



Performance Audit

Contract Management Capabilities across Local Councils

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List of Abbreviations

DLG Department for Local Government

NAO National Audit Office

PPP Public-Private Partnership

UK United Kingdom



Executive Summary

Executive Summary

1. Contract management is a multifaceted process, enabling the contracted parties to fulfil their obligations while delivering the objectives stipulated by virtue of their contract agreement. Of central importance to successful contract management is the development of a sound working relationship between customer and provider that spans throughout the contractual lifecycle. Furthermore, effective contract management warrants the adoption of a proactive approach, whereby future needs are identified, anticipated and reacted to well in advance.

2. Based on a comprehensive review of local and foreign literature, together with preliminary research carried out across a number of local councils, the National Audit Office (NAO) has developed a model of understanding of the contract management process which seeks to highlight the major stages of the contract management lifecycle. This contract management lifecycle includes several interrelated and interdependent stages built in compliance with the regulatory framework, standards, rules and procedures that essentially provide context.

3. One of the most important functions of local councils is the issue, award and management of contracts for goods, works and services. Legal obligations relating to the call for tenders are governed by the Local Councils Act, which states that: *“For the purpose of discharging any functions in pursuance of any matter under this Part of the Act, a Council shall contract out and expose to competition any of the functions assigned to it.”*

4. Local councils shall be statutory local government authorities having the power of entering into contracts and transactions in order to perform all of their functions as established by means of the Local Councils Act. Although the procurement process is heavily regulated, summaries of audit reports presented in the NAO Annual Audit Report of the Auditor General - Public Accounts (2008, 2009 & 2010) highlight critical limitations in sourcing, tendering and contract management procedures across local councils.

5. The main objective of this performance audit was the examination of contract management capabilities and practices applied in local councils. The study sought to delineate the key limitations and challenges faced by local councils in the application of contract management. Subsequently, the highlighting of such limitations and challenges was intended to serve as a springboard for the identification of opportunities key to the overall amelioration of contract management practices and processes across local councils. As a secondary and indirect objective, albeit also of significant importance to those aforementioned, this performance audit aimed to encourage the development and dissemination of good practices, particularly so in those local councils where contract management is not as comprehensively developed as circumstances so warrant.

6. This audit adopted a comprehensive view of the entire contract management process, commencing at the initial determination of specifications/requirements in tender/contract documentation, to the tendering/contract award process and the actual management of the contracts. NAO considers these activities to be best understood when conceptualised as a continuum rather than distinct phases, with contract management being planned for from the start of the procurement process. This study focused on two types of contracts, that is, contracts relating to road resurfacing and others relating to the collection of mixed household waste. The selection of these two types of contracts was based on the criterion of materiality, with road resurfacing and the collection of mixed household waste ranking as the two highest sources of expenditure across the selected local councils.

7. The report provided a detailed overview of the system utilised in the inception and prioritisation process of contract design. This first stage in the contract management lifespan, addressed in this report, focused on the identification of needs, the method employed in assigning different levels of priority to the identified and necessary

works or services, and the budget allocation that enabled all of the above. Furthermore, NAO delved into the process of tender documentation design, focusing specifically on the building of specifications, the assignment of responsibility and the establishment of service level requirements. The management of risk, which is an integral aspect of the contract management function, was also addressed.

8. NAO ensued in its study through the presentation of a comparative analysis of the structures, systems and practices that the selected case studies applied throughout their respective calls for tenders and tender submission processes. In addition, focus was channelled towards the evaluation and examination of submitted tenders, as well as the subsequent decision-making process associated with the award of contracts. This analysis highlighted capability requirements deemed conducive to full compliance with legal obligations and sound management practices that were to be adhered to throughout the processes. NAO considered the effective application of these capabilities as central in ensuring fairness, high levels of efficiency, selection of the most favourable contracts, professionalism, accountability and transparency, as well as the pursuance of ethical behaviour.

9. Finally, the audit report also focused on a number of aspects relevant to the contract management process at the post-award stage. Attention was first directed at the assignment of contract management responsibilities and the delineation of corresponding roles. A number of key performance issues were subsequently presented. These included the measurement of contractor performance, certification and payment for completed works or services, the assessment of the Council Representative's performance, as well as, quality of service, business continuity issues and contingency planning, among others. The contractual change management process was reviewed, and consequently followed by an analysis of the relationship between the contracting local council, the contractor and the Council Representative.

Conclusions

10. From the data collected in this study, it is immediately apparent that no formal systems designed for the effective identification of needs have been implemented by the majority of sampled local councils. The process of need identification is overly reliant on informal sources of information feeding into the decision-making process, often involving the input of Executive Secretaries, council members, residents, and Council Representatives. NAO considers the risks inherently associated with such an informal system of need identification as gravitating around the issues of comprehensiveness and objectivity. Failure to establish formal systems through which council needs are identified accentuates the risk of subjective bias,

potentially limiting awareness of the complete population of works or services required by the local council. Moreover, incomplete information at this initial stage of the process will inevitably impact upon subsequent processes, possibly resulting in far greater inefficiencies and ineffectiveness.

11. Consonant with the above are the findings relating to the systems of prioritisation, or absence thereof, employed by the local councils under review. Once again, only a minority of local councils formally documented their respective prioritisation processes, while others simply relied on informal feedback mechanisms. Intricately linked to the prioritisation process in the council's budgetary allocation, NAO considers the perceived limited budgets as adding further weight and importance to the prioritisation process, highlighting the necessity of utilising what funds are available in the most efficient, effective and economical manner possible. Irrespective of perceived or actual budgetary constraints, NAO is of the opinion that a fair allocation of funds may only be achieved if accurate data regarding the various dimensions key to administering a locality are known. The importance of the now defunct Field Services Unit, or some equivalent form of data gathering system is essential in attaining this goal.

12. The design of tender specifications is an area of significant concern to NAO, exhibiting numerous shortcomings that merit attention. NAO considers the source of this issue to be the outdated contract documentation, particularly the Local Councils (Tendering) Procedures, which inadequately address current needs and realities with regard to specification design. However, NAO considers the overarching weakness in relation to specification design to be the lack of suitable monitoring provided by the Department for Local Government (DLG). Inadequate centralised systems of monitoring coupled with outdated documentation result in the inevitable outcome of changes being made to the conditions and specifications of contracts under review. This is expressly prohibited by virtue of the Local Councils (Tendering) Procedures (Appendix P3.IX), yet awareness or adherence to such regulations by a number of local councils is poor, while monitoring mechanisms are weak.

13. NAO considers the conceptual identification and management of risk to be sufficiently addressed in the Local Councils (Tendering) Procedures. This was in fact corroborated by the Executive Secretaries and Council Representatives involved in this study. However, in its review of defaults in performance and corresponding remedial courses of action, NAO noted that at the operational level, certain provisions relating to the termination of contracts may warrant review. One such case is clause 37 of the Local Councils (Tendering) Procedures, which stipulates that a contract may be terminated after issuing 25 default notices in a one-week period, or 75 default notices over a four-week period. NAO considers



the number of default notices that must be served under such a clause to be excessively high, thereby limiting the local councils' contingency in reacting to clear instances of poor performance and therefore exposing its management of such contracts to considerable risk.

14. At a general level of analysis, the local councils reviewed in this study adequately adhered to the regulations governing the submission and examination of tenders. A select group of councils engaged in practices that are to be commended by NAO, such as the Mqabba Local Council in its coordination of the collection of mixed household waste contract with neighbouring localities, and the Birkirkara Local Council, which has further endeavoured at improving the accountability and transparency of the tender submission process.

15. Nonetheless, one of NAO's most pressing concerns with regard to the contract management process across local councils relates to the significant proportion of active contracts that were in effect expired. NAO noted that a considerable number of local councils endorsed and sustained this poor practice by extending already expired contracts on a year by year basis. NAO considers arguments put forward by a number of local councils justifying such practices as unacceptable and considers the indefinite extension of expired contracts, albeit on a year by year basis, to infringe upon the principles of good governance.

16. Further deviations from the principles of good governance were significantly pronounced in the case of the Mtarfa Local Council. This particular Local Council did not provide any form of documentation when requested by NAO, somewhat perplexingly stating that it had not carried out any road resurfacing works, while maintaining its mixed household waste contract in a perpetually expired state, which nonetheless, does not justify the absence of required documentation.

17. In stark contrast to the above, NAO noted that three particular Local Councils, namely Birkirkara, Mqabba and Żurrieq, exhibited good practices in the collection and collation of tender documents, specifically through the utilisation of a checklist system.

18. A number of issues emerge from the evidence collected by NAO regarding the award of contracts, particularly with respect to the evaluation criteria employed. The system utilised in the selection of road resurfacing contracts, which closely ties in with the role of the technically proficient Council Representatives, ensures reliability of method, validly making reference to key indicators through the respective bills of quantities and unit cost rates. The majority of local councils made appropriate use of such a system, and selection of contractors not ranked as most favourable by means of the aforementioned indicators was justified, agreed to by the council members and minuted.

19. On the other hand, NAO's analysis of the evaluation criteria utilised in the collection of mixed household waste tenders provided mixed results. Scoring on performance criteria was carried out in a fair, reliable and accurate manner, largely due to the sound guidance provided by DLG in the form of an addendum to the Tendering Procedures, which specifically delved into the finer details of how such criteria were to be scored. However, the scoring system employed by a number of local councils with regard to the financial criteria failed to appropriately classify the various tender bids. Employing a system that awards maximum marks to the most financially favourable bid, no marks at all to the least financially favourable bid, and scoring all other bids pro-rata will invariably result in a method of classification that is heavily skewed. Minor variations in terms of values of submitted tender offers are incongruently reflected in the wide range



of awarded marks, rendering irrelevant the ratings awarded under the performance criterion.

20. While a few Local Councils, such as Birkirkara, Mqabba and Żurrieq, exhibited significant good practices in the compilation of detailed evaluation reports, others were rendered conspicuous by their poor, and at times, anomalous practices. The persistent theme of poor documentation and record-keeping practices can once again be applied to this context, and despite asserting to the contrary, numerous local councils failed to provide NAO with the relevant evaluation sheets pertaining to the contracts under review. Clearly incongruent with established tendering practices is the decision taken by the San Pawl il-Baħar Local Council, whereby road resurfacing works were awarded to two tendering parties, eventually resulting in the lodging of an understandable appeal by one of the tendering parties.

21. The reviewed local councils adopted various approaches and styles in the assignment of responsibility and overall management of contracts. NAO noted that this variety in terms of contract management approaches and styles emanates from the prevalent idiosyncrasies that characterise each local council. One dominant factor in this discourse relates to the issue of financial constraints, with a number of Executive Secretaries contending that limited funds restricted their engagement of external contract management service providers. The councils' decision to outsource contract management services or otherwise was also influenced by the technical or non-technical nature of the contract to be managed, ordinarily outsourcing in the former case, and adopting in-house arrangements in the latter case. Notwithstanding all of the above, NAO noted that the assignment of responsibility of the contract management function was often shared between various persons, most commonly including the Executive Secretary, Councillors, the Mayor and the externally appointed Council Representative.

22. The issue of role delineation is intricately linked to the aforementioned responsibilities assigned to outsourced Council Representatives, particularly in delineating the services rendered by Contract Managers with those rendered by Architects, very often due to the overlapping of roles. Data collected throughout this study indicates the significant confusion and ambiguity relating to the role of the Contract Manager, which is in stark contrast with the Specific Conditions set out in the Tendering Procedures, clearly outlining the key responsibilities that must be adhered to. The varied responses obtained by NAO in this regard are testament to this issue of poor awareness by the Executive Secretaries with respect to the contract management roles and functions expected to be fulfilled by outsourced Council Representatives.

23. Two distinct systems of performance measurement characterise the evaluation of technical and non-technical contracts, as was respectively the case with the road resurfacing works contract and collection of mixed household waste contract. Analysis of data relating to contract management practices across the reviewed local councils indicates that externally appointed Council Representatives were entrusted with the evaluation of technical contracts, whereas other non-technical contracts were internally addressed, primarily through the input of Executive Secretaries, Councillors and Mayors. In the latter case, NAO noted that residents' feedback on services rendered was utilised as an informal source of performance measurement. To this effect, NAO is somewhat concerned with the fact that evaluation of contractor performance, for non-technical contracts, was in the vast majority of cases not carried out in a formal manner.

24. Consonant with the findings put forward in relation to performance measurement, the process of certification of completed road resurfacing works and collection of mixed household waste services rendered was characterised by its significant disparity. NAO considers this difference to

be largely attributable to the appointment of a specifically designated Council Representative in the former case. In the general absence of certification regarding the collection of mixed household waste, NAO's concern focuses on the documentation used in endorsing payment. Although NAO acknowledges that the risk of services not being delivered with respect to this contract are minimal, particularly given the regular feedback received from residents, NAO still considers the appropriate certification of services rendered to be a good management practice.

25. Although the Council Representative's performance, similar to that of other contractors, is subject to the scrutiny and review of the contracting local council, the specialist technical knowledge, that is at times an intrinsic part of the service, renders performance assessment all the more complex. NAO considers this difficulty in evaluating the performance of engaged Council Representatives as a risk to local councils, which is in fact substantiated by the two scenarios put forward by the Birkirkara and Nadur Local Councils. NAO commends the two aforementioned Local Councils in their efforts at mitigating such risk.

26. An issue of significant concern to NAO relates to the principles of good governance, specifically in the endorsement of contractual variations well in excess of the 10 per cent threshold but within the 20 per cent capping, at which point the local council may exercise its right to terminate the contract and issue a fresh call. Of utmost concern to NAO is the situation where contractual variations exceeded the 20 per cent capping. Such circumstances should imply the immediate termination of the contract and the issue of a fresh call for tenders, or the issuing of a call specifically corresponding to the variations. A case in point was a road resurfacing contract issued by the Iklin Local Council, which exceeded the originally contracted amount by 47 per cent. NAO's concern in this regard focuses on the clear breach of regulations governing the administration of such tenders. NAO acknowledges the difficulties associated with circumstances when planned works are subjected to substantial variations midway through a given project. However, the appropriate utilisation of the skills and proficiencies of a duly appointed Council Representative would presumably mitigate such a risk.

Recommendations

27. NAO recommends that all local councils implement a formal system detailing the processes and mechanisms to be followed in the identification of needs. A more formal system will imbue the process with a greater sense of accountability, and indirectly strengthen the elements of objectivity and transparency. NAO considers the role played by DLG in this context as centrally important, contributing to the formalisation in a twofold manner. On one level, DLG may contribute by assuming responsibility

for standardising the formalised need identification process across all local councils. Complementary to this, DLG may also ensure that local councils are also afforded sufficient flexibility in the implementation of such procedures, customising the nonetheless formal need identification process to suit and better fit their specific constraints and requirements.

28. Once again, NAO recommends that formal systems for the establishment of priorities are implemented across local councils. Such a system could possibly involve the screening of competing proposals through analysis of their respective alignment with the local council's needs and available funding. Comparing and rating several projects against pre-established criteria through some form of decision matrix may assist the council in arriving at objective decisions representing true value for money. Critically important in the formulation and establishment of such criteria are the ancillary systems of data gathering (such as the area of parks, road lengths, number of residents and number of properties) that subsequently feed into the decision-making process.

29. NAO strongly recommends that limitations relating to specification design are addressed in a three-pronged manner. The first approach should ensure that the necessary revisions to contract documentation are driven forward by DLG. Revision of the Local Councils (Tendering) Procedures, so as to better reflect recent developments and current needs would, in NAO's opinion, improve overall contract management capabilities. Alternatively, DLG may explore the possibility of aligning local council tendering practices with Government public procurement regulations. The second approach should essentially focus on improving central control through the revision of DLG monitoring mechanisms. Suitable monitoring would ensure that local councils are adhering to regulations, maintaining standards that have been centrally agreed upon and uniform in their approach to commonly arising issues. Finally, the third approach targets the subsidiary level of operation, that is, the Executive Secretaries and other persons involved in the design of specifications at local council level. Focused and specialised training, complemented with suitable awareness of what conditions and specifications can and cannot be amended must be implemented so as to address the existent incongruence between Local Council (Tendering) Procedures and current practices.

30. Although NAO considers the coverage afforded by the Local Councils (Tendering) Procedures to sufficiently cater for risk, particularly at the conceptual level, nonetheless NAO urges DLG to consider the review of default clauses as a means of ensuring and imbuing local councils with greater influence in the determination of clear cases of non-performance.

31. NAO considers the role played by DLG as integral to the development of contract management capabilities across local councils, thereby ensuring the integrity and validity of employed procedures. It is against this backdrop that NAO recommends that DLG should seek to establish a stronger and more robust monitoring presence among all local councils. Such a presence is envisaged to particularly contribute towards addressing the numerous instances of contracts expiring and not being renewed through the established tendering process, but simply extended on an interim, yet indefinite basis.

32. Additionally, DLG is best positioned to serve as a platform for the exchange of good practices, arrived at and adopted by various local councils, thereby serving its purpose of ensuring the promulgation of good governance practices at this subsidiary level of government. NAO recommends that DLG further embraces such a role, through the active coordination and encouragement of local councils in the emulation of good practices.

33. Further to the important role and function fulfilled by DLG in the overall management of the local government function, so too is the part played by the local councils themselves, which must be assigned a centrally prominent role in the sustained evolution towards modern control management practices and eventual overall good governance. NAO strongly recommends that local councils operating with expired contracts should rectify their position without delay. In addition, NAO urges the relevant authorities involved in overseeing the lengthy appeals procedures referred to by various local councils, to streamline and resolve pending cases in a more acceptable timeframe. NAO considers the role assumed by local councils in such contexts to be the primary driving force and impetus pushing for speedy resolution of such contractual standstills.

34. NAO specifically urges the Mtarfa Local Council to revise and reform its contract management practices, particularly with respect to its organisation of documentation, management and renewal of active contracts, as well as its overall record keeping. Such measures would regularise Mtarfa Local Council's position in line with the established Tendering Procedures and more importantly, safeguard transparency and accountability.

35. The level of guidance provided by DLG with regard to the evaluation process utilised in the award of tenders is endorsed by NAO, and should in fact be extended to encompass other aspects and dimensions of the contract management process. NAO recommends that the provision of adequate guidance by DLG should be followed-up by suitable systems of monitoring, which would effectively ensure that the attained standards are maintained and possibly improved upon, as was the case with the Birkirkara Local Council.

36. NAO considers the evaluation criteria utilised by local councils in the selection of contractors for road resurfacing works to be reliable and valid, and therefore encourages such a system to be maintained and consolidated. Similarly positive is NAO's feedback with regard to the performance criteria employed in the evaluation of tender bids submitted in view of the mixed household waste collection contract. However, NAO recommends that DLG, in collaboration with local councils, devise and agree upon a standard system for scoring tender bids on their financial component. NAO considers such a revision to be of utmost importance if fairness of the evaluation process is to be ensured.

37. The evident disparity in terms of good practices relating to the preparation of evaluation reports among the reviewed local councils presents a window of opportunity for DLG. NAO encourages DLG to capitalise on the various good practices adopted by a number of local councils and extend such standards among other councils.

38. NAO recommends greater streamlining and standardisation with respect to the assignment of responsibility and overall management of contracts. DLG's role in the implementation of such reform would be critical and address various aspects. One such aspect is the issue of financial constraints, which was allegedly a determining factor in the decision by certain local councils of not engaging Council Representatives. Given that tendering parties formally determine a contract management fee of five per cent of the tendered sum, NAO considers the above justification as unacceptable and recommends a more widespread engagement of Council Representatives, and in so doing, further ensure the establishment of appropriate management structures, key in supervision of ongoing works and services.

39. Clearly evident among Executive Secretaries is the need for greater awareness of the roles and functions that can be fulfilled by an engaged Contract Manager, particularly in view of the detailed Specific Conditions set out in the Tendering Procedures, which clearly outline the key responsibilities that must be adhered to. Once again, NAO recommends that DLG assumes a pivotal role in the dissemination of relevant information and awareness building, while encouraging the active participation of Executive Secretaries and other local council members.

40. NAO encourages DLG and all local councils to introduce more robust systems of performance measurement, which would ideally be based on a proactive management approach rather than the reactive one currently in place, possibly encompassing formally set criteria and benchmarks. NAO understands that such a system would address the present situation of local councils' over-reliance on informal and unstructured systems of feedback as the basis for performance measurement. Furthermore,

NAO considers it imperative that a formal evaluation report determining contractor performance, corresponding to each instance of contracted works or services, be compiled. Such an evaluation should not be exclusively restricted to the narrowly defined and contracted works or services, but also extended accordingly to encompass non-performance issues. In this latter context, NAO considers the sustained cooperation between local council and Council Representative as critically important in the formal monitoring of such issues.

41. NAO recommends the introduction of appropriate procedures required for the certification of all contracted works, particularly absent in this audit in the case of the collection of mixed household waste contract. It is in NAO's considered opinion that such certification further contributes to good governance practices across local councils, thereby providing the necessary checks and balances in the endorsement of payment. Furthermore, NAO reiterates its previous recommendation regarding the appointment of designated Council Representatives across all contracts, which would subsequently serve to facilitate the certification process.

42. While acknowledging the inherent difficulties associated with the review of the Council Representative's performance, NAO proposes a two-pronged approach in the address of such an issue. At a central level, NAO encourages DLG to devise a standard tool to be utilised in the evaluation of works and services rendered by the Council Representative on behalf of the contracting council. At the subsidiary level, NAO encourages councils to adopt a critical approach in their respective performance review of engaged Council Representatives, taking as an example the corrective action instigated by the Birkirkara and Nadur Local Councils.

43. NAO considers the aforementioned lacuna regarding the overall performance evaluation of engaged contractors to be more comprehensively addressed through the establishment of a formal system of information sharing that would be readily accessible to all local councils. Due to the essential coordination involved in the setting up of such a process, NAO considers it opportune for DLG to assume the relevant central coordinating function.

44. Although not all contractual variations may be anticipated, NAO nonetheless recommends that local councils strive towards enhancing their employed systems of planning and change management. At a basic level of redress, NAO considers the need for a heightened level of awareness of particular Executive Secretaries, thereby refining their knowledge and understanding of the established financial thresholds governing the means by which local councils address instances of contractual variations. In addition, NAO is of the opinion that rigorous change management control may only be achieved if the Council Representative acts as an interface, facilitating the council and contractor relationship through the processing of requests for incorporating newly identified contract requirements. Moreover, NAO recommends that the designed framework and specifications should include in-built provisions that adjust for cost variations, such as is the case with fluctuating fuel prices. A monthly adjustment mechanism allows for the appropriate compensation of cost variations, and if appropriately monitored, results in a fair agreement between the contracting parties.

45. In conclusion, NAO strongly recommends that DLG and local councils alike address instances of gross discrepancies in variations through the introduction of appropriate mechanisms central to ensuring good governance. One possible means of imbuing the tendering process with greater control with respect to variations would involve further scrutiny by DLG, thereby monitoring such discrepancies from originally tendered contract sums. Centrally integral to the entire tendering process is the adherence of local councils to established procedures and regulations. NAO strongly urges local councils to abide by the parameters set by means of the various financial thresholds, and DLG to take corrective action when instances of non-adherence are brought to light. Finally, NAO recommends that variations should be accompanied by some form of discrepancy report, in which case the local council and engaged Council Representative would provide the relevant justification for the disparity with the originally tendered bid.

Chapter 1



Contextualising the Contract Management Framework

Chapter 1 – Contextualising the Contract Management Framework

This initial chapter provides an overview of the growing relevance of establishing a sound contract management framework, specifically highlighting good practices applicable within the local government context. The role of local government and its subsequent involvement in the application of contract management principles is followed by an analysis of the various stakeholders that prominently feature in this relationship. Finally, this chapter outlines the scope and objectives of this study, together with the employed methodology.

1.1 Background Information

1.1.1 Contract management is a multifaceted process, enabling the contracted parties to fulfil their obligations while delivering the objectives stipulated by virtue of their contract agreement. Of central importance to successful contract management is the development of a sound working relationship between customer and provider that spans throughout the contractual lifecycle. Furthermore, effective contract management warrants the adoption of a proactive approach, whereby future needs are identified, anticipated and reacted to well in advance.

1.1.2 The twofold aim of contract management is that of obtaining services as delineated in the contractual agreement, while simultaneously ensuring value for money. This latter aim essentially implies the identification of means that are crucial to the enhancement of efficiency, effectiveness and economy of the contractual service or relationship, balancing costs against risks, while actively managing the customer-provider relationship.

1.1.3 The ‘Contract Management Guidelines’, published by the United Kingdom Office of Government Commerce (2002), highlights a number of factors deemed essential throughout the procurement process, including:

a. **Good preparation:** An accurate assessment of needs helps create a clear output-based specification.

Effective evaluation procedures and selection ensure that the contract is awarded to the right provider.

- b. **The right contract:** The contract serves as the foundation for the relationship. It should include aspects such as allocation of risk, the quality of service required, and value for money mechanisms, as well as procedures for communication and dispute resolution.
- c. **Service delivery management and contract administration:** Effective governance ensures that the customer gets what is agreed, to the level of quality required. Performance under contract must be monitored so as to ensure that the customer continues to get value for money.
- d. **Relationship management:** Mutual trust and understanding, openness, and excellent communication are as important to the success of an arrangement as the fulfilment of the formal contract terms and conditions.
- e. **People, skills and continuity:** There must be people with the right interpersonal and management skills to manage these relationships on a peer-to-peer basis and at multiple levels in the organisation. Clear roles and responsibilities should be defined, and continuity of key staff should be ensured as far as possible. A contract manager (or contract management team) should be designated early on in the procurement process.
- f. **Knowledge:** Those involved in managing the contract must understand the business fully and know the contract documentation inside out. This is essential if they are to understand the implications of problems (or opportunities) over the life of the contract.
- g. **Flexibility:** Management of contracts usually necessitates some flexibility on both sides and a willingness to adapt the terms of the contract to reflect a rapidly changing external environment. Problems that

could not be foreseen when the contract was awarded are bound to arise.

- h. **Change management:** Contracts should be capable of change (to terms, requirements and perhaps scope) and the relationship should be strong and flexible enough to facilitate it.

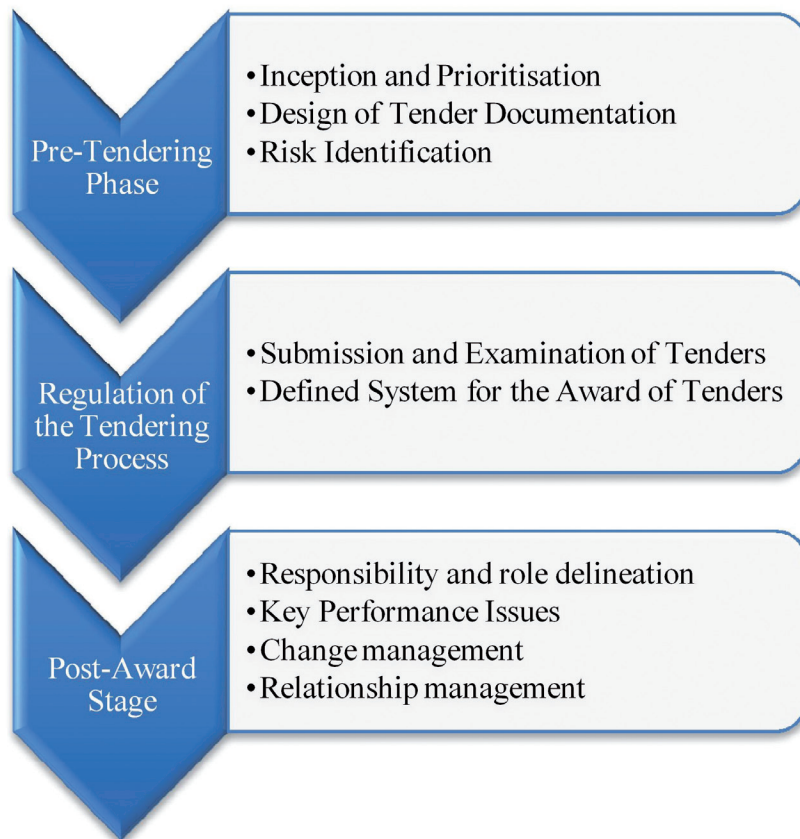
1.1.4 Based on a comprehensive review of local and foreign literature, together with preliminary research carried out across a number of local councils, the National Audit Office (NAO) has developed a model of understanding of the contract management process which seeks to highlight the major stages of the contract management lifecycle. This lifecycle includes several interrelated and interdependent stages built in compliance with the regulatory framework, standards, rules and procedures that essentially provide context.

1.1.5 The key elements of the contract management lifecycle are broadly envisaged under three major areas, which are subsequently followed by a number of key activities that fall under each respective area. These are listed hereunder and graphically represented in Figure 1:

- a. The Pre-Tendering Phase
 - i. Inception and Prioritisation
 - ii. Design of Tender Documentation
 - iii. Risk Identification
- b. Regulation of the Tendering Process
 - i. Regulations Governing the Submission and Examination of Tenders
 - ii. A Defined System for the Award of Tenders
- c. Post-Award Stage
 - i. Assignment of Responsibility and Role Delineation
 - ii. Key Performance Issues
 - iii. Contractual Change Management
 - iv. Managing the Relationship

1.1.6 The contract management lifecycle commences with the identification and prioritisation of needs, which is subsequently followed by the development of specifications tailored to suit such needs. Hence, the contract management lifecycle moves on to the design and preparation of tender documentation, which brings to the fore the issue of risk management. In the area of contract management, the term ‘management of risk’ incorporates all activities required to

Figure 1: Key Elements of the Contract Management Lifecycle



identify and control risks that may bear an impact on the particular outcome of a given contract. As a general rule, it is the customer's prerogative to ensure receipt of service wherever possible, particularly when one considers that the major areas of risk relate to the provider being unable to deliver, or not delivering to the agreed quality standard.

1.1.7 Prior to the launch of the selection process, strict procedures and criteria are required so as to ensure the fair treatment of bidding suppliers and selection of the most favourable bid. The Local Councils Act (2011, Cap. 363), together with other regulations and procedures, create a framework in which local councils should operate. An explanation of such regulations is provided in Section 1.2 and further elaborated upon in greater detail in Chapter 3.

1.1.8 The finalisation of submission of tender bids is followed by one of the most critically important stages in the overall process, that is, the establishment of a defined system for the award of tenders. Pursuant to the process of tender adjudication, the successful bidder and customer formalise their contractual agreement, thereby stipulating systems that govern the delivery of goods and services, while establishing expected quality standards.

1.1.9 The first stage of the post-award process is the assignment of responsibility and role delineation, which handles the formal governance of the contract. Contract administration is also concerned with the smooth operation of routine administrative and clerical functions, performance measurement, possible changes to the contract documentation, as well as the mechanics of the relationship between the customer and the service provider. Contract administration requires appropriate resourcing, with responsibility assigned to a nominated individual or shared across a contract management team. It is important that all members of the team deal promptly with contract administration tasks, particularly during the early stages of implementation.

1.1.10 Measurement of service delivery ensures that specifications and the appropriate quality standards are being met, thereby fulfilling the terms of the contract. Inevitably, detailed agreements of the required service levels and the expected performance and quality of services to be delivered are of paramount importance in this regard. Bearing direct relation to the quality standard of contractual works and services are the variables of cost and time. Improving quality may imply greater cost and longer duration, while reducing costs and time may on the other hand compromise quality. Balancing the trade-off between cost, quality and time results in a contractual agreement that ultimately ensures value for money.

1.1.11 The drivers for change during the term of a contract emanate from a range of sources. Ideally, the requirement for modifications should be embodied in the

terms of the contract since changes are always easier to manage when they are planned for. Even when they occur without warning, it is often possible to anticipate what might happen and plan for what can be done. Changes emanating from factors external to the immediate contract agreement, such as economic trends that affect the profitability of the customer or the provider, may make change an inevitable reality; however, alteration of the service is always subject to the voluntary agreement of contracting parties. A successful arrangement requires a mutual commitment from all the stakeholders involved.

1.1.12 Finally, NAO also identified relationship management as an imperative construct and variable in the post-award issues that characterise the contract management process. A robust approach towards relationship management keeps the relationship between the two contracting parties open and constructive, aiming to resolve or ease tensions and identify problems as they arise. Successful management of such a relationship involves ensuring that the delivery of services meets established requirements. The commercial arrangement must be tailored in such a way so as to be acceptable to both parties, offering value for money for the customer and adequate profit for the provider. Notwithstanding these contractual and commercial aspects, the way in which the relationship between the contracting parties operates is vital in determining the success or otherwise of the overall contract management process.

1.2 The Role of Local Government

1.2.1 The Local Councils Act (2011, Cap. 363) was modelled on the European Charter of Local Self-Government, signed and ratified by the Maltese Government. According to this Act, *"The Council shall be a statutory local government authority having a distinct legal personality and capable of entering into contracts, of suing and being sued, and of doing all such things and entering into such transactions as are incidental or conducive to the exercise and performance of its functions as are allowed under the Act."*

1.2.2 One of the most important functions of local councils is the issue, award and management of contracts for goods, works and services. Legal obligations relating to the call for tenders are governed by the Local Councils Act, which states that: *"For the purpose of discharging any functions in pursuance of any matter under this Part of the Act, a Council shall contract out and expose to competition any of the functions assigned to it."*

1.2.3 Moreover, the contracting out function of local councils is more specifically regulated by the Local Councils (Tendering) Regulations (2011, S.L. 363.03). The regulations declare that a call for tenders must be issued when the council requires any works, services, materials

or other supplies in connection with the execution of its functions. Furthermore the Local Councils (Tendering) Regulations state that *“a call for tenders, shall be required if the proposed or expected expenditure exceeds the limits defined in regulation 24, of the Local Councils (Financial) Regulations.”*

1.2.4 Regulation 24 of the Local Councils (Financial) Regulations (2007, S.L. 363.01) stipulates that any *“orders, contracts, agreements or items exceeding 4,658.75 euro or five per cent of the ordinary financial allocation to the Council, whichever is the lowest, shall require the:*

- a. *Issue of a public tender according to the Local Councils (Tendering) Regulations;*
- b. *The approval of the Council according to order 32(1) of the Standing Orders contained in the Sixth Schedule to the Act and according to the Local Councils (Tendering) Regulations.”*

1.2.5 Local Councils are also regulated by virtue of Subