the services to be provided to departments and institutions. The provisions of Section 20 relate to the requirement in terms of Treasury Regulation 16A6.3(e) which necessitates that departments and institutions to prepare information technology related contracts in terms of the State Information Technology Agency Act (88 of 1998).

Section 7(3) of the State Information Technology Agency Act (88 of 1998) makes it mandatory for departments and institutions to procure specific information technology goods and services from the Agency. Whilst the procurement of some services is mandatory, others may be procured through the Agency. In instances where the goods or services are provided directly by the Agency, such must accordingly be procured from the Agency. Other goods and service must be procured through the Agency, that is, the Agency will undertake the procurement on behalf of the relevant department or institution (South Africa, 1998: Section 7(4)). Hence, a two-fold contractual process will emerge. Firstly, the contract between the department or institution and the Agency and secondly, the contract between the department or institution and the contractor appointed by the Agency on behalf of the department or institution (South Africa, 1998: Section 20). Thus the study argues that a department or institution procuring information technology related goods and services through the Agency will have to

manage the contract in respect of the business agreement that exists between itself and the Agency and where the goods and services are procured by the Agency on behalf of the department or institution, manage the resultant contract between the department or institution and the appointed contractor. The aim of the empirical investigation is to determine whether the Department utilises the services of the Agency for the procurement of information technology goods and services and the extent to which the contractual arrangement between the Department and the Agency is managed. The access to information is a critical element of ensuring the success of contracts. The Promotion of Access to Information Act (2 of 2000) which promotes accessibility to information held by the state or another person is discussed in the following sub-section.

3.2.8 Promotion of Access to Information Act (2 of 2000)

Section 32(1)(a) of the Constitution, 1996, stipulates that “everyone has the right of access to information held by the state”. The Promotion of Access to Information Act (2 of 2000) was enacted to give effect to this constitutional right and promote transparency and accountability in departments and institutions. This objective corresponds with the principle of transparency as espoused by Section 217 of the Constitution, 1996. Currie and Klaaren (2002:1) assert that the Promotion of Access to Information Act (2 of 2000) “gives legislative effect to the right to access of information” held by the state as well as private bodies to the degree that the record or information being requested will be utilised for the exercise or protection of rights. Furthermore, the right to request access to a record or information places both public and private bodies under obligation to provide access to such record or information that may be requested. Devenish, Govender and Hulme (2001:185) argue that one of the meanings of the term “rights” includes private rights that arise from contractual obligations. Thus, departments and institutions are compelled to provide information relating to contract management activities to the relevant contractor. Section 9 of the Promotion of Access to Information Act (2 of 2000) espouses that contractors should be provided with information relating to their contracts including amendments to the contracts and reasons for particular decisions or actions that are taken. Where information is not provided upfront, such should be provided immediately upon request

(South Africa, 2000b: Section 11). The withholding of information could impact negatively on the contractor's performance and the execution or timeous completion of the contract if the contractor has to follow the processes of the Promotion of Access to Information Act (2 of 2000) to obtain information which should have in the first instance been provided to him/her. The reluctance to provide information could lead to unnecessary litigation and costs as a result of contractors having to apply to the courts to obtain information (South Africa, 2000b: Section 78). The study thus argues that there should be sharing of information throughout the duration of the contract and that in instances where information is requested, such should be availed to the contractor. In addition to the being provided with information, contractors expect that departments and institutions would act lawfully and treat them in a reasonable and procedurally fair manner. The Promotion of Administrative Justice Act (3 of 2000) which entitles everyone to lawful, reasonable and procedurally fair actions is discussed in the following sub-section.

3.2.9 Promotion of Administrative Justice Act (3 of 2000)

Section 33(1) of the Constitution, 1996 stipulates that "everyone has the right to administrative action that is lawful, reasonable and procedurally fair" and in terms of Section 33(2), "everyone whose rights have been adversely affected by administrative action has the right to be given written reasons". The Promotion of Administrative Justice Act (3 of 2000) was enacted to give effect to the above provisions of the Constitution, 1996. In terms of the provisions of Section 3(1) of the Promotion of Administrative Justice Act (3 of 2000), any person whose rights or legitimate expectations could be materially and adversely affected by an administrative act, should expect that such act would be procedurally fair. The person is entitled to be provided with reasons for the relevant administrative act (Section 5) and may challenge the administrative act in a court of law or tribunal (South Africa, 2000: Section 6(1)). According to Currie and Klaaren (2001:3) the Promotion of Administrative Justice Act (3 of 2000) encourages "fair, rational, and lawful decision-making" and sets minimum standards for decision-making and the provision of reasons for decisions that are made consequently discouraging maladministration. The actions of departments and institutions relating to contract management are of an administrative nature and as

such are subject to legal review (Currie & Klaaren, 2001:3). Bolton (2007:18) supports the views of Currie and Klaaren (2001:3), that contract management activities fall under the scope of administrative actions and that the Promotion of Administrative Justice Act (3 of 2000) empowers the courts to review “the lawfulness, reasonableness, procedural fairness and the right to written reasons for administrative action”. Devenish *et al.* (2001: 500) argue that the state will be liable if it commits a wrongful administrative act. A wrongful act “is an invalid one, which infringes upon the rights of individuals in a culpable manner and causes damage to them” (Devenish *et al.*, 2001:500). Thus, the study argues that at all times during the contract management phase, the actions taken by departments and institutions must be fair, reasons must be provided or provided immediately upon request and be able to withstand judicial review. Unlawful, unreasonable and procedurally unfair actions lend themselves to corrupt activities. The Prevention and Combating of Corrupt Activities Act (12 of 2004) which was promulgated to prevent and combat corruption and corrupt activities is discussed in the following sub-section.

3.2.10 Prevention and Combating of Corrupt Activities Act (12 of 2004)

The Prevention and Combating of Corrupt Activities Act (12 of 2004) was promulgated to strengthen the measures to prevent and combat corruption and corrupt activities and amongst other objectives, “to provide for the establishment and endorsement of a Register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts”. The Minister of Finance is accordingly mandated in terms of Section 29 to establish a Register of Tender Defaulters which is to be managed by the National Treasury. Section 34 compels departmental and institutional officials to report any knowledge or suspicion of any offence in respect of corrupt activities relating to contracts as contemplated in Section 12, to the South African Police Service. These corrupt activities include the acceptance or agreement or offer to accept or to give any gratification or reward for the persons own benefit or another person’s benefit as a reward for improperly influencing the promotion, execution or procurement of a contract or fixing of the price or other monetary considerations relating to a contract.

In terms of Section 28 of the Prevention and Combating of Corrupt Activities Act (12 of 2004), a court may issue an order that the details of any person or enterprise convicted of an offence in respect of corrupt activities relating to contracts may be endorsed in the Register of Tender Defaulters. The details to be endorsed include the particulars of the enterprise, any partner or shareholder, manager, director or any other person involved in the offence in respect of which the court had imposed the sentence. Such endorsement will be in addition to the sentence imposed by the court. In such instance, the National Treasury may after consulting the contracting department or institution, cancel the contract taking into account various factors and circumstances relating to the contract and the impact of such cancellation. The endorsement of the Register of Tender Defaulters may not be for a duration of less than five years or more than ten years for which period the person or enterprise will not be permitted to trade with the state. The National Treasury may also recover any damages incurred or suffered from the person or enterprise convicted of the offense as a result of the cancellation of the contract (South Africa, 2004: Section 28).

Bolton (2008:792) expresses the view that the restriction of contractors as a result of unsatisfactory performance will ensure that departments and institutions contract only with responsible and reliable contractors and will improve the confidence of honest contractors and the public in government procurement. Corruption lessens the ability to derive value for money as well as achieve government's social redress goals. Bolton (2006b:25), however, acknowledges that restriction of contractors could be detrimental especially if the contractor is largely or entirely dependent on government contracts for business.

The study argues that contract management should include being alert to the potential of corrupt activities taking place during the execution of contracts. Contract management officials must be able to detect corrupt activities and report such activities to the South African Police Service. In instances where the courts rule that the details of persons or enterprises convicted of corrupt activities must be endorsed in the Register of Tender Defaulters, such is reported to the National Treasury to effect the endorsement. In the event that the National Treasury cancels the contract, the contract management officials must ensure that damages are calculated and that such

damages are recovered from the relevant person or enterprise. The prescripts relating to contract management are discussed in the following section.

3.3 CONTRACT MANAGEMENT POLICY FRAMEWORKS AND PRESCRIPTS

The public sector supplements legislation with directives or instructions, frameworks, guidelines and operating procedures that prescribe how administrative actions are to be undertaken (Venter, 2013:52). Section 76 of the Public Finance Management Act (1 of 1999) empowers the National Treasury to make regulations or issue instructions to departments and institutions relating to any matter pertaining to the Act. Section 76(4)(c) makes specific provision for regulations or instructions relating to, amongst other matters, the supply chain management system of the public sector. Section 6(2)(a) also empowers the National Treasury to prescribe uniform norms and standards for the promotion and enforcement of transparency and effective management of revenue, expenditure, assets and liabilities of departments and institutions (South Africa, 1999). The National Treasury has issued a range of prescripts relating to supply chain management, some of which include aspects relating to contract management. The Eastern Cape Provincial Treasury also issued prescripts that relate to supply chain management contracts. The prescripts issued by the National Treasury are discussed in the following sub-section.

3.3.1 National Treasury Contract Management Framework

The National Treasury issued the Contract Management Framework (2010) to articulate the generic requirements for the management of contracts including accounting for contracts by departments and institutions at a high level. Whilst accounting for, recognition, measurement and disclosure of contracts are dealt with in the Framework (National Treasury, 2010c:5 & 11), the primary focus is on department or institution wide contract management. The Framework (National Treasury, 2010c:4) emphasises the importance of contract management and highlights the necessity for contract management in the public sector. The section of the Framework (2010) dealing with the legislative and regulatory framework, however, discusses the role of the Public Finance Management Act (1 of 1999) and Treasury Regulations, 2005, only

whilst the other relevant legislation and prescripts discussed in this chapter have been omitted. The following contract management activities have been identified (National Treasury, 2010b:3-10):

- identification and classification of contracts;
- recognition, measurement and disclosure;
- planning and budgeting for contract management;
- oversight of contract management;
- resourcing contract management activities;
- document and information management;
- relationship management;
- performance management;
- payment, collection, incentives and penalties; and
- risk management.

The Framework (National Treasury, 2010c:4) proposes that the contract life cycle comprises of six stages which are planning for contracts, creation of contracts, collaboration for the purposes of drafting and negotiating contracts, execution or signing of contracts, administration or management of contracts and close-out or renewal of contracts. Each department or institution should establish and maintain an inventory or register of contracts wherein the contracts should be classified according to the different categories. Policies and procedures should be developed and implemented to guide the management of each category of contract (National Treasury, 2010c:11). The financial implications arising from contracts should be recognised, measured and disclosed in the annual financial statements. The full and proper disclosure of financial information will improve the usefulness of decisions taken regarding contracts (National Treasury, 2010c:11). The Framework (National Treasury, 2010:11-12) proposes that planning, budgeting and reporting entail a review of all contracts, including proposed contracts, be undertaken at three different stages. The review should be undertaken during planning and budgeting, preparation of the department's or institution's annual financial statements and reports and during in-year monitoring and reporting with the objective of managing current contracts and planning for new contracts. The study argues that each department or institution should have a

contract register and policies and procedures for the management of contracts. Periodic reviews of contracts should be undertaken for the purposes of planning, budgeting and financial reporting.

The Framework (National Treasury, 2010c:12-13) articulates the responsibilities of heads of departments and institutions relating to contract management oversight. The responsibilities include the institution of systems, policies, procedures, controls and adequate capacity for effective contract management as well as periodic review of the effectiveness and efficiency of contract management within the department or institution. The contract management system that is implemented could either be manual or automated and should include a document management system. The Framework (National Treasury, 2010b:13-17) emphasises the necessity for policies and procedures for each of the contract management activities with specific focus on relationship management, performance management, payments and risk management as well as the appointment of suitably skilled staff, training and commensurate remuneration. The National Treasury (2010b:18-20) proposed that a phased-in implementation strategy be adopted for the institutionalisation of contract management. The study argues that heads of departments and institutions are responsible for oversight of contract management within his or her department/institution and should ensure that there are adequate systems, policies, procedures, controls and the capacities to effectively and efficiently carry out the contract management function. The contract management guide issued by the National Treasury which describes the contract management function in more detail is discussed in the following sub-section.

3.3.2 National Treasury Contract Management Guide

The Contract Management Guide (National Treasury, 2010b:7-9) is an amplification of the Contract Management Framework and is intended to provide a practical guide to departments and institutions on the implementation and application of the Contract Management Framework. The Contract Management Guide (National Treasury, 2010b:7-9) proposes that the implementation strategy consists of six stages which are:

- undertake a review of the contract management framework;
- working through the contract management guide;
- undertaking and completing a gap analysis of the contract life cycle;
- preparing an action plan;
- implementation of the action plan; and
- continuous improvement.

From the above, the study argues that there should be a structured approach to implementing contract management. Departments and institutions should follow the staged strategy to ensure successful implementation thereafter ensure continuous improvement. The following aspects relating to contract management are dealt with in the Contract Management Guide (National Treasury, 2010b:17-94):

- identification and classification of contracts;
- recognition, measurement and disclosure;
- planning, budgeting and reporting cycle;
- oversight of contract management;
- resourcing contract management activities;
- document and information management;
- relationship management;
- performance management;
- payment, collection, incentives and penalties;
- risk management; and
- policies and procedures.

The aspects of the Contract Management Guide (National Treasury, 2010b:34-49) dealing with recognition, measurement and disclosure; and planning, budgeting and reporting cycle do not fall under the scope of the study and will therefore not be discussed further. The remaining aspects of contract management listed above are directly related to the managing of contracts and will be discussed in the following paragraphs.

The classification of contracts or groups of contracts is a significant aspect of good contract management which assists in identifying the level of management intervention required for each contract. Contracts can be classified by type or nature, strategic importance, value, duration and complexity. A rating system should be implemented to classify the strategic importance or level of complexity of each contract which will then determine the level or intensity of management required for the relevant contract (National Treasury, 2010b:24-25). Departments and institutions should establish and maintain an inventory or register of contracts wherein contract information will be recorded. The Contract Management Guide (National Treasury, 2010b:24) proposes that there should be multiple contract inventories or registers with each contract owner having his or her own inventory/contract register and that the responsibility of contract owner be assigned to the lowest possible level of management. The Contract Management Guide (National Treasury, 2010b:25-32) also distinguishes between the various types of contracts which include supply chain management contracts. The study argues that each department or institution should have a contract register, classify and rate its contracts in terms of level of management required and allocate the responsibility of contract owner within the organisation.

The Contract Management Guide (National Treasury, 2010b:51) proposes that the current legislative framework and international contract management good practice place an obligation on the heads of departments and institutions to implement appropriate contract management oversight. Oversight must be supported by governance arrangements which should detail the composition, roles and responsibilities of the various role players, types of decision to be taken, the sequence of decisions in terms of the flow of work, appropriate delegations to facilitate decision making and reporting mechanisms. The oversight performed will ensure (National Treasury, 2010b:17-94):

- proper enforcement of contracts;
- classification of contracts in terms of the required management intervention;
- appropriate monitoring of contracts;
- contract performance management is driven by either a single person or a committee;

- clearly defined roles of all stakeholders including contract owners;
- role players have been appropriately delegated to carry out their functions;
- clear procedures for the transition of contracts from the award phase to contract management;
- implementation of contract management plans;
- alignment of contract management processes to organisation wide governance and risk management processes including reporting;
- continuous contract management training;
- policies and procedures have been implemented and reviewed on an annual basis for improvement; and
- periodic evaluation of contract management effectiveness and efficiency including the cost benefit thereof.

The study argues that the head of a department or institution has the responsibility for oversight and must exercise this responsibility. Such should be undertaken by classification and monitoring of contracts, ensuring that adequate resources are employed and that their roles are clearly defined with appropriate delegations, there is continuous training, contract management plans are implemented, contract management processes and procedures are aligned to the department's or institution's governance and risk processes and reviewed annually, regular evaluation of effectiveness and efficiency of contract management and that policies and procedures are in place and implemented. The aim of the empirical investigation is to determine whether the head of department performs oversight in respect of contract management and that such oversight encompasses the factors espoused in the Contract Management Guide (National Treasury, 2010b).

The Contract Management Guide (National Treasury, 2010b:53-54) proposes that people, processes and systems are important resource considerations for contract management. The nature of the contract will determine the type and level of resources as well as skills and competencies necessary to effectively manage the contract. The appropriate level of skills and qualifications should be detailed and reviewed periodically to ascertain continued relevance and be supported by on-going development programmes which must address the specific needs of each role player.

The management of contracts could be undertaken either by a team or individuals and the processes could be automated using specialised software applications. The use of contract management systems, whether manual or automated, will enhance the proper management of contracts (National Treasury, 2010b:57). The study argues that each department or institution should have an appropriate number or team of qualified and skilled officials supported by appropriate systems for the effective and efficient management of contracts. The aim of the empirical investigation is to determine whether the contract management function is resourced in terms of people, processes and systems.

The secure storage and easy access to contract documentation and information is an essential requirement for effective and efficient contract management. The contract documentation include documentation from the pre-award and post-award phases and could comprise of but not limited to specifications, bid and proposal requests/advertisements, bid documentation, contracts, official orders, delivery and acceptance notes and payment documentation. The accessibility of information relating to milestones, deliverables, and payments which are contained in contract documentation will facilitate effective and efficient management of contracts (National Treasury, 2010b:59-60). Document and information management could encompass a manual or automated system or a combination of both. The document and information management system could be incorporated into a department wide automated contract management system as opposed to being a standalone system. The utilisation of automated contract management systems enhances visibility of the objectives and conditions of a contract and improve decision making, reduces costs whilst improving revenue generation and enhances compliance with legislation, policies and procedures (National Treasury, 2010b:60-64). The study argues that secure storage and easy access to contract documentation and information supported preferably by an automated system are important for effective and efficient management of contracts. The aim of the empirical investigation is to determine whether document and information management are formalised within the contract management environment.

The Contract Management Guide (National Treasury, 2010b:66-67) proposes that relationship management should be pro-active and focus on both internal and external stakeholders. Sound relationship management will be of benefit to the department or institution, its stakeholders and contractors. The success of strategic sourcing is dependent on sound relationship management. Some of the key elements for effective relationships are (National Treasury, 2010b:67):

- understanding and respect of the view of the other party;
- shared knowledge, objectives and desire for the success of the contract;
- thorough knowledge and understanding of the requirements of the contract and the contractual documents;
- open channels of communication and flow of information;
- readiness of all parties to the contract to resolve issues or disputes;
- effectiveness of decision making processes;
- reciprocal trust and understanding; and
- united approach to management of delivery in terms of the contract.

The study argues that relationship management is a critical factor for effective and efficient contract management. Successful contractual relationships are largely based on mutual trust, understanding and a united approach for the management and success of contracts.

The Contract Management Guide (National Treasury, 2010b:80-82) identifies payment, collection, incentives and penalties as key aspects of managing contracts. Payments should at all times be made timeously as provided for in the conditions of the contract or in terms of the provisions of legislation and prescripts. In instances where monies are due to the department or institution, such must be diligently monitored to ensure timeous receipt or to initiate immediate steps to recover such monies. The terms and conditions of contracts make provision for penalties relating to default in delivery relating to the contract and in some instances, incentives for early completion. In both instances, monitoring of the contractor's performance is critical to ensure uniform application of such provisions. The study argues that contractor payments must be made timeously whilst collection of monies owing to the department

or institution is closely monitored for timeous recovery and that incentives and penalties must be applied uniformly.

Risks are inherent in contract management. Risks could arise from poor or sub-standard contract management, ambiguous terms and conditions of contracts or parties acting in bad faith during contract negotiations (National Treasury, 2010b:84). Therefore, risk analysis relating to a contract is of critical importance in order to identify potential risks and identify actions or strategies to minimise or eradicate such risks. Each contract should have a risk management plan which will inform the contract manager of contract management officials of the actions to be taken and that such actions will be taken timeously (National Treasury, 2010b:84-86). The study argues that risk management is critical to ensuring effective and efficient management of contracts. The empirical investigation investigates whether the Department conducts risk management relating to contract management.

The Contract Management Guide (National Treasury, 2010b:88-89) proposes that there should be approved contract management policies and procedures and that such should be developed for each of the aspects of contract management identified in the guide. The policies provide high level direction on contract management practices which will ensure that each stakeholder fulfils his or her obligations and that contractors fulfil their obligations according to the terms and conditions of the relevant contracts. Procedures entail a detailed description of how specific operational tasks should be carried out. Policies and procedures must be approved by the head of a department or institution or other appropriate authority and reviewed periodically to ensure continuous improvement. Any deviation from the approved policies and procedures should result in disciplinary action being taken against the relevant official/s (National Treasury, 2010b:89-94). The study argues that policies and procedures are important aspects of contract management and that each department or institution should have approved contract management policies and procedures. The aim of the empirical investigation is to determine whether the Department has developed and implemented policies and procedures relating to contract management. The National Treasury issued the Government Procurement General Conditions of Contract (2010) to ensure that contractual documentation is simplified, legally and technically correct and

facilitate easier management of contracts. The Government Procurement General Conditions of Contract is discussed in the following sub-section.

3.3.3 Government Procurement: General Conditions of Contract

The National Treasury issued the Government Procurement: General Conditions of Contract (National Treasury, 2010a) which departments and institutions are required to incorporate in the standard bidding documents utilised for the purposes of invitation of bids. The Government Procurement: General Conditions of Contract (National Treasury, 2010a:2) is aimed at creating awareness of the general conditions of contracts that are applicable to government contracts and ensure awareness of the rights and obligations of all parties to government contracts. Special conditions of contract may be necessary for specific bidding processes which, if applicable, will supplement the Government Procurement: General Conditions of Contract and take precedence in the event that contradictions arise.

The Government Procurement: General Conditions of Contract (National Treasury, 2010a:6-15) incorporates the following provisions which are directly related to the management of contracts and should be incorporated into, where applicable, the contract management activities:

- conformity of goods and services to the standards and specifications stipulated in the bidding documents;
- utilisation, ownership, disclosure and inspection of contractual information and documentation;
- submission, management and discharge of performance securities related to the contractor's obligations in terms of the relevant contract;
- inspection, testing and analyses of goods and services including obligations for related costs and rejection of non-compliant goods and services;
- compliance to specified packing requirements for goods during transit and storage;
- compliance to documentary requirements related to delivery of goods;

- insurance against loss or damage relating to the manufacture or acquisition, conveyance and storage of the goods procured in terms of the contract;
- provision and payment in respect of incidental services related to the full execution of the contract;
- compliance to conditions relating to the supply or availability of spare parts manufactured or distributed by the contractor;
- pledging, honouring and remedial measures related to warranty on goods supplied;
- method and requirements for payments;
- conditions related to pricing;
- conditions relating to amendments to the contract, assignment of obligations and sub-contracting;
- measures to deal with delays in the contractor's performance including sourcing from outside the contract and the imposition/non-imposition of penalties;
- termination of the contract either in whole or part due to default by the contractor and imposition of restrictions of trade with the public sector;
- management of the impact of anti-dumping and countervailing duties and rights on payments;
- performance of the contract in situations where force majeure arises and the impact thereof on payments;
- termination of contract due to the insolvency of the contractor;
- settlement of disputes including mediation prior to settlement through the courts of law;
- the limitations of liability;
- applicability of law over the contract;
- the medium of service of notices and calculation of timeframes for execution of such notices; and
- obligations related to taxes and duties.

The study argues that the Government Procurement: General Conditions of Contract (National Treasury, 2010a) are the typical provisions that apply to public sector contracts and should be incorporated into the day-to-day management of contracts.

These provisions are not exhaustive and where necessary must be supplemented by special conditions of contract that are relevant or applicable to the contract being entered into. The aim of the empirical investigation is to determine whether the Department utilises the Government Procurement: General Conditions of Contract for contracting and whether the provisions thereof are applied during contract management. Variations to contracts as prescribed by the National Treasury instruction note on enhancing compliance monitoring and improving transparency and accountability in supply chain management is discussed in the following sub-section.

3.3.4 National Treasury instruction note on enhancing compliance monitoring and improving transparency and accountability in supply chain management

The National Treasury issued the instruction note on enhancing compliance monitoring and improving transparency and accountability in supply chain management. The objective of the instruction note is to introduce measures that would enhance accountability, transparency and compliance in respect of supply chain management in departments and institutions whilst ensuring that value for money is being derived (National Treasury, 2011b:1-2).

The instruction note (National Treasury, 2011b:7) recognises that a department or institution may, in exceptional cases, be required to expand or vary the requirements of the original contract. Thresholds for such expansions or variations were not previously prescribed which resulted in gross abuse of the supply chain management system. The National Treasury (2011b:7) through the instruction note set thresholds in order to thwart any further abuse of the supply chain management system through expansions or variations to contracts. Bolton (2006c:281) maintains that variations to contracts should not be so drastic that they create an unfair obligation in terms of the performance of a contractor. As such, the variations should not result in a new contract being created which is substantially or materially different to the original contract relating to the terms, conditions and scope of work that were contained in the initial bid invitation.

Departments and institutions have been directed not to expand or vary the original values of contracts for construction related goods, works and/or services by more than 20% or R 20 million and 15% or R 15 million for non-construction related goods, works and/or services. In each case, the lower monetary values of the thresholds must be applied. Provision is made for deviations from these thresholds, however, such are subject to the prior written approval of the provincial treasuries in the case of provincial departments and the National Treasury in the case of national departments (National Treasury, 2011b:7). Proper management of contracts would ensure that contractors perform in terms of the contract and minimise the necessity for variations. Thus, departments and institutions must carefully monitor contracts to ensure that expansions and variations of contracts are prevented or kept to a minimum and that the relevant authorisations are obtained. The study argues that expansions and variations to the original value of a contract will occur, but that such should be within the threshold prescribed by the National Treasury and have prior approval. Furthermore, contract management activities must include monitoring of expansions and variations to contracts. The aim of the empirical investigation is to determine whether the Department adheres to the provisions of the instruction note (National Treasury, 2011b) in managing its contracts. Apart from nationally formulated policies and prescripts applicable to all departments, the Eastern Cape Provincial Treasury developed prescripts that are discussed in the following sub-section.

3.3.5 Prescripts issued by the Eastern Cape Provincial Treasury

Section 18(2)(a) of the Public Finance Management Act (1 of 1999) empowers provincial treasuries to issue instructions that are not inconsistent with the Act. The Guide to Accounting Officers (National Treasury, 2004:17-20) also alludes to the responsibility of provincial treasuries relating to the issuing of instructions, guidelines and practice notes relating to supply chain management. The Eastern Cape Provincial Treasury issued a Contract Management Strategy for utilisation by provincial departments. The Contract Management Strategy is discussed in the following sub-section.

3.3.5.1 Eastern Cape Contract Management Strategy

The Contract Management Strategy of the Eastern Cape Province (Eastern Cape, 2013:2-5) identifies four stages in the contract management life cycle. The four stages are structure and resources, delivery, development and strategy. The stages are further broken down into eleven areas or activities. The Strategy (Eastern Cape, 2013:2-5) also identifies people, processes and systems as critical enablers of contract management.

The structures and resources stage deals with contract management activities related to planning and governance, people and administration. The Strategy (Eastern Cape, 2013:5-6) proposes that the role players within contract management should also participate in the planning phase for the contract in order to obtain an understanding of the requirements of the contract and the terms and conditions and would thus be able to ensure that the contractor fulfils his or her obligations. Planning for contract management must take into consideration and include the transition from the contract award to contract management phase, ownership and responsibilities of the contract owner and contract manager/contract management unit, clearly defined contract management processes and plans, alignment to departmental governance and risk management processes and regular evaluation to measure the cost-benefit of the contract management processes. The Strategy (Eastern Cape, 2013:6) recognises that the responsibility for contract management should be fulfilled by a contract manager or contract management team who must have the appropriate skills, experience and be afforded training and development. Contract management staff must have relevant job descriptions with clear objectives, reporting channels and appropriate delegations. The administration activity deals with the management of the physical contract, safe storage, accessibility and timeous decision making. The Strategy (Eastern Cape, 2013:7) proposes that complex contracts should have a summary and/or and operational guide which should identify key milestones and notice periods. Contract management information should be reported on an ad hoc and regular basis. Provision is also made for contract closure or termination mechanisms. The study argues that planning for the management of contracts, linkage to the departmental or institutional governance systems and structures, appointing suitably

trained and experienced staff as well as establishing mechanisms for the administration of the physical contracts are essential for effective and efficient contract management.

The delivery stage deals with managing relationships, performance, payments and risk. The Strategy (Eastern Cape, 2013:7) recognises that the relationship that comes into existence during a contract is of mutual benefit to all the parties. Strong internal and external relationships, clearly defined roles and responsibilities, effective informal and structured communication and dispute resolution processes are therefore necessary to facilitate successful delivery in terms of a contract and ensure that the department or institution derives value for money. Managing performance entails ensuring that the contractor delivers the service in accordance with the terms and conditions of the contract. Monitoring and reporting are highlighted as critical aspects of managing the performance of contractors in addition to dispute resolution and changes to the contract (Eastern Cape, 2013:8). To ensure that payments are managed effectively, payment processes and mechanisms should be clearly defined including the management of penalties and payments in respect of changes to the contract (Eastern Cape, 2013:8-9). The Strategy (Eastern Cape, 2013:9-10) supports the necessity for risk management related to managing contracts. Provision is made for the allocation of responsibilities, establishment of processes to deal with risks that have been identified, develop and implement risk mitigation actions and escalation or reporting on risk management activities (Eastern Cape, 2013:9-10).

The development stage deals with contract development and supplier development. Contract development entails the actions necessary for managing changes to contracts during the execution phase. There is a need for regular reviews to ensure that contracts will be responsive to changes within the department or institution which may require new or additional services. Clearly defined processes must be established to manage changes to contracts including structured management of disputes and price fluctuations. Supplier development entails the planning for, management and governance related to the development or improvement of a supplier/suppliers capacity either as the contract progresses or from one contract to the next. Supplier development also addresses the management of contractors in terms of government's

social redress objectives, as espoused in the Constitution, 1996 and other legislation (Eastern Cape, 2013:10-11). The study argues that changes will occur during the execution of contracts and that there must be a structured approach to monitoring and managing such changes. The aim of the empirical investigation is to determine whether the Department has clearly defined processes to manage changes to contracts. The development or growth of contractors and fulfilment of government's social redress objectives must also be managed during the contract management process.

The strategy stage addresses the requirement for relationships between the contracting department or institution and the contractor as well as market management. The strategy proposes that there should be a structured approach for the management and development of relationships with contractors. Such relationships will provide a clear sense of the benefits that each party will derive from the contract and should include innovation and knowledge and skills transfer. Market management relates to researching and understanding the market in respect market conditions that influence contracting and contract management as well as availability of alternative contractors as well as their capacity and capability which would inform future procurement strategies including whether to in-source or outsource future requirements (Eastern Cape, 2013:11-12). The study argues that contract management activities should include contractor relationship management which will be mutually beneficial to the department or institution and also assist to achieve the objective of developing contractors as individuals and intended recipients of contracts through social redress programmes. Managing the market will inform future procurement strategies by providing insight into market conditions and the availability and suitability of potential contractors. The aim of the empirical phase in the study is to determine whether the Department has implemented contract management and that such was undertaken in accordance with the Contract Management Strategy of the Eastern Cape (2013).

3.4 CONCLUSION

The review undertaken in this chapter has established that the policies of government are articulated and implemented through legislation. The legislation governing the government administration constitutes the branch of law known as administrative law and provides the government administration with the mandate and a legal framework or guidelines according to which public services are to be rendered. The government administration was established and structured in a manner that would facilitate effective and efficient delivery of services as espoused in policies and legislation.

Public sector supply chain management in South Africa enjoys constitutional status and is founded on the principles of fairness, equity, transparency, competition and should be cost effective. Provision is also made for the allocation of preferences which seek to implement government's social redress objectives. The Constitution, 1996, makes provision for the promulgation of legislation which provide for and have an impact on government administration relating to supply chain management. The review has identified the various pieces of legislation that directly govern or influence supply chain management. Whilst contract management is not specifically addressed in the legislation reviewed, there are several provisions which have an impact on contract management. Some of these provisions provide governance on the pre-award phase of supply chain management, however, such provisions need to be managed during contract management to ensure that contractors fulfil their obligations under the terms and conditions of the contracts and that the social redress objectives are achieved. Monitoring of contracts and contractors is critical to ensure that the provisions of legislation that have an influence on performance of contractors and contracts are complied with. Some of the legislation was enacted to ensure governance over the administrative actions taken by departments and institution. Provisions of the Promotion of Administrative Justice Act (3 of 2000) require administrative actions to be lawful, reasonable, procedurally fair and affected persons to have the right to be provided with reasons when they are affected by the administrative actions. The Promotion of Access to Information Act (2 of 2000) makes provision for information held by the state to be accessible to all citizens whilst the

Prevention and Combating of Corrupt Activities Act (12 of 2004) seeks to eradicate fraud and corruption within the government administration.

The review also identified frameworks that govern contract management. The National Treasury issued the contract management framework and contract management guide which principally seek to formalise the establishment of the contract management function and clarify the activities, roles and responsibilities relating to the management of contracts. The Government Procurement: General Conditions of Contract comprises matters that affect the management of contracts and constitute a part of the standard bidding documents to cater for instances where no formal contracts or service level agreements are entered into. The provisions thereof must be monitored and administered during the management of contracts. Expansions or variations of contracts have also been identified as an aspect of contract management that has to be managed and are provided for in the instruction note on enhancing compliance monitoring and improving transparency and accountability in supply chain management. The Eastern Cape Provincial Treasury issued the Contract Management Strategy to assist with the formalisation and implementation of contract management within provincial departments and public entities.

The findings of the empirical investigation are discussed in the next chapter.

CHAPTER 4

CONTRACT MANAGEMENT CHALLENGES IN THE EASTERN CAPE DEPARTMENT OF EDUCATION

4.1 INTRODUCTION

The aim of this chapter is to elucidate and reflect on the findings of the empirical investigation. The chapter focusses primarily on detailing and interpreting the data collected during the empirical investigation as proposed in chapter one. Thus, the research objectives of determining the current state of contract management within the Department to establish its level of compliance and identifying potential contract management challenges, will be addressed.

The empirical investigation entailed conducting interviews with a representative sample of officials of the Department identified from within the supply chain management environment which includes contract management as well as end users who are the beneficiaries of contracts. The empirical investigation was preceded by a detailed analysis of the literature, legislation and policy frameworks which were reviewed in chapters two and three to identify common themes (Leedy & Ormrod, 2009:144). The themes that were identified formed the basis for formulation of the questions that were asked during the interviews. The interview questionnaire included a face sheet wherein the interviewees would record their biographical data. There were 15 questions linked to the identified themes and one question affording interviewees an opportunity to expand or add further information that they would have thought to be relevant to the investigation. A copy of the interview questionnaire is appended as Appendix A.

One-on-one conversational interviews were conducted with the identified officials. The interviewees were provided with the background and purpose of the interviews and the process to be followed. Proof that approval was granted by the head of the Department to conduct the interviews was presented to the interviewees and they were made aware that the interviews would be recorded. The interviewees were assured

that their identities would not be divulged and that the interviews were purely for research purposes. This assurance was re-affirmed at the end of the interviews. The interpretation of the data collected during the interviews is discussed in this chapter.

4.2 BIOGRAPHICAL DATA

The interpretation of the research data commenced with the transcription of the individual interviews followed by coding of each transcript according to the themes and sub-themes that were identified during the literature review and the review of legislation and policy frameworks.

The biographical data relevant to the empirical investigation focussed on six key elements. The elements are the rank or post level of the interviewees, age, gender, qualifications, duration of employment in the Department and duration of performing work related to contract management. The biographical data in respect of each element is discussed in the following sub-sections and also visually represented by the use of charts in each of the corresponding figures (Lutabingwa & Jarbandham, 2007:568).

4.2.1 Rank

A sample of 20 participants was identified to be interviewed. The interviewees comprised of 3 chief directors representing 15% of the sample; 7 directors representing 35% of the sample; 7 deputy directors representing 35% of the sample; and 3 chief education specialists representing 15% of the sample. The rank of chief education specialist is equivalent to the rank level of deputy director, thus adhering to the sample proposed. The distribution of the interviewees per rank is depicted in Figure 4.1.

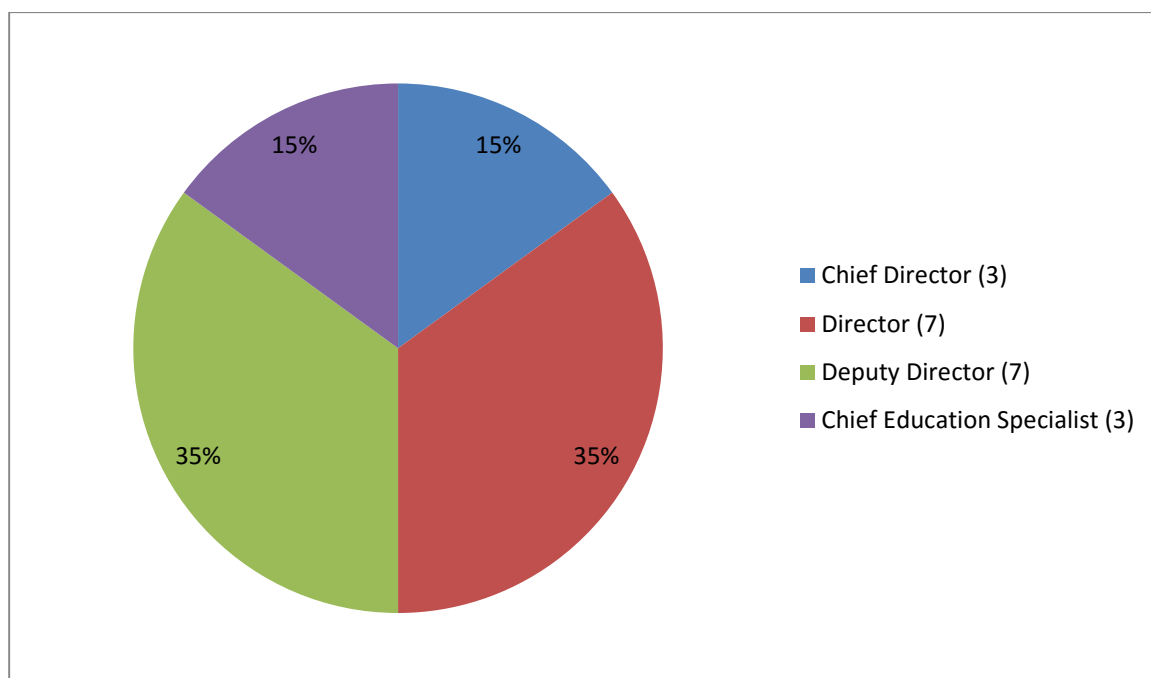


Figure 4.1: Rank of interviewees

4.2.2 Age

The sample comprised of 1 interviewee in the age group 30-39 years representing 5% of the sample; 8 interviewees in the age group 40-49 years representing 40% of the sample; 10 interviewees in the age group 50-59 years representing 50% of the sample; and 1 interviewee in the age group 60-69 years representing 5% of the sample. The age distribution of the interviewees is depicted in Figure 4.2.

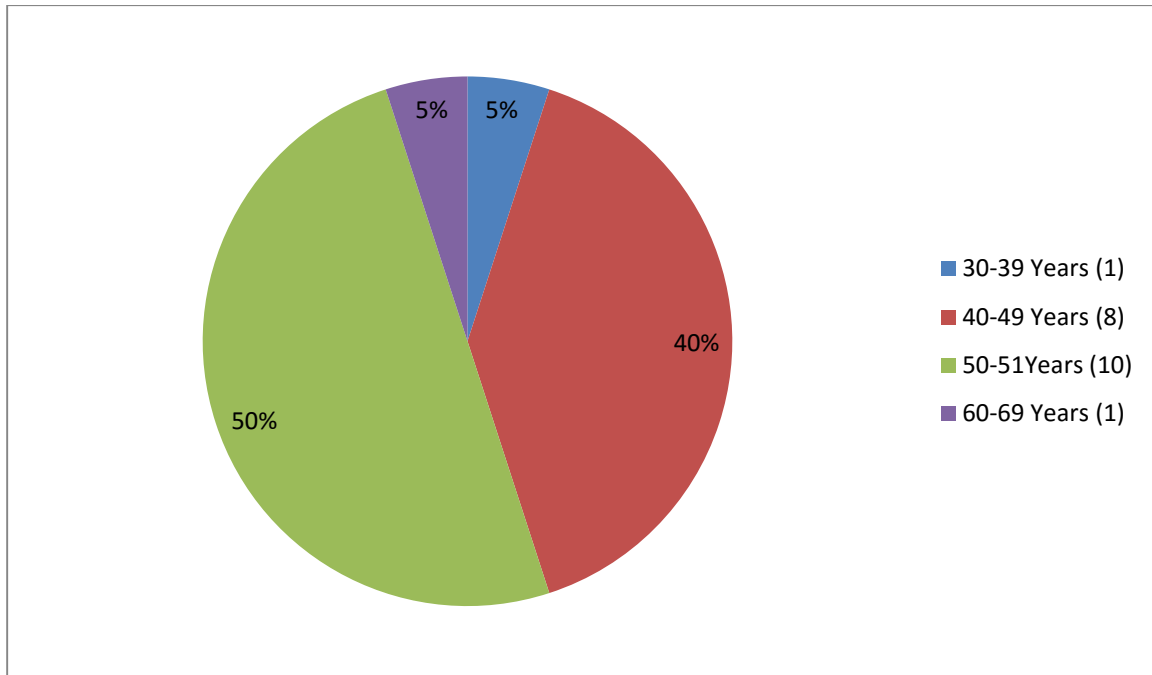


Figure 4.2: Age of interviewees

4.2.3 Gender

The sample comprised of 8 females representing 40% of the sample and 12 males representing 60% of the sample. The gender distribution of the interviewees is depicted in Figure 4.3.

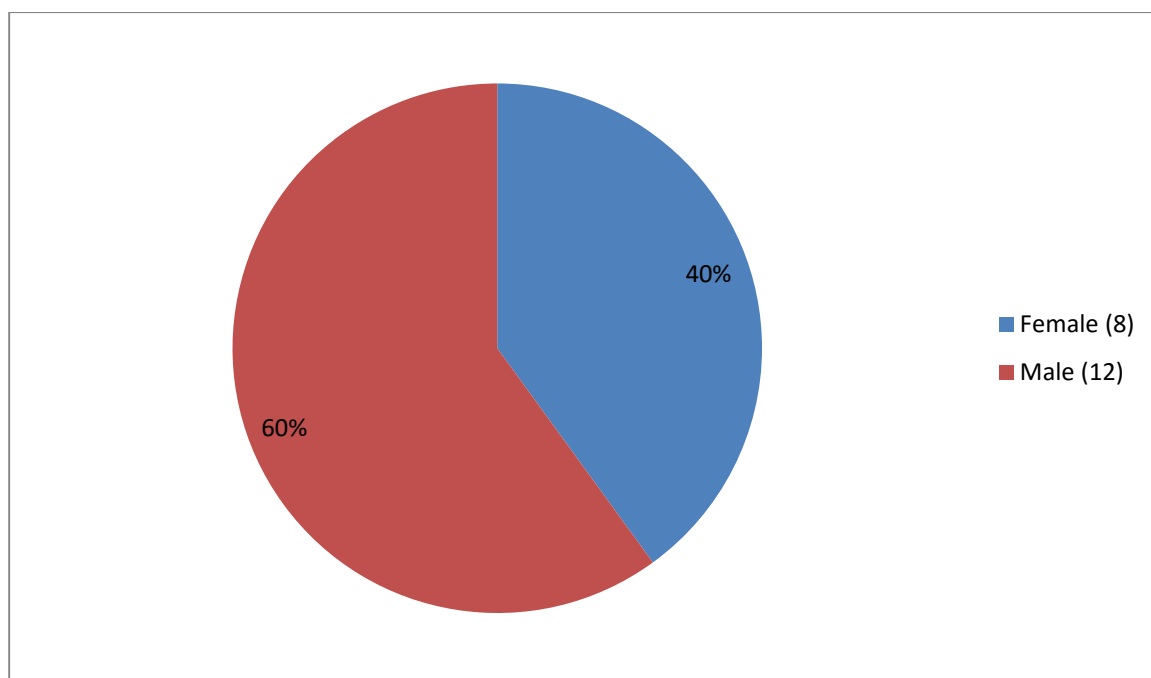


Figure 4.3: Gender of interviewees

4.2.4 Qualifications

The highest level of qualifications of the sample of interviewees ranged from matric to a doctorate qualification. There was 1 interviewee with a matric level of qualification representing 5% of the sample; 1 interviewee with a post-matric certificate representing 5% of the sample; 7 interviewees with either a diploma, bachelor of technology or degree representing 35% of the sample; 5 interviewees with either a honours diploma or degree representing 25% of the sample; 4 interviewees with a masters degree representing 20% of the sample; and 2 interviewees with a doctorate qualification representing 10% of the sample. The distribution of the interviewees according to highest qualification is depicted in Figure 4.4.

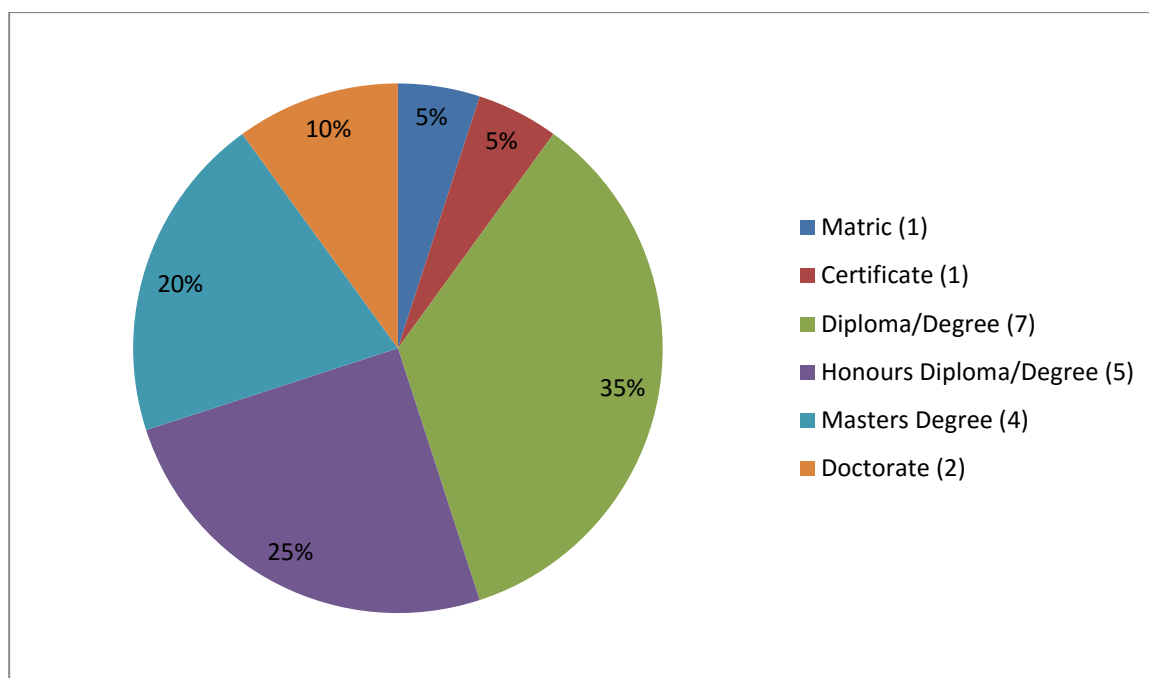


Figure 4.4: Qualifications of interviewees

4.2.5 Duration of employment in the Department

The duration of employment of the sample of interviewees in the Department ranged from 2 to 38 years. There were 4 interviewees in the category of 0-9 years of employment representing 20% of the sample; 3 interviewees in the category of 10-19 years of employment representing 15% of the sample; 9 interviewees in the category of 20-29 years of employment representing 45% of the sample; and 4 interviewees in the category of 30-39 years of employment representing 20% of the sample. The distribution of the interviewees according to their duration of employment in the Department is depicted in Figure 4.5.

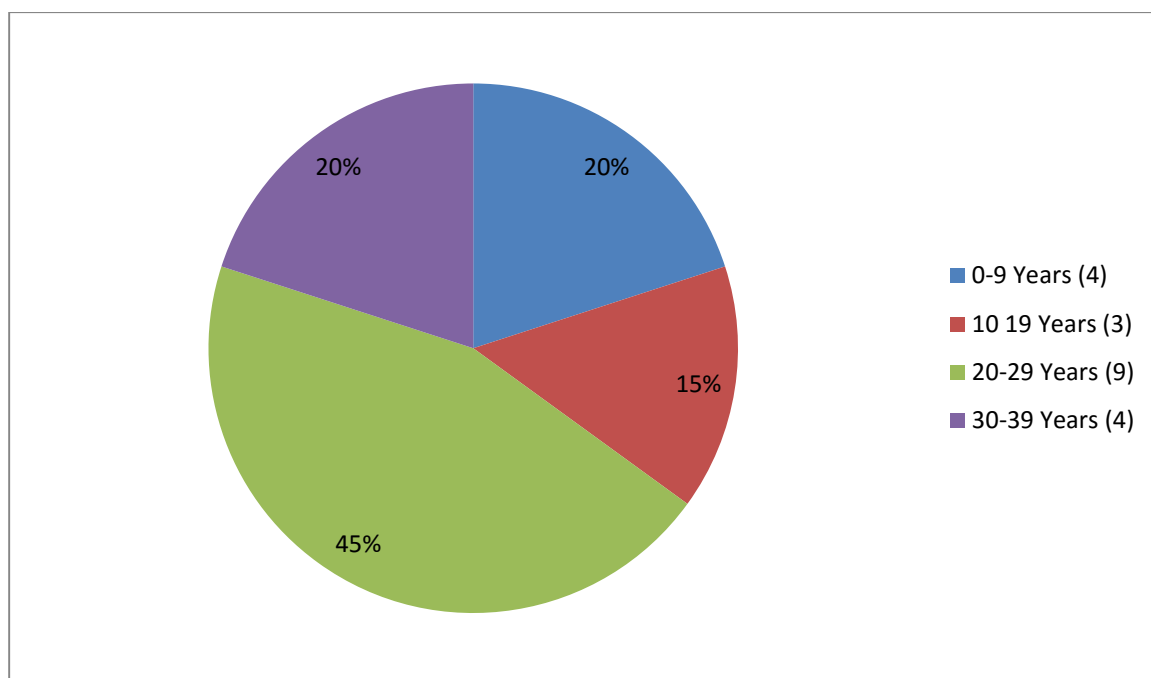


Figure 4.5: Duration of employment of interviewees

4.2.6 Duration of performing work related to contract management

The duration of performance of work in the Department related to contract management ranged from 2 to 16 years. There were 13 interviewees in the category of 0-9 years of performance of contract management related work representing 65% of the sample and 7 interviewees in the category of 10-19 years of performance of contract management related work representing 35% of the sample. The distribution of the interviewees according to their duration of performance of contract management related work in the Department is depicted in Figure 4.6.

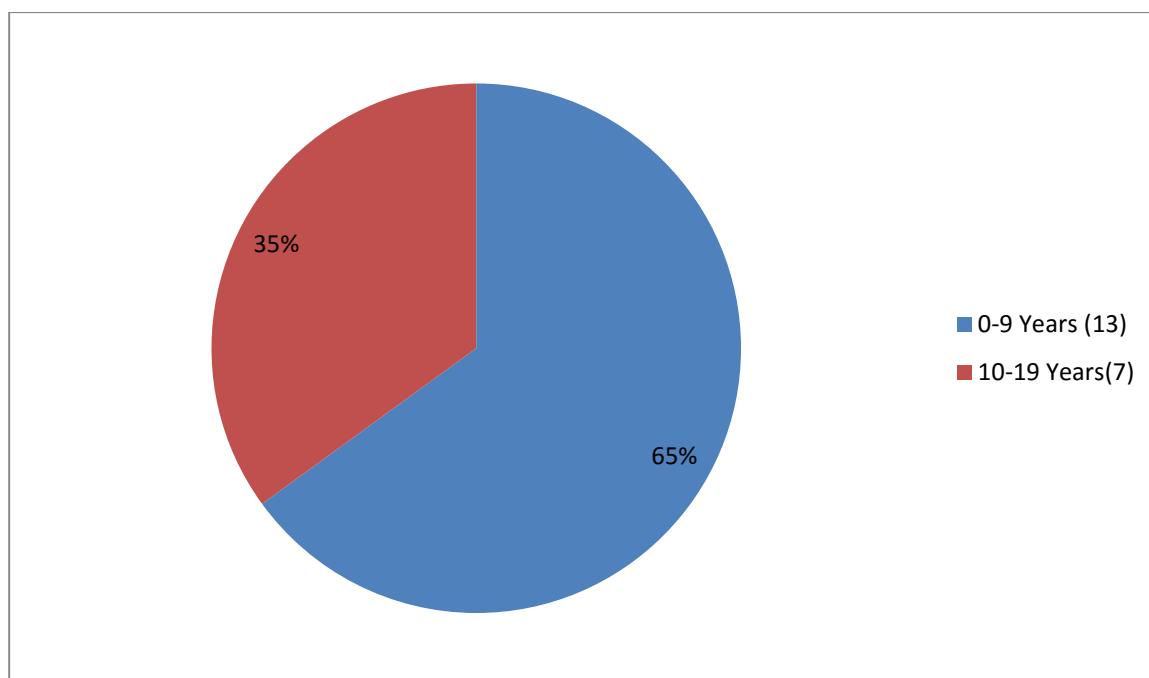


Figure 4.6: Duration of performance of work by interviewees related to contract management

The second component of the empirical investigation deals with research data. The thematic analysis of the literature review and the review of legislation and policy frameworks identified various themes based upon which the questions were developed in order to determine the challenges related to each of the themes within the Department. The themes identified are legislation and prescripts, frameworks, contract management activities, contract management role players, risk management, and contract management tools. By their nature, some of the themes constituted sub-themes and resulted in multiple questions being formulated. Interviewees provided multiple responses in accordance therewith. The interpretation of the research data collected during the interviews is discussed in the following sub-sections.

4.3 LEGISLATION AND PRESCRIPTS

Public sector procurement in South Africa is regulated by several pieces of legislation and prescripts. These pieces of legislation and prescripts drive service delivery and the social redress objectives of government; ensure just and fair administrative actions;

and have an influence on the management of contracts. Thus, it is important that the relevant legislation and prescripts are implemented or adhered to during the management of contracts. Centafont (2014:41) expressed the view that “a contract management system should primarily provide a comprehensive solution to the problem of ensuring that all contracts currently in place are in compliance with applicable government regulations”. The empirical investigation relating to legislation and prescripts comprised of 2 questions, discussed hereunder.

4.3.1 Implementation of legislation and prescripts that govern contract management

Eight interviewees (40%) indicated that the lack of skills and knowledge of officials of the relevant legislation and prescripts as well as which aspects of the legislation and prescripts ought to be implemented during contract management is a challenge whilst 3 (15%) attributed the challenge to a lack of staff to perform the contract management function. The lack of monitoring of implementation of legislation and prescripts was also cited by 5 interviewees (25%) as a challenge with one interviewee mentioning that “there is no dedicated person responsible for monitoring the implementation of legislation and prescripts”. Four interviewees (20%) indicated that they were either not aware of the legislation and prescripts or not exposed to this requirement. Other challenges cited by interviewees in addition to the above include failure to explain the requirements and obligations to end users; end users relying on their own experience or understanding of what is expected to be done; there are no training programmes in place; and inconsistencies in applying these requirements during contract management. Thus, it can be concluded that there are inconsistencies in the implementation of legislation and prescripts during contract management. End users are expected to fulfil this responsibility relying on their own experience and understanding of what should be done as a result of a lack of skills and knowledge.

From the above, the study argues that there are challenges in the implementation of legislation and prescripts during the management of contracts within the Department. There is a lack of skills, knowledge and staff. End users are expected to ensure that legislation and prescripts are implemented during the management of contracts, but

have to rely on their own experience and understanding of what should be done which results in inconsistencies in application. Thus, there is potential for contractors not being treated fairly and with transparency. The review of legislation and policy frameworks argued that being vigilant of the potential of corrupt activities taking place during the execution of contracts constitutes a part of contract management and that there is a need for ethical standards to be applied during contract management. Research data relating to anti-fraud and anti-corruption measures is discussed in the following sub-section.

4.3.2 Fraud and corruption

The review of legislation and policy frameworks in chapter three identified the potential for fraud and corruption to occur during contract management and determined that there is an obligation to prevent and also address instances of fraud and corruption upon detection. According to Hughes (2003:240) implementers of government policy should do so in a responsible manner without exceeding their powers which are based on legislation. The Public Service Regulations, 2016 requires of a head of department to “develop and implement an ethics management strategy that prevents and deters unethical conduct and acts of corruption”. Officials should assist the head of department to combat fraud and corruption (South Africa, 2005: Regulation 16A8.3) as measures are prescribed for dealing with such activities. The requirement of reporting fraud and corruption is reinforced by Public Service Regulation 13(e) which requires employees to report, amongst others, fraud and corruption immediately upon detecting such activities (South Africa, 2005). Dealing adequately with fraud and corruption will improve the confidence in government procurement, including contract management, and promote efficiency and value for money (Bolton, 2008: 792).

The interviewees provided two divergent views of the Department’s application of anti-fraud and anti-corruption measures. Seven interviewees (35%) indicated that there are no consequences when cases of fraud and corruption related to contract management are detected and in the words of one interviewee, “there are no corrective measures to rectify the behaviour of officials”. Five interviewees (25%) reported that the Department’s corruption strategy has not been fully implemented whilst 3 (15%)

indicated that there is a lack of knowledge, skills and capacity to deal with fraud and corruption. Other challenges cited include cases being reported and investigated, but no remedial action is taken; the anti-fraud and anti-corruption measures that have been implemented are weak; and no one wants to take the responsibility for dealing with fraud and corruption. As a result, there is no deterrent to contract management related fraud and corruption taking place.

With regards to the remedies that the Department applies when cases of fraud and corruption are detected, 7 interviewees (35%) reported that there have been cases of officials who were found guilty of contract management related fraud and corruption being fired and 4 (20%) reported that there have been cases referred for criminal investigation. The interviewees, however, reported that there are challenges in applying remedial measures. Some of the challenges cited were the potential of physical threats against officials reporting or investigating fraud and corruption, management interference in cases, a lack of cooperation between the different units responsible for dealing with fraud and corruption and cases that are taken to the courts being settled prior to finality being reached in such cases.

From the above, the study argues that the Department attempts to implement anti-fraud and anti-corruption measures, but that there are challenges in doing so. The measures have not been not fully implemented in the Department and there is interference by management in some instances when applying the measures. There also appears to be inconsistency in application of the measures and a lack of will to see the measures taken to their logical conclusion. Thus, the anti-fraud and anti-corruption measures implemented by the Department are not effective; exposing the Department to potential losses of resources. Officials are not aware of or understand the implications of their actions and could easily be influenced into participating in fraudulent or corrupt activities. The prevalence of fraudulent and corrupt behaviour could undermine the integrity of the Department's contract management activities. The interpretation of the research data relating to frameworks is discussed in the following sub-section.

4.4 FRAMEWORKS FOR IMPLEMENTATION AND EXECUTION

The literature review demonstrated the importance of a framework to ensure successful implementation and execution of the contract management function (Government of Canada, 2015:7) and that such a framework should include policies and processes and procedures. Momme and Hvolby (2002:194) postulate that frameworks facilitate “proper planning, control and continuous improvement of the buyer-supplier relationship” which essentially deals with the activities that centre on contract management.

The challenges cited by interviewees with regards to the implementation of the departmental contract management framework, policies and procedures were twofold. Firstly, the responses dealt with capacity, knowledge and skills and secondly, other challenges related to the implementation of the departmental contract management framework, policies and procedures. Firstly, the lack of staff, cited by 10 interviewees (50%) was the most common of the challenges. The lack of capacity, knowledge and/or skills of individual officials to implement the departmental contract management framework, policies and processes and procedures was highlighted by 6 interviewees (30%). One interviewee stated that contract management is “not really an established field in the Department”.

Secondly, five interviewees (25%) indicated that they were not aware of any contract management framework, policies and processes and procedures whilst 3 interviewees (15%) were of the view that such did not exist at all. Six interviewees (30%) indicated that there is no contract management unit which would implement the framework, policies and processes and procedures in the Department whilst 4 (20%) highlighted the fact that the departmental organisational structure does not make provision for a contract management unit. Other challenges cited by the interviewees in addition to the above were the need for training; poor communication or a lack of flow of information; a lack of knowledge and understanding of contract management by officials; and that the departmental contract management framework, policies and processes and procedures are implemented as a matter of compliance rather than ensuring performance.

The empirical investigation revealed that there are severe challenges relating to the implementation of the departmental contract management framework, policies and processes and procedures. Although the interviewees provided varying responses, there was consistency in that 19 interviewees (95%) provided negative responses. The only exception was the interviewee who indicated that there were no challenges in implementing the contract management framework, policies and processes and procedures for the management of infrastructure projects. Thus, it can be concluded that the Department does not have any documented contract management framework, policies and processes and procedures and that in general, contract management within the Department has not been adequately established. The interpretation of the research data relating to contract management activities is discussed in the following sub-section.

4.5 CONTRACT MANAGEMENT ACTIVITIES

The empirical investigation relating to contract management activities comprised of 6 questions based on the sub-themes identified during the thematic analysis of the literature review and the review of legislation and policy frameworks. The data collected during the empirical investigation is discussed hereunder.

4.5.1 Contractual relationship protocols

The thematic analysis of the literature review and the review of legislation and policy frameworks recognised that relationships come into existence during contracts and that such relationships are mutually beneficial to all parties (Eastern Cape, 2013:7). Relationship management should be pro-active and be internally and externally focussed which will benefit the Department and its contractors (National Treasury, 2010b:66-67). This activity covers the management of relationships between the different stakeholders within the ambit of contract management both internally and externally. Hugo, Badenhorst-Weis and Van Biljon (2004:6) expressed the necessity for extreme proficiency in the management of contractor relationships. Thus, the

protocols that would govern such relationships ought to be formalised and documented to ensure efficiencies in managing contracts.

Ten interviewees (50%) indicated that there are no contractual relationship protocols in the Department whilst 5 (25%) indicated that they were not aware of such protocols with one interviewee expressing the sentiment that “I don’t think that protocols have been prescribed or documented yet”. Four interviewees (20%) attributed the challenges in effectively utilising the contractual relationship protocols to ineffective communication in the Department especially between the Supply Chain Management Unit and end users, a lack of feedback from end users, non-exposure of end users to the protocols and, in the words of one interviewee, “limited understanding of the protocols, especially by end users”. Other challenges attributed to the challenges in effectively utilising the contractual relationship protocols cited in addition to the above were a lack of training; capacity; and monitoring of utilisation of the protocols.

From the above, it can firstly be deduced that the Department does not have formal documented contractual relationship protocols. This in itself is a challenge. Secondly, 4 interviewees (20%) responded to the question on the presumption that the Department has contractual relationship protocols by virtue of a question being asked in relation thereto. Thus, it can be argued that the lack of formal documented contractual relationship protocols means that there is no uniformity and governance in the relationships that end users have or develop with contractors. Furthermore, relationships could develop that lend themselves to nepotism, fraud and corruption. Such does not bode well for effective management of the performance of contractors and could lead to poor or non-performance and resulting in the Department failing to fulfil its service delivery imperatives. The Department will also have very little likelihood of succeeding in any litigation against poor or non-performing contractors. The interpretation of the research data relating to payment of contractors and application of penalties for poor performance is discussed in the following sub-section.

4.5.2 Timeous payment of contractors and penalties for poor performance

The management of payment to contractors which includes the application of penalties for poor performance was identified during the thematic analysis of the literature review as one of the key activities for effective contract management. Nieman (2008:7-8) asserts that this activity deals with the rates, intervals or milestones upon which payments are to be made, documentary requirements to facilitate payment and the method of effecting payment as well as price adjustment mechanisms. The review of legislation and policy frameworks established that timeous payment of contractors is regulated in terms of the provisions of the Treasury Regulations, 2005 as well as by the agreed to terms and conditions of the contract. The necessity for the deduction of penalties in instances where contractors default on their performance in terms of the agreed to deliverables of a contract was also identified (National Treasury, 2010b:80-82). The Eastern Cape (2013:8-9) expresses the need for clearly defined processes and mechanisms for effective management of payments to contractors including the application of penalties.

Eleven interviewees (55%) attributed challenges relating to timeous payment of contractors to weak business processes and controls relating to the processing of payments as cited by one of the interviewees that “actually, I think it is the lack of proper management and controls in our system”. Seven interviewees (35%) indicated that there are delays in payment of contractors which are caused largely by the financial payment systems not containing the correct banking details which is as a result of suppliers not informing the Department of changes when such occur and the submission of non-compliant invoices by contractors. Other challenges cited by the interviewees with regards to timeous payment of contractors, in addition to the above, were the absence of a contract management unit; a lack of staff and a lack of supervision of the payment process; challenges with the electronic payment system being utilised; delays in submission of invoices by contractors; invoices being lost; and a lack of budget to meet payment obligations.

Ten interviewees (50%) indicated that penalties for poor performance by contractors are not being applied by the Department. The contributing factors are the absence of

a contract management unit, a lack of staff, a lack of monitoring of the performance of contractors and a reluctance to apply penalties. In some instances, the Department contributes to or is the cause of poor performance by contractors and is therefore unable to apply penalties as substantiated by one of the interviewees that “many a times you will find that the fault is with us as the Department”.

From the above, it is maintained that the Department faces challenges in fulfilling its obligations to pay contractors timeously and apply penalties in instances of poor or non-performance. The challenges are influenced by internal and external factors which are, in most instances, within the control of the Department. Thus, the study deduces that the Department does not ensure that the financial payment systems contain relevant data and has not instituted effective controls to ensure that contractors are paid timeously. Furthermore, the Department is unable to implement penalties in instances of poor or non-performance as proper contract management does not take place. The interpretation of the research data relating to management of contractor performance is discussed in the following sub-section.

4.5.3 Managing contractor performance

The management of contractor performance was identified during the thematic analysis of the literature review and the review of legislation and policy frameworks as a critical activity for effective contract management. The National Treasury (2010c:11) and the Eastern Cape (2013:5-6) propose that there should be prescribed processes and procedures for managing contractor performance and implementation thereof will ensure effectiveness. The National Treasury (2010b:88-89) proposes further that each aspect or activity within contract management should have approved procedures.

Capacity, knowledge and skills limitation of officials were cited by 10 interviewees (50%) as the primary challenges in the implementation of the processes and procedures for managing contractor performance. Five (25%) attributed the challenges to a lack of staff whilst 4 (20%) cited the absence of a contract management unit as the challenge. Four interviewees (20%) indicated that the challenge is that there are no written policies, procedures, manuals or protocols that guide the management of

contractor performance. Other contributing factors cited by the interviewees included officials having personal interests and relationships with contractors which, in the words of one interviewee, results in “a deliberate failure to manage contracts due to other interests”. Poor communication or exposure to documents; end users being forced to perform a task that they are not responsible for; there being no clear distinction of roles and responsibilities; and that the Department is re-active rather than pro-active were mentioned as being impediments to the implementation of the processes and procedures for managing contractor performance.

From the above, the study argues that the Department does not effectively manage the performance of contractors which is largely attributed to a lack of capacity, knowledge and skills of officials as well as a lack of staff. Thus, it can be argued that the management of the performance of contractors does not take place in a structured manner and controlled environment. The Department must address the challenges related to capacity, knowledge and skills as well as implement prescribed processes and procedures for the management of contractor performance. One of the key findings which was explicitly stated by interviewees is the lack of a contract management unit to manage, supervise and control the process effectively. The management of variations or changes to contracts is discussed in the following sub-section.

4.5.4 Managing variations or changes to contracts

Variations or changes to contracts are inevitable and there should be clearly defined procedures for managing such variations or changes in a structured manner (Eastern Cape, 2013:10-11). The establishment of these procedures will ensure uniformity, fairness and effective management of variations and changes to contracts. Variations or changes to contracts must be undertaken in compliance with the prescribed procedures and formalised by amending the service level agreement or formal contract (Western Cape Government, 2013:23-24).

Nine interviewees (45%) ascribed a lack of knowledge of the policies and procedures for managing variations or changes to contracts as the primary challenge being faced

by the Department. Five (25%) identified non-compliance with the policies and procedures as a challenge whilst another 5 (25%) identified delays in approving variations or changes to contracts as the challenge. In addition, interviewees cited apathy on the part of officials; the bureaucratic and time consuming processes which resulted in delays in project completion were cited for non-compliance; the lack of a contract management unit; lack of capacity; failure to detect potential variations or changes to contracts; lack of documented processes and procedures; and non-reporting being other challenges that the Department experiences. Interviewees also reported that there is a tendency within the Department of not properly scoping the requirements of contracts which result in variations or changes to contracts and that in some instances, end users vary contracts in order to source unrelated requirements to merely avoid following the normal procurement and contracting processes as such are deemed to be onerous and burdensome. One interviewee reported that “end users do not understand what constitutes a variation order and tend to use existing contractors to perform other additional work than that related to the contract”.

From the above, the study deduces that the Department experiences challenges in managing variations or changes to contracts. The key challenges are a lack of knowledge of policies and procedures, non-compliance and delays in obtaining approvals for variations and changes to contracts. Thus, it can be argued that the Department has not implemented effective controls to monitor and ensure that variations or changes to contracts are managed effectively and in compliance with the relevant processes and thresholds. Furthermore, there is deliberate manipulation or abuse of variations or changes to contracts to circumvent procurement and contracting processes. The interpretation of the research data relating to dispute resolution mechanisms is discussed in the following sub-section.

4.5.5 Contractual dispute resolution mechanisms

Nieman (2008:7-11) asserts that disputes between contractors and the Department would arise and that there should be readiness of the contracting parties to resolve such disputes. The Eastern Cape (2013:7) identified the necessity for dispute resolution processes to facilitate successful delivery in terms of contracts and ensure

value for money. The Department should develop and implement a mechanism to deal effectively with contractual disputes as and when such arise.

On the one hand, ten interviewees (50%) indicated that they were not aware of the departmental dispute resolution mechanisms for contractual disputes. Three of these interviewees (15%) were of the view that the Legal Services Unit deals with contractual disputes. On the other hand, 10 interviewees (50%) indicated categorically that there is no dispute resolution mechanism and in the words of one interviewee, “this area is not established in the Department”. Seven interviewees (35%) were of the view that the dispute resolution mechanism is built into the contract or service level agreement. Other challenges cited by interviewees, in addition to the above, included a lack of willingness to implement a dispute resolution mechanism; a lack of capacity to deal with disputes; and disputes are not resolved or addressed speedily. One interviewee reported that the Department faces the challenge that “contractors usually take the Department to court” thus electing to litigate against the Department as opposed to resolving disputes internally with the Department.

From the above, it can be deduced that there are challenges within the Department in dealing with contractual disputes. There is no prescribed contract dispute resolution mechanism in place which in itself is a challenge. Thus, the Department will have to develop and implement a dispute resolution mechanism, ensure full and proper implementation which includes ensuring that all role players are aware of and implement the mechanism. The interpretation of the research data relating to service level agreements/formal contracts is discussed in the following sub-section.

4.5.6 Service level agreements/formal contracts

The preparation and concluding of service level agreements/formal contracts, the custody or management of contract related documentation and the management thereof, including contract close-out, are activities that reside within the ambit of contract management (Western Cape Government, 2013:18-23). Bartsiotas (2014:10-13) endorses the view that there should be designated officials or a contract management unit to perform contract management responsibilities. The roles and

responsibilities of officials relating to these activities should also be defined and allocated.

The interviewees were of differing views of the procedure for concluding service level agreements/formal contracts. Ten interviewees (50%) stated that the service level agreements/formal contracts are drawn up by end users, forwarded to the Legal Services Unit for vetting before submission to the Head of Department and contractor for sign-off. Two interviewees (10%) were of the view that the Legal Services Unit draws up the service level agreements/formal contracts which are then forwarded to the Head of Department and contractor for sign-off whilst 2 (10%) were not aware of the procedure. Of the remaining six interviewees, 1 (5%) each reported that the end user, together with the Legal Services Unit, draws up the service level agreement/formal contract after negotiations with the contractor which is then forwarded to the Head of Department for sign off; the Supply Chain Management Unit draws up the service level agreement/formal contract, forwards to legal services for vetting and then to the Head of Department and contractor for sign-off; and the contract manager draws up the service level agreement/formal contract, forwards to legal services for vetting and then to the Head of Department and contractor for sign-off. One interviewee (5%) reported that the end user negotiates with the contractor, draws up the service level agreement/formal contract which is then forwarded to the Legal Services Unit for vetting before submission to the Head of Department and contractor for sign-off. One interviewee (5%) reported that “the Department utilises standard contracts which are signed-off by the Head of Department and contractor”. Thus, it can be argued that there is no uniform procedure for the drawing up of service level agreements/formal contracts within the Department and that the application of varied procedures is acceptable to the management of the Department.

With regards to the responsibility for drawing up service level agreements/formal contracts, 11 interviewees (55%) indicated that service level agreements/formal contracts are drawn up by the relevant end user. Four interviewees (20%) indicated that the Supply Chain Management Unit is responsible for this function whilst one (5%) each indicated that the contract management unit and the Legal Services Unit fulfil this responsibility. Three interviewees (15%) did not know who is responsible for drawing

up service level agreements/formal contracts. Thus, it can be argued that the responsibility for drawing up of service level agreements/formal contracts has not been formally assigned and in the words of one interviewee, “there is confusion”.

There were different views of who in the Department is the custodian of the signed service level agreements/formal contracts. Fourteen interviewees (70%) indicated that either the Contract Management Unit or the Supply Chain Management Unit is the custodian of the service level agreements/formal contracts and in the words of one interviewee, “this is an interim arrangement”. Three interviewees (15%) were of the view that end users are the custodians of the service level agreements/formal contracts whilst 3 (15%) were not in the know. Thus, it can be argued that the responsibility for the custody of signed service level agreements/formal contracts has not been assigned to any specific official or unit in the Department.

Nine interviewees (45%) indicated that contract close-out is performed whilst 8 (40%) indicated that contract close-out is not performed at all. Of the 9 interviewees who reported that contract close-out takes place, 5 (25%) indicated that contract close-out is performed by the contractor and the Department places reliance on the close-out reports of the contractors; 2 (10%) indicated that contract close-out is performed by end users; 1 (5%) indicated that contract close-out is performed by the Legal Services Unit whilst the remaining interviewee reported that contract close-out in respect of infrastructure projects is performed by a contract close-out committee. One interviewee reported that “contract close-out only takes place if the contractor requests that it be done” whilst another stated that “contract close-out is haphazard and does not take place in some cases”. Thus, it can be deduced that contract close-out is not a mandatory requirement in the Department and that the responsibility has not been assigned, nor have procedures for such been prescribed.

The challenges related to management of service level agreements/formal contracts were attributed to a lack of staff as indicated by 2 (10%) interviewees, lack of capacity, knowledge and skills (20%) and the absence of a contract management unit (15%). Other challenges cited included no on-line system for the management of service level agreements/formal contracts; collusion between officials and contractors; failure to

timeously renew contracts; service level agreements/formal contracts are not drawn up on time; some contracts do not have service level agreements/formal contracts; and poor or non-reporting by end users.

From the above, it can be deduced that the procedure for drawing up of service level agreements/formal contracts has not been formally prescribed thus the varying approaches and views of how such is managed in the Department. The responsibility for this task and the custodianship of signed service level agreements/formal contracts has not been formally assigned. Similarly, the challenges relating to the managing of service level agreements/formal contracts and contract close-out can be attributed to the absence of formal procedures and the non-assignment of such responsibilities. It would appear that end users undertake these responsibilities out of their sense of ensuring that their own contracts are concluded and services/goods are delivered for the purpose of the service delivery objectives. Thus, it can be argued that there is an urgent need for the Department to prescribe processes and procedures for concluding, managing and custody of service level agreements/formal contracts as well as undertaking contract close-out and the assignment of such responsibilities. The interpretation of the research data relating to contract management role players is discussed in the following sub-section.

4.6 CONTRACT MANAGEMENT ROLE PLAYERS

The literature review revealed that there are various role players in the contract management process with clearly defined roles and responsibilities who contribute to the successful management of contracts. Such contributions are essential for the successful delivery of goods and services that support delivery of services to the citizenry. The empirical investigation relating to contract management role players comprised of 4 questions which are discussed hereunder.

4.6.1 Role of the head of department and executive management

The role of the head of department supported by the executive management of the Department includes developing and implementing policies, processes and

procedures for contract management and providing oversight amongst others. Section 38 of the Public Finance Management Act (1 of 1999) places a statutory obligation on the accounting officer, in the case of the Department the Head of Department, to establish and maintain an appropriate system of procurement and provisioning which is fair, equitable, transparent, competitive and cost effective. Such a system includes the responsibility for contract management. The National Treasury (2010b:51) maintains that the current legislative framework and international good practice places an obligation on heads of departments to implement and provide oversight of contract management. Thus, role/nature and level of involvement of the Head of Department and executive management in contract management in the Department has to be adequate.

In response to the role/nature of involvement of the Head of Department and executive management in contract management in the Department, four interviewees (20%) reported that the Head of Department merely signs off on service level agreements/contracts and documents whilst 3 (15%) reported that the Head of Department and executive management are only involved in contract management when it becomes necessary or there are challenges. The focus is mainly on high value strategic contracts such as learner teacher support material, school furniture and printing of examination material whereas the literature reviewed in chapter three postulates that their responsibilities extend across all contracts and contract management activities (National Treasury, 2010c:12-13). One interviewee (5%) stated that “there is acknowledgement for the need for support on matters related to contract management, however, there is a lack of action” on the part of the Head of Department and the executive management to provide the requisite support. The remaining interviewees, 12 (60%) were unable to provide a response. Thus, it can be argued that there is no structured and consistent involvement by the Head of Department and executive management in the management of contracts. Their involvement is born out of obligation in respect of assigned responsibilities or when a crisis arises.

In relation to the adequacy of the support of the Head of Department and executive management, fourteen interviewees (70%) indicated that the support of the Head of Department and the executive management is not adequate whilst 6 (30%) were of

the opposing view that the support was adequate. Thus, on the basis of the view of the majority of the interviewees, it can be argued that the Head of Department and executive management need to play a more involved and sustained role in supporting contract management activities within the Department.

From the above, it can be deduced that there is no concerted involvement of the Head of Department and the executive management in contract management within the Department and that involvement is mostly reactionary or responsive to a need or when problems arise. The current level of involvement is inadequate. Thus, it can be argued that the role of the Head of Department and executive management must be reviewed with the intention to escalate the level and frequency of involvement in and support of contract management activities. The organisational arrangements for contract management within the Department and the adequacy of resourcing of the contract management unit are discussed in the following sub-section.

4.6.2 Organisational arrangements for contract management

The success of contract management depends on sufficient internal capacity which necessitates the appointment of a contract manager and team. Bartsiotas (2014:10-13) proposes that officials should be appointed and/or contract management units established to perform contract management functions with the view to professionalising the function. The Department of Public Service and Administration (2006:2-3) highlights the necessity for effective organisational structures. According to Handfield, Monczka, Giunipero and Patterson (2009:132) and the National Treasury, (2015a:51-52) officials who perform contract management responsibilities must be adequately knowledgeable, skilled/trained and professional and placed within appropriate structures. Thus, there should be a dedicated contract management unit within the departmental organisational structure which is adequately resourced.

Fourteen interviewees (70%) indicated that there are no organisational arrangements for contract management within the Department. Six interviewees (30%) indicated that there is provision for a contract management unit on the organisational structure however, in the words of one of the interviewees, “the unit is not operationalised and

capacitated as yet". Their responses were based on the secondment of three officials to the Supply Chain Management Unit to perform contract management related functions.

Fifteen interviewees (75%) indicated that the lack of capacity and skills poses a challenge to the Department managing contracts effectively. One interviewee (5%) reported that "consultants are utilised for the management of contracts" and another that the absence of "oversight of the officials who perform contract management related functions" is a challenge.

From the above, it can be deduced that there are no formal organisational arrangements for a contract management within the Department. The absence of any provisions for a contract management unit on the departmental organisational structure poses a challenge in that a formal unit cannot then be established. There is also a lack of capacity and skills to perform contract management related functions as the three seconded officials are not adequate. Thus, there is an urgent need for the Department to make provision for a contract management unit on its organisational structure and to implement and capacitate the unit as a matter of urgency. The informal or temporary arrangement that is currently in place creates uncertainty and does not bode well for a working relationship between end users and the contract manager and cannot be sustained as a long term arrangement. The interpretation of the research data relating to the relationship between the contract manager and end users is discussed in the following sub-section.

4.6.3 Relationship between the contract manager and end user

The literature review and the review of legislation and policy frameworks identified that there are various role players within contract management. These include the contract manager or contract management staff who is responsible for the management of contracts as well as the end users. There is necessity for coordination and cooperation between the various role players to provide a stable environment for effective contract management whilst simultaneously maintaining segregation of functions (Saunders,

1997:289). The importance of sound relationship management is also highlighted by the National Treasury (2010b:66-67)

In response to the relationship between the contract manager and end user, three interviewees (15%) reported that there is a closer working relationship between the end user and contract manager now that one has been appointed, albeit in a temporary capacity whilst 1 (5%) was of the view that the relationship is very good whilst another felt that the relationship is starting to improve. Four interviewees (20%) reported that there is no relationship between the contract manager and end user whilst 1 (5%) each reported that “sometimes there are conflicts between the end user and the contract manager” and “there is a lack of communication between the end user and the Contract Management Unit”. The remaining interviewees could not respond to this part of the question. Thus, it can be argued that there are challenges in the relationship between end users and the contract manager and that such are not conducive to a healthy working relationship for effective contract management.

Ten interviewees (50%) stated that the end user is responsible for contract management whilst 6 (30%) stated that either the Contract Management Unit or the Supply Chain Management Unit is responsible. One interviewee (5%) reported that “the responsibility for contract management is tossed between the Legal Services and Supply Chain Management Units” meaning that no one is prepared to accept such responsibility whilst another was of the view that this responsibility is undertaken jointly by the Legal Services Unit and the end user. One interviewee (5%) reported that the responsibility for contract management is not clearly defined.

From the above, it can be deduced that there are conflicting views with regards to the responsibility for contract management. Such uncertainty does not bode well successful management of contracts within the Department. There are also conflicting opinions on the state of the relationship between the contract manager and end users. Whilst there are indications that the relationship is improving, there is still a fairly high level negative sentiment which demonstrates uncertainty and that such a state is not conducive to effective and efficient contract management within the Department. Thus, the Department must implement measures to foster a healthy working relationship

between end users and the contract manager. The successes and/or challenges that the contract management staff experience in managing contracts including challenges relating to skills development is discussed in the following sub-section.

4.6.4 Contract management staff

Hugos (2006:69) and Joaquin and Greitens (2012:807) recognised the need for and dependence on skilled and capable staff to carry out the contract management functions. According to Saunders (1997:294-295) contract management staff may be recruited with the requisite skills, knowledge and capabilities or they could be cultivated from within the pool of existing staff by implementing skills development programmes. Such programmes could be internal or external to the department aimed at having professional staff performing contract management functions.

Fifteen interviewees (75%) indicated that the lack of the requisite skills and knowledge is a major challenge as evidenced in the words of one of the interviewees that “staff allocated to the Contract Management Unit does not have the requisite skills”. Two interviewees (10%) reported that end users manage their own contracts, but lack the skills and knowledge to do so. A further 2 (10%) indicated that they were unable to comment on the development of the skills of contract management staff. Thus, it can be gathered that the Department does not have sufficiently skilled officials to perform contract management activities.

There were contradictory views of the Departments skills development programmes. Six interviewees (30%) indicated that there are no skills development programmes whilst 4 (20%) indicated that there are skills development programmes and that attempts are being made to train staff. Some of the other challenges reported included the state of completeness of the contract register; that there is no audit trail and that document management is a major challenge; that there is resistance by end users to contract management staff getting involved in contract management; lack of reporting; and the lack of willingness in some quarters to manage contracts in an unbiased manner.

From the above, the study deduces that whilst there was broad consensus that the contract management staff lack the requisite skills and knowledge to perform their functions, there is no concerted effort to implement skills development programmes to address the matter. In addition to the limitations relating to skills and knowledge, there are other challenges that inhibit the ability of the contract management staff to perform their functions. Thus, it can be argued that in order to ensure that contract management staff are adequately skilled to perform their functions effectively, the Department must implement a skills development programme and address the other challenges that prevail and in so doing, ensure that there is a conducive environment for effective contract management. The interpretation of the research data relating to risk management is discussed in the following sub-section.

4.7 RISK MANAGEMENT

The interviewees were requested to elaborate on the process of risk management in the Department and how contract management risks are dealt with. Interviewees were further probed to provide insight on when and where risk management, in relation to contract management, takes place as well as what the challenges in implementing risk management are.

Risk management forms an integral part of contract management (ANAO, 2012:6). According to the National Treasury (2010d:19), “risk management is a valuable management tool which increases an institution’s prospects of success through minimising negative outcomes and optimising opportunities”. The head of department has the responsibility of making certain that the environment within a department is conducive to effective functioning of risk management (National Treasury, 2010d:21). There should be alignment between the Department’s contract management processes and procedures and its governance and risk processes (National Treasury, 2010b:17-94). Thus, risk analysis should be conducted for all contracts and a risk management plan developed for individual contracts in order to take timeous action to mitigate against contract management risks.

The interviewees were unable to respond to the first part of the question which relates to the process of risk management in the Department with specific reference to contract management risks. Sixteen interviewees (80%) reported that there is a Risk Management Unit within the Department, however, 10 (50%) reported that the unit does not deal with contract management risks whilst 6 (30%) reported that the Risk Management Unit operates separately from the Contract Management Unit and in the words of one of the interviewees, “the Risk Management Unit deals with general risks and does not focus on contract management risks”. Thus, it can be argued that there is no co-ordination and interrelation in the activities of the risk management and contract management processes in the Department. Of the 16 interviewees, 5 (25%) indicated that risk management within the Department is re-active instead of being pro-active as expressed by one of the interviewees that “the role of the Risk Management Unit has become investigative in nature and is not pro-active”. Three interviewees (15%) indicated that they are not aware that the Risk Management Unit deals with contract related risks. Thus, contract management risks are not detected early enough or if risks emerge during the currency of a contract, such cannot be mitigated timeously.

On the matter of challenges relating to the implementation risk management in respect of contract management, five interviewees (15%) indicated that the Risk Management Unit lacks the capacity to pay attention to contract management risks. Interviewees cited other challenges as being officials not being aware of what risk management is about; the lack of skills in the Contract Management Unit; not being aware of when risk management should take place; the absence of a contract management unit; and there are no risk management policies or that there are risk management policies but such are not implemented.

From the above, it can be deduced that there is a disjuncture between the risk management and contract processes in the Department. There is a lack of capacity and skills within the Risk Management Unit to deal with contract management related risks. There is no integration between risk management and contract management and risk management in relation to contract management takes place after the fact or re-actively thus not being able to timeously mitigate risks that emerge during the contract management. Accordingly, the study argues that the level of risks related to

contract management in the Department is very high and that there is potential for failure in the performance of contracts and contractors. The interpretation of the research data relating to contract management tools is discussed in the following subsection.

4.8 CONTRACT MANAGEMENT TOOLS

Interviewees were requested to respond to the question: What are the challenges that are experienced in the utilisation of contract management tools and systems, including document management tools, as well as the interface of automated tools with other electronic systems that the Department utilises?

The utilisation of contract management tools and systems assist in improving the ability of organisations and individuals to apply contract management processes and manage contractor performance (Financial and Fiscal Commission, 2015:93; Handfield *et al*, 2009:754). Contract management tools and systems equip officials to analyse and measure the performance of contractors and also facilitate efficient and accurate reporting. The need for automation of processes and procedures to bring about efficiencies in the current age of technological advancements is growing (Government of Canada, 2015:9; Elsey, 2007:3). Thus, there is movement towards the utilisation of automated tools and systems for contract management as well as document management.

Eighteen interviewees (90%) indicated that the Department does not have any formal or electronic contract management system in place for the management of contracts alluding to the fact that such is a challenge in the management of contracts. One of the interviewees reported that “contract management tools and systems are never discussed with end users”. Fifteen interviewees (75%) indicated that there is no formal or electronic document management system within the Department currently and in the words of one interviewee, “I do not know that there is a document management system”. A project for the implementation of an electronic document management system is currently under way.

From the above, it is evident that the Department has not employed any contract management and document management tools or systems for the purpose of managing its contracts and contractual documents. Thus, it can be argued that the non-availability of contract management tools allows for unstructured management of contracts. Reliance will have to be placed on the ability of officials to be intuitive and alert to the requirements for managing contracts. Furthermore, there is a risk that the lack of an automated contract management system will result in the management of contracts becoming a reactionary process rather than being proactive.

The analysis of research data collected during the empirical investigation according to the themes and sub-themes identified during the literature review and review of legislation and policy frameworks was extended to include an analysis across the themes and sub-themes. General observations made during the interpretation of the research data across themes and sub-themes are discussed in the following subsection.

4.9 GENERAL OBSERVATIONS OF DATA ANALYSIS

Analysis of research data need not necessarily be confined within a single data source or question. Themes also emerge across data sources for example, within a batch of interviews which may be relevant to the analysis and interpretation of research data (Bryman, 2012:580). An analysis of the responses of interviewees across the research questions was undertaken to determine patterns or commonality in the challenges in implementing contract management in the Department.

Seven challenges featured prominently in the myriad of challenges that emerged during the empirical investigation. The lack of capacity, knowledge and skills of the officials involved in contract management activities within the Department was the most prominent challenge featuring in 12 (75%) of the 16 questions. Poor communication across the Department was cited in 8 (50%) of the questions as a challenge. The lack of staff, absence of a contract management unit and a lack of policies and procedures were cited in 7 (44%) of the questions as contributors to the contract management challenges whilst a lack of monitoring and lack of training featured in 6 (37.5%) and 5 (31%) questions respectively.

From the above, it can be deduced that there are challenges that are not unique to specific aspects or activities of contract management. The challenges cited above ~~are~~ repeat themselves across most of the aspects or activities of contract management. Thus, it can be argued that the common occurrence of these challenges is the cause of inefficiencies in the Department's contract management system. The lack of staff and lack of capacity, knowledge and skills of the officials involved in contract management activities demonstrates the fundamental inability of the Department to effectively execute contract management activities. Improvement of or addressing the challenges cited above would have the residual effect of facilitating other challenges related to contract management being addressed.

4.10 CONCLUSION

The objective of this chapter was to analyse and interpret the data collected during the empirical investigation. The data was analysed on a twofold basis. Firstly, in terms of biographical data and secondly, research data; being the responses of the interviewees to the questions that were posed to during the interviews.

Purposive sampling was adopted to identify the participants in the interviews. The analysis of the biographical data demonstrated that the objectives in selecting interviewees were complied with. There was compliance with the number and rank or post levels targeted. There was also an attempt to foster a balance in the gender distribution of the interviewees with the result that the interviewees comprised of 60% males and 40% females. The sample comprised of twenty interviewees in the rank of deputy director, director and chief director of which females represented 40% and males 60% of the sample. The interviewees fell in the age group 30 to 69 years with qualifications ranging from a level of matric to doctorate. The duration of employment in the Department ranged from 2 to 38 years and duration of having performed contract management related work ranged from 2 to 16 years.

The questions were formulated on the basis of the themes and sub-themes that were identified during the review of literature and legislation and policy frameworks that

govern contract management in chapters two and three. The questions were designed to identify challenges that the Department experiences in managing its contracts. There were varying responses to the questions which seem to suggest that the responses of some interviewees were based on their own experiences or lack of exposure rather than what is prescribed or prevailed in the Department.

The most significant challenges that were identified during the empirical investigation were a lack of capacity, knowledge and skills of the officials involved in contract management activities; poor communication across the Department; a lack of staff; absence of a contract management unit; a lack of policies and procedures; a lack of monitoring; and a lack of training. These challenges were alluded to across most of the aspects or activities of contract management.

The Department does not have any documented contract management framework, policies and processes and procedures; documented contractual relationship protocols; and prescribed procedures for drawing up service level agreements/formal contracts. The Department does not have any prescribed dispute resolution mechanism/s. The conflicting views and uncertainty as to the roles and responsibilities of officials relating to contract management can be attributed to the absence of these.

The empirical investigation sought to determine whether there are challenges in the implementation of contract management within the Department. From the above, it is evident that challenges exist and that such needs to be addressed. The intention of the study is to provide a framework upon which the Department can initiate improvements to the current status of contract management. The next chapter deals with the formulation of a contract management framework for the Department.

CHAPTER 5

MANAGEMENT FRAMEWORK FOR CONTRACT MANAGEMENT IN THE EASTERN CAPE DEPARTMENT OF EDUCATION

5.1 INTRODUCTION

The previous chapter dealt with the analysis of the data collected during the empirical investigation relating to the challenges that the Department experiences in implementing contract management. The views expressed by the interviewees confirmed that challenges are experienced within the Department in managing its contracts. The data was analysed according to the relevant themes which revealed that the most prominent challenges that exist are the lack of capacity, knowledge and skills of officials involved in contract management activities; poor communication across the Department; lack of staff; absence of a contract management unit; lack of policies and procedures; lack of monitoring of contract management activities; and lack of training. These challenges recur across the themes.

The objective of this chapter is to detail a framework for contract management in the Department as proposed in chapter one. In addition to proposing a framework, it is important to determine a suitable contract management process flow based on the data collected during the empirical investigation and the literature reviewed in chapter two as well as a suitable organisational arrangement for contract management within the Department's current organisational structure. The possible contract management process flow for the Department is discussed in the following section.

5.2 CONTRACT MANAGEMENT PROCESS FLOW

The literature sources reviewed in chapter two demonstrated that the core post-contract award activities include post-contract award negotiations, drafting of service level agreements or formal contracts, signing of the service level agreement or formal contract by the relevant parties, ensuring that copies of the signed service level agreement or formal contract are availed to the relevant role players, safe custody and

management of the signed service level agreement or formal contract, planning for management of the contract including utilisation of risk management and contract management tools, managing the contract and contractor performance, managing payments and variations to the contract, holding of periodic meetings and management of disputes, governance and oversight as well as contract close-out and reporting (Nieman, 2008:7-11; OECD, 2009:70-73; ANAO, 2012:84-119; Bartsiotas, 2014:37-47; NAO, 2008:8-16). The empirical investigation demonstrated that the Department experiences challenges in managing these activities uniformly and consistently. The Auditor-General (2014:465) alluded to the Department having an inadequate contract management process also citing inadequacies in policies, procedures, document management and that there is no dedicated official to manage contracts. Thus, there is a need for a contract management business process to be identified. According to Stanford (2015:312), a business process is an end-to-end series of activities which commences with inputs and ends with an output. A typical contract management business process flow comprising the activities alluded to above which will be suited to the departments operational environment is illustrated in Figure 5.1.

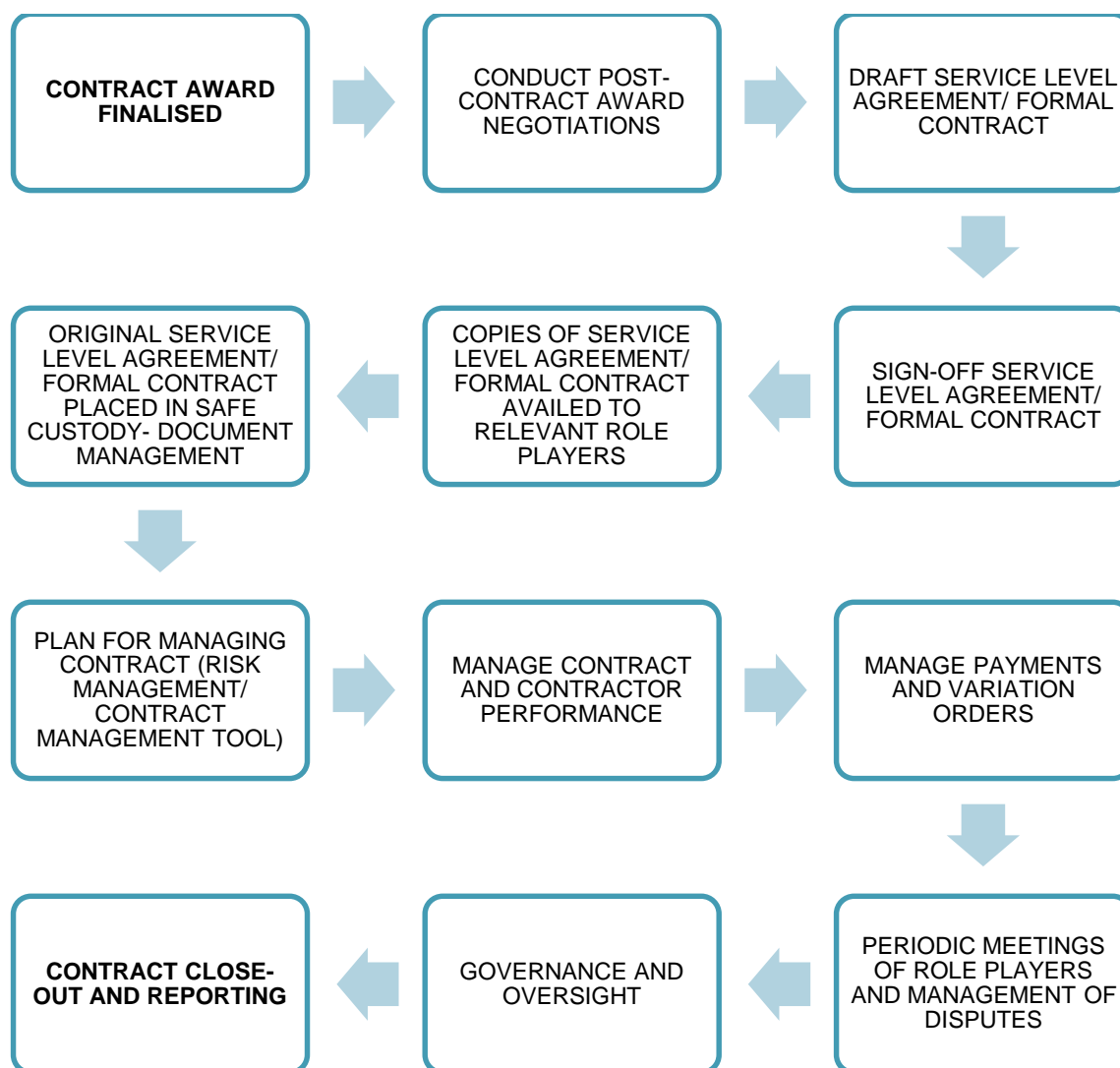


Figure 5.1: Contract management process flow

(Source: adapted from Nieman, 2008:7-11; OECD, 2009:70-73; ANAO, 2012:84-119; Bartsiotas, 2014:37-47; NAO, 2008:8-16)

5.3 PROPOSED AMENDED ORGANISATIONAL STRUCTURE

The Guide to Accounting Officers (National Treasury, 2004:21-22) makes provision for the establishment of a supply chain management unit within the structure of the office of the chief financial officer of a department with clear lines of authority. Such a structure must be appropriate and have fully skilled and professional staff. The supply chain management unit referred to incorporates the contract management function (National Treasury, 2003:4). Thus, the contract management unit must reside within

supply chain management and within the structure of the office of the chief financial officer.

The Supply Chain Management Unit of the Department does reside within the structure of the Office of the Chief Financial Officer, however, there is no provision for contract management within the said Unit. The current organisational structure was approved and implemented in 2006 and did not make provision for contract management. Thus, it is out of necessity that the current structure be reviewed. The current organisational structure makes provision for a Supply Chain Management Unit headed by a chief director with two directorates. One directorate is responsible for auxiliary functions whilst the second deals with acquisitions and procurement (Eastern Cape, 2006:31-31; 42-43). A contract management unit will be appropriately placed as a sub-directorate within the latter directorate as its functions are more closely aligned to those of the existing sub-directorates therein. The proposed organisational structure of the Supply Chain Management Unit inclusive of a contract management unit is illustrated in Figure 5.2.

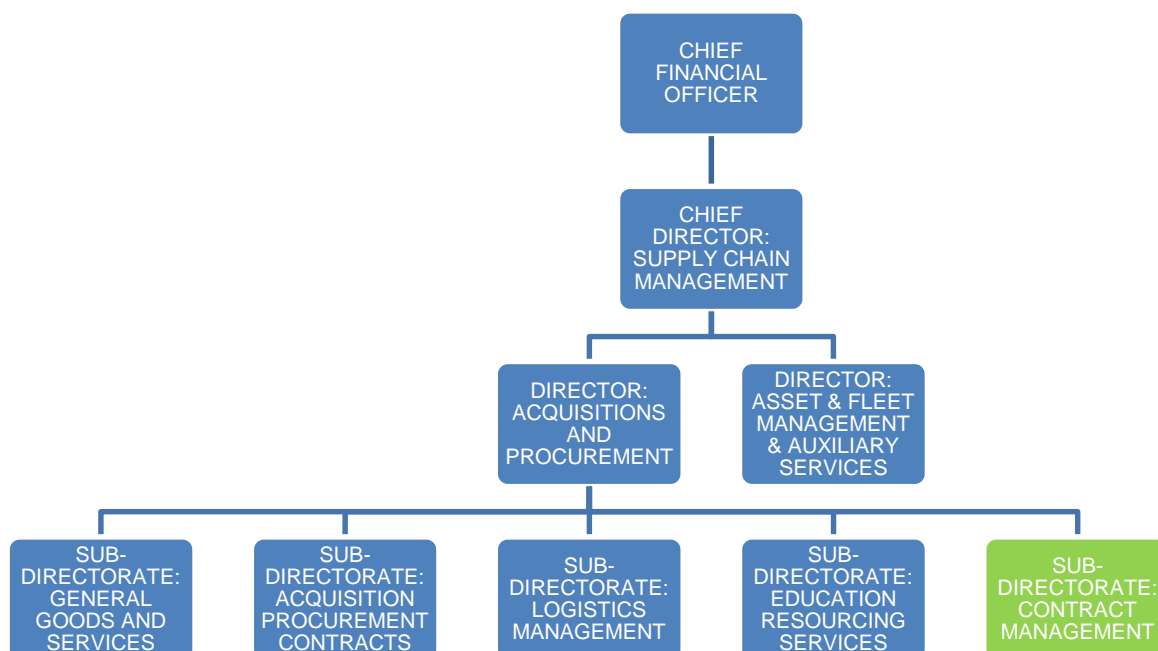


Figure 5.2: Proposed amended organisational structure for contract management

(Source: Adapted from Eastern Cape, 2006:31-31; 42-43)

The Department of Public Service and Administration (2006:2-1) postulates that an organisational structure is the configuration of an organisation to enable the achievement of its goals and drive effective service delivery. The organisation and allocation of work as well as co-ordination of interrelated tasks are facilitated through organisational structures. Thus, the placement of a contract management sub-directorate within the directorate dealing with acquisitions and procurement will be appropriate as a result of the interrelation of contract management related tasks with the tasks performed by the other sub-directorates within acquisitions and procurement. However, in view of the size of the Department, budget as well as the number, value and complexity of contracts that the Department enters into, it would be more appropriate to establish the contract management unit as a directorate on its own. The contract management framework being proposed for the Department is discussed in the following sub-section.

5.4 PROPOSED CONTRACT MANAGEMENT FRAMEWORK

The review of various literature in chapter two identified the activities that ideally constitute contract management. These activities were tested during the empirical investigation and it was determined from the current status of its contract management function that the Department is experiencing challenges in implementing and managing these activities efficiently and effectively. According to McBride & Reinecke (2012:1-2), frameworks strive to create a conceptual structure or series of active steps or rules of how to manage an organisation or function. Frameworks should be “easily accessible and credible to staff, and driven from the top so that each member of staff is well supported and guided in their daily tasks and decisions by a comprehensive set of ideal behaviours and values” (McBride & Reinecke, 2012:2). Thus, it is relevant that a management framework for contract management be proposed with the objective of providing the Department with a basis from which to be able to develop an effective contract management framework and effect improvements in its contract management function as a whole.

The study identified that the regulatory framework, role players, relationship management, governance and oversight, risk management, organisational arrangements, resourcing and skills development, contract management systems, planning and managing contract and contractor performance as well as dispute resolution are the key activities or aspects of contract management and should be embodied in a contract management framework. McBride and Reinecke (2012:1-3) concur that a framework should, amongst others, identify legislation and government directives, identify the key stakeholders or role players, cover issues related to relationship management, include clear lines of accountability and delegations, include controls for fraud and corruption and incorporate risk management, as identified during the study. The NAO (2008:8-16) supports that inclusion of relationship management, governance and oversight, risk management, resourcing and skills development and managing contract and contractor performance in a contract management framework. The following are the activities or aspects that are being proposed for inclusion in the contract management framework.

5.4.1 Definitions, abbreviations and acronyms

There are specific definitions, abbreviations and acronyms that will be expressed or utilised in the contract management framework or that are applied in the contract management environment that will be acceptable to the Department. These should be identified and listed under this section of the framework to provide clarity of understanding, interpretation and uniform application of the framework.

5.4.2 Introduction

The Department's objectives and the scope of the contract management framework must be articulated in the introduction. A brief overview of what contract management within the departmental operational environment entails, the purpose of the framework and when, where and to whom the framework would be applicable must be stipulated. The relationship between contract management to the Department's strategic goals and objectives should also be highlighted.

5.4.3 Regulatory framework

The regulatory framework encompassing the various pieces of legislation, prescripts, internal and external policies, processes and procedures as well as protocols that pertain to contract management within the Department must be detailed in this section. The relevance and applicability of the pertinent aspects of each should be elaborated on succinctly to ensure uniform understanding and application. Potential conflicts or contradictions with other pieces of legislation, prescripts, internal and external policies must be identified and clarification of application and/or precedence must be provided. Provision should be included for the Department to develop and implement new or additional policies, processes and procedures as well as protocols whenever the need arises and that such should not be inconsistent with legislation and other existing prescripts, policies, processes and procedures. The consequences of not adhering to legislation, prescripts, internal and external policies must be detailed. Provision should be included for the Department to review current policies, processes and procedures as well as protocols whenever the need arises, if not periodically. The above will assist the Department in addressing the challenges relating to the lack of skills and knowledge of contract management staff in matters relating to legislation and prescripts; inconsistencies in the implementation of legislation and prescripts during contract management; fair and transparent treatment of contractors; full implementation of anti-fraud and anti-corruption measures; and promotion of ethical standards of behaviour by officials and contractors. Furthermore, there will be assurance that contract management is adequately established and supported by documented and approved policies, processes and procedures.

5.4.4 Role players

The various role players must be identified and their roles and responsibilities must be detailed. These should include, amongst others who would be linked to or involved in specific contracts, the Head of Department, the executive management, the contract management unit and its officials, the Legal Services Unit or legal officer, end users, contractors, sub-contractors and the risk management unit. Delegation of responsibilities and reporting lines should also be detailed including the provision for

such delegations to be withdrawn and remedial actions to be applied in cases of abuse of delegated powers. Provision should also be included for the delegations of responsibilities to be documented and issued in writing to the relevant incumbents. The necessity for the compilation, implementation and adherence to protocols must also be included. The challenges relating to identification of role players; allocation and acceptance of responsibilities; accountability and understanding and following protocols will be addressed.

5.4.5 Relationship management

The fact that relationships will arise out of the conclusion of and during the execution of contracts must be stated. The roles and responsibilities of the various parties to the contract must be well defined. Some of the relationships which are identifiable should be stated. This section should also make provision for the establishment of formal contract management relationship protocols. The protocols that have been identified and already prescribed should be included. This section should also prescribe that the departmental protocols will govern the relationships and reporting lines of each role player including the channels of communication. The current challenges relating to contract management relationships and conflicts regarding responsibilities will be countered whilst communication and governance will improve.

5.4.6 Governance and oversight

Roles and responsibilities of the Head of Department and executive management must be clearly defined. Oversight mechanisms or structures, reporting, timelines, redress or punitive measures/mechanisms must be clearly articulated and the assignment of the relevant responsibilities must be detailed. The procedures for dealing with fraud and corruption, the mechanisms to support such procedures, punitive measures and rights and obligations of all role players must be stipulated. The code of conduct and matters relating to ethics, fairness, transparency and vetting of role players must also be stipulated. Provision may be included for the development of a separate governance framework and or policies. The Department may opt for alternate dispute resolution or review mechanisms instead of placing reliance on the courts as the first

arbitrator. The options for review must be clearly defined and the precedence relating to the review options should be determined ahead of time and stipulated. The challenges relating to the current role/nature and adequacy of involvement of the Head of Department and executive management in contract management; implementation of anti-fraud and anti-corruption measures; and management of disputes will be addressed.

5.4.7 Risk management

In terms of Section 38(1)(a)(1) of the Public Finance Management Act (1 of 1999), the Head of Department is obliged to ensure that the Department has and maintains an effective, efficient and transparent risk management system. Departments are required to operate within the terms of an approved risk management policy (National Treasury, 2010d:22). The Department's risk management framework must incorporate the management of risks relating to contract management. This section of the contract management framework must provide clear details of such link and prescribe who should perform contract management risk activities, the frequency, timing and reporting protocols. The challenge of disjuncture between the risk management and contract management functions of the Department will be addressed. Furthermore, the integration of contract management related risk management into the departmental risk management processes will ensure pro-active planning for and timely mitigation of risks. The Department will, however, have to ensure that there is adequate capacity within the Departmental Risk Management Unit to manage contract management related risks.

5.4.8 Organisational arrangements

This section of the framework must detail the organisational arrangements for contract management in the Department. The study identified that the current organisational structure of the Department was approved in 2006. There have not been any reviews or amendments to date. Stanford (2015:256-257), proposes that the design of an organisational structure is "dynamic, has a life cycle and will change as the context demands". Thus, there is a need for a review of the Department's organisational

structure with the specific intention of including a contract management unit into the organisational structure. This section should include a diagrammatic representation which depicts where the contract management unit fits into the organisational structure. The structure proposed above should, if adopted, be inserted in this section of the framework and address the challenges that the Department faces. The current informal or temporary arrangement, which is not sustainable, will be replaced with a permanent structure with the requisite staff and skills to provide a structured and efficient contract management function.

5.4.9 Resourcing and skills development

Provision should be included for the adequate resourcing for contract management in proportion to the number, value, nature and complexity of contracts that are to be managed. This entails the appointment of the adequate number of staff with the requisite skills, capability and experience to be able to effectively and efficiently carry out their responsibilities and that they are performance managed (NAO, 2008:9). The minimum skills requirements for recruitment must be determined and prescribed. There must be provision for a structured skills development programme with regular refresher training to ensure that staff is abreast of developments in the field of contract management and are able to apply themselves appropriately. The objective of professionalisation of the staff and fostering continuous professional development should be included. Provision should also be included for skills development programmes for other role players involved in contract management. The challenges that prevail relating to the lack of dedicated and trained contract management staff who are supported by a structured and continuous skills development programme will be overcome.

5.4.10 Contract management systems

The systems, processes and procedures that will be employed to facilitate contract management in the Department must be documented. Provision must be made for the employment of an automated contract management tool/s and that the utilisation thereof is mandatory. The utilisation of an automated document management system

must also be prescribed. Provision must be made for protocols to be issued regarding the linkage between systems and governance in the utilisation thereof. The document management system should also make provision for the ease of access and security of contract management related documentation, especially for audit and dispute resolution purposes. In this regard, digital imaging of documents should be prescribed. The employment of a contract management system or tool will overcome the challenge of unstructured management of contracts and reliance on the ability of officials being intuitive and alert to the requirements for managing contracts.

5.4.11 Planning and managing contract and contractor performance

The necessity for the Department to enter into negotiations with the appointed contractor prior to entering into a service level agreement or formal contract must be stated. The processes and responsibilities for drafting of service level agreements, legal vetting and sign-off or that a separate framework for dealing with such should be compiled must be provided for in this section of the framework. The mechanism for the safe storage and protocol for accessibility of the original service level agreement/formal contract and all other supporting documentation should be prescribed. These documents should include warranties, performance guarantees, indemnities, securities and insurance. The utilisation of a generic or contract management specific electronic medium of document management aligned to the Department's document management protocols must be specified. The relevant role players, who should be provided with copies of service level agreements/formal contracts, must be identified and the provided with such. The challenges identified during the study relating to management of formal contracts/service level agreements and document management will be addressed.

Clearly documented processes or protocols for managing contracts and the relevant contractor's performance must be provided for. This will include the creation of the contract on the contract management tool, preferably an electronic tool, and the performance of a risk assessment. The processes for managing payments whether in terms of timelines or milestones, deduction of penalties for poor or non-performance, managing of variations or amendments to contracts, holding of periodic contract

meetings and managing disputes must be clearly defined. The contract close-out procedures, documenting lessons learnt for implementation of improvements and reporting requirements must also be prescribed. The challenges relating to the management of contractors and their performance; payments; contractor data; application of penalties; and variations to contracts will be overcome.

5.4.12 Dispute resolution

This section of the framework should specify the dispute resolution mechanism/s that the Department will employ to effectively deal with disputes that will arise between contractors and itself. Typically, the mechanism/s should be stipulated in the bidding conditions and be incorporated in the conditions of contract contained in the service level agreements or formal contracts that are entered into. The law to apply and that internal processes will take precedence over external mechanisms must also be incorporated. The mechanism/s could include the utilisation of alternate dispute resolution mechanisms, such as mediation and arbitration, whilst resorting to the courts of law should be the last resort. Provision must be made for the possibility of early termination of contracts and the basis for such, the options of the Department to apply restrictions from bidding and claims for damages. The challenges that the Department experiences relating to dispute management and resolution will be overcome by the implementation of a prescribed dispute resolution mechanism which would also ensure a uniform and structured approach to dispute resolution.

5.4.13 Review

Contract management is dynamic and changes necessitate reevaluation of performance expectations and that adjustments be made (Mcbride & Reinecke (2012:1-3). The aim of this section is to ensure that the framework is at all times relevant and responsive to the Department's contract management requirements. Thus, provision should be made for periodic reviews of the framework, but at least on an annual basis which will assist to identify any areas where weaknesses exist or have arisen and utilise the opportunity to make enhancements or rectifications.

5.5 CONCLUSION

This chapter focussed on three critical aspects related to contract management within the department. Firstly, a typical contract management business process flow comprising the activities identified during the study which will be suited to the Department's operational environment, as illustrated in Figure 5.1 above, was developed. The business process flow will provide the Department with a clear indication of the sequence of activities that have to be undertaken for the successful management of contracts. Secondly, an amended organisational structure was proposed arising from the determination that the current organisational structure of the department does not have any provision for a contract management unit. Furthermore, the current organisational structure was approved in 2006 and has not been reviewed or amended since then to ensure its currency and relevance to present day operational environment. Thirdly, in keeping with the key objective of this chapter, a management framework for contract management in the Department was proposed. The framework provides a broad outline of what should be incorporated in the Department's contract management framework. The proposed framework provides a set of guidelines which will govern the various contract management activities and direct the conduct of officials in executing such activities efficiently and effectively. The next chapter deals with the summary of the findings of the chapters and make recommendations based on the challenges that were identified.

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

6.1 INTRODUCTION

The Department's ability to deliver on its constitutional mandate of the right to basic education is being hampered by challenges that are experienced in contract management. Leedy and Ormrod (2009:45) maintain that the intention of a research study is to provide solutions to a problem that has been identified. Thus, the objective of the study was to describe the theoretical framework, legislation, policies and best practice models relating to public sector contract management; ascertain the typical contract management requirements for public sector departments inclusive of structural, human resource, skills and functional or operational requirements; determine the current state of contract management within the Department to establish its level of compliance; identify the potential contract management challenges; and propose a management framework which will form the basis for possible corrective action or improvement of contract management within the Department. This chapter seeks to demonstrate that the objectives of the study have been achieved.

6.2 SUMMARY OF CHAPTERS

Chapter 1 provided the orientation and problem statement which confirmed that the Department experiences contract management challenges. Evidence was provided to substantiate and confirm that a problem exists. The objectives of the research study were set, the research questions were identified and the theoretical statements that are central to contract management were elaborated on. The research methodology was expounded which dealt with the literature review and the empirical investigation. The research methodology proposed that the empirical investigation will entail a qualitative research method and motivated the basis for such an approach. The manner in which sampling, instrumentation, data collection and data analysis would be undertaken was expanded on. Some of the limitations that could have impeded the study were identified and the manner in which such would be dealt with was elucidated.

The significance of the study and the layout of the ensuing chapters were also explained.

Chapter two focussed on the review of literature aimed at addressing two research objectives. The research objectives are to describe the theoretical framework, legislation, policies and best practice models relating to public sector contract management; and ascertain the typical contract management requirements for public sector departments inclusive of structural, human resource, skills and functional or operational requirements. The review covered literature within the South African public sector context and other international public sector best practices based on contract management within the Organisation of Economic Co-Operation and Development, Australian Government, United Nations system and the Government of the United Kingdom. Legislation and policies were, however, dealt with in chapter three. An attempt was made to determine the supply chain management value chain and demonstrate where contract management fits into the value chain. There was general consensus that the supply chain management value chain broadly comprises of three phases being the planning or pre-tender phase, the tendering phase which includes the awarding of contracts and the post-contract award phase and that contract management resides in the post-contract award phase.

The role and importance of frameworks in contract management was also demonstrated and the activities within the contract management business process were explored. These activities include post-contract award negotiations; drafting, finalisation and management of service level agreements or formal contracts; planning for management of the contract including utilisation of risk management and contract management tools; managing the contract and contractor performance; managing payments and variations to the contract; holding of periodic meetings and management of disputes; governance and oversight; and contract close-out and reporting. The review of literature identified four categories of role players in contract management, these are the end users of contracts, procurement or tendering officials/staff, contract manager/contract management officials/staff and contractors. The responsibility for the management of contracts rests with the end users and contract manager/contract management officials/staff. Contract management should

be formalised within the organisational structure and be professionalised with dedicated officials/staff to perform the function. The relevance of risk management and utilisation of contract management and document management tools/systems was also identified with the emphasis on utilisation of automated tools/systems.

The research objective of describing the theoretical framework, legislation, policies and best practice models relating to public sector contract management was dealt with partially in chapter two. The part relating to the various pieces of legislation, policy frameworks and other prescripts that apply to public sector contract management were discussed in chapter three. Legislation was identified to be the source of authority and governance or influence over the conduct of departments, institutions and individuals in the performance of their functions. The provisions of the various pieces of legislation reviewed which relate to contract management were identified and the relevance thereof demonstrated. The frameworks and prescripts reviewed sought to re-enforce and give effect to the provisions of the relevant pieces of legislation. Furthermore, the review demonstrated that contract management should be a formally established function and the roles, responsibilities and activities required to support an effective and efficient contract management function were clarified. The review also established that there is congruence between the legislation, frameworks and prescripts reviewed in chapter three and the literature reviewed in chapter two.

Chapter four dealt with the analysis and interpretation of the data collected during the empirical investigation in order to fulfil the research objectives of determining the current state of contract management within the Department to establish the level of compliance; and identifying potential contract management challenges. The review of literature, legislation, frameworks and prescripts undertaken in chapters two and three identified six themes which formed the basis for the development of the research instrument and data collection. These themes are: legislation and prescripts; frameworks; contract management activities; contract management role players; risk management; and contract management tools. Data collection was undertaken through face-to-face interviews. The analysis of the data provided overwhelming evidence which confirmed that the Department does experience challenges related to contract management. These challenges are: a lack of capacity, lack of knowledge and

skills of the officials involved in contract management activities; poor communication and relationship management across the Department; a lack of staff; absence of a contract management unit; a lack of policies and procedures; a lack of monitoring; and a lack of training.

The objective of chapter five was to provide details of the management framework that is being proposed for contract management in the Department. The data collected and analysed during the empirical investigation and the literature, legislation, frameworks and prescripts reviewed in chapters two and three provided the basis for determining a suitable framework for contract management for the Department. The data analysis identified the need to also propose a suitable contract management process flow as there is no uniformity or consistency in the process of managing contracts. Thus, a contract management process flow encapsulating the various activities that were deemed to be relevant to the Department's contract management requirements was developed and proposed.

The organisational structure of the Department does not make provision for the establishment of a contract management unit or for adequate resourcing of the contract management function. The current arrangements are ad hoc in nature. Furthermore, the organisational structure of the Department was approved in 2006 and not reviewed since then. Thus, the need to propose a suitable organisational arrangement for contract management within the Department's current organisational structure which incorporates a sub-directorate for contract management was deemed necessary in chapter five. The management framework for contract management was proposed based on the critical contract management activities that were identified as well as the analysis of the research data which demonstrated the challenges that the Department experiences in managing its contracts. The rules or critical contents which should be incorporated under the various activities to guide the Department in its contract management activities were proposed and will facilitate the development of a final contract management framework.

Chapter six aims to provide a summary of the research project and, in addition, draws conclusions arising from the study. Furthermore, recommendations are being made

that will chart a way forward in making improvements to the current status of contract management within the Department. Such recommendations will also provide a basis from which policy reforms and further research can emanate.

6.3 RECOMMENDATIONS

One of the objectives of the study was to identify potential contract management challenges that the Department experiences in the management of contracts and such were identified as discussed in chapter four. Some of the challenges relate directly to the activities that are undertaken in the management of contracts whilst others are related to structures and systems that the Department has employed for the management of contracts. The following recommendations are being made according to the themes that formed the basis of the empirical investigation.

6.3.1 Recommendations relating to legislation and prescripts

The study identified that there are inconsistencies in the implementation of legislation and prescripts during contract management and that end users are expected to fulfil this responsibility relying on their own experience and understanding of what should be done without the relevant skills and knowledge. Furthermore, the Department has not fully implemented anti-fraud and anti-corruption measures and that there are inconsistencies and interference by management when applying these measures. The measures are not effective thus exposing the Department to, amongst others, potential losses of resources and officials being easily influenced into participating in fraudulent or corrupt activities. Thus, it is recommended that the Department implements a structured programme for the training of officials on the relevant legislation and prescripts as well as implementation and monitoring thereof. An effective anti-fraud and anti-corruption strategy must be developed and uniformly implemented.

6.3.2 Recommendations relating to frameworks

The study revealed that the Department does not have any documented contract management framework, policies and processes and procedures. Thus, it is

recommended that the Department adopts the contract management framework proposed in chapter five for purpose of developing a comprehensive framework pertinent to the Department's operational environment which must be fully implemented and monitored.

6.3.3 Recommendations relating to contract management activities

The study revealed the following challenges relating to contract management activities within the Department:

- the Department does not have formal documented contractual relationship protocols resulting in a lack of uniformity and governance in the relationships that end users have or develop with contractors;
- the financial payment systems do not contain relevant and up to date data and contractors are not paid timeously. Furthermore, the Department is unable to implement penalties in instances of poor or non-performance as proper contract management does not take place;
- the performance of contractors is not managed in a structured manner and within a controlled environment thus rendering it ineffective;
- challenges are experienced in managing variations or changes to contracts resulting in delays in obtaining approvals for variations and changes to contracts. Furthermore, there is deliberate manipulation or abuse of variations or changes to contracts to circumvent new procurement and contracting processes;
- there is no prescribed contract dispute resolution mechanism in place; and
- there is no documented procedure for or uniformity in drawing up of service level agreements/formal contracts. The responsibility for this task and the custodianship and management of signed service level agreements/formal contracts have not been formally assigned.

In order that the above challenges are addressed, it is recommended that the Department develops and implements contractual relationship protocols; effective controls to ensure that contractors are paid timeously and that penalties are deducted

where relevant; effective procedures and controls for managing contractor performance; effective procedures and controls to monitor and ensure that variations or changes to contracts are managed effectively and in compliance with the relevant procedures and thresholds; a dispute resolution mechanism; and processes and procedures for concluding, managing and custody of service level agreements/formal contracts as well as undertaking contract close-out and reporting.

6.3.4 Recommendations relating to contract management role players

The following challenges relating to contract management role players were identified during the study:

- the Head of Department and executive management do not play an active and adequate role in supporting contract management activities within the Department;
- there are no formal organisational arrangements for contract management and that the current arrangement is of an ad hoc nature;
- there is also a lack of capacity and skills to perform contract management related functions; and
- the responsibility for contract management has not been formally assigned.

In order that the above challenges are addressed, it is recommended that the Department reviews the role of the Head of Department and executive management with the intention of escalating the level and frequency of involvement in and support of contract management activities; a formal contract management unit be established within the Supply Chain Management Unit as per the amended organisational structure proposed in chapter five; an adequate number of staff with the requisite skills must be appointed to perform contract management functions; a suitable skills development programme must be implemented for continued skills development; and the assignment of contract management responsibilities must be formalised and issued to the relevant role players.

6.3.5 Recommendations relating to risk management

The study demonstrated that there is a disjuncture or a lack of integration between the risk management and contract processes in the Department which are re-active rather than being pro-active. There is a lack of capacity and skills within the Risk Management Unit to deal with contract management related risks. Thus, it is recommended that risk management related to contract management must be structured and integrated within the department-wide risk management processes. Furthermore, the Department must increase the capacity of the Risk Management Unit to be able to adequately support contract management related risk processes.

6.3.6 Recommendations relating to contract management tools

The study revealed that the Department has not employed any contract management and document management tools or systems for the purpose of managing its contracts and contractual documents. Thus, it is recommended that the Department acquires and implement an automated contract management system to facilitate structured and effective management of contracts. Such a system should also have document management capability.

6.4 CONCLUSION

Chapter six provided a synopsis of the research study which was dealt with in the preceding chapters and demonstrated that the research objectives that were set in chapter one were achieved. The study provides insight into the current state of contract management within the Department and the results are conclusive that challenges are being experienced by the Department in managing contracts. These challenges were highlighted, conclusions drawn and corresponding recommendations were made to address such. This included proposing a contract management process flow, an amended organisational structure that incorporates a sub-directorate for contract management and a contract management framework. The Department is encouraged to take note of the recommendations in the context of the importance of the contract management function and should implement an improvement plan to enhance and sustain

an efficient and effective contract management function. This will result in an overall improvement in the administrative efficiencies related to the contract management function within the Department, compliance, governance, audit outcomes, performance of contractors and service delivery.

The study provides a basis for further research studies on contract management within the general public sector administration as well as from a departmental or institutional specific perspective. The results of the study can also be utilised by the Eastern Cape Provincial Treasury to develop or enhance prescripts related to contract management within the provincial domain, develop system descriptions that are relevant and in keeping with modern/global best practice, increase automation, implement initiatives for the improvement of skills and capabilities of contract management officials, set appropriate standards for recruitment, amongst other gains that can be derived. Similarly, the National Treasury could utilise the findings of the research study to drive improvements in contract management at a national sphere.

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**DETERMINING CONTRACT MANAGEMENT CHALLENGES RELATING TO
SUPPLY CHAIN MANAGEMENT IN THE EASTERN CAPE DEPARTMENT OF
EDUCATION**

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INTERVIEW QUESTIONNAIRE
INTERVIEWEE FACESHEET

Date of interview: _____

Place of interview: _____

Name (in full): _____

Designation/rank: _____

Unit/component: _____

Age: _____

Gender: _____

Highest qualification:

Number of years' service in the Department: _____

Number of years' service in current position: _____

Number of years of performing work relating to contract management in the
Department: _____

INTERVIEW QUESTIONS

1. What are the challenges in implementing the departmental contract management framework, policies and processes and procedures?
2. What are contractual relationship protocols that the Department has in place? What are the challenges relating to the effective utilisation of these protocols?
3. What are the challenges relating to timeous payment of contractors including the application of penalties for poor performance?
4. What are the challenges in the implementation of the processes or procedures for managing contractor performance?
5. What are the challenges relating to the application of the procedures for managing variations or changes to contracts?
6. Please explain the dispute resolution mechanism/s that the Department has adopted. What are the challenges in implementing these mechanisms?
7. Please elaborate on the procedures for concluding service level agreements/formal contracts? Who performs this function? Who is the custodian of the service level agreements/formal contracts? What are the challenges relating to the management of service level agreements/formal contracts including contract close-out?
8. What is the role/nature and level of involvement of the Head of Department and executive management in contract management in the Department? Is the support of the Head of Department and executive management adequate?
9. What are the organisational arrangements for contract management within the Department including the adequacy of resourcing of the contract management unit? What challenges do they pose?

10. Please explain the relationship between the contract manager and end user in the management of contracts. Who is responsible for contract management?
11. What are the successes and/or challenges that the contract management staff experience in managing contracts including challenges relating to skills development?
12. Please elaborate on the process of risk management in the Department and how contract management risks are dealt with? When and where does risk management in relation to contract management take place? What are the challenges in implementing risk management?
13. What are the challenges that are experienced in the utilisation of contract management tools and systems, including document management tools, as well as the interface of automated tools with other electronic systems that the Department utilises?
14. What are the challenges that are experienced in the implementation of the different pieces of legislation and prescripts (general conditions of contract included) that govern contract management including the social redress goals and constitutional principles of fairness and transparency?
15. What are the challenges experienced with regards to anti-fraud and anti-corruption measures that the Department has implemented? What remedies has the Department applied in cases where fraud and corruption have been detected?
16. Is there anything which you think might be important that you would like to add relating to contract management in the Department?

Thank you for your participation.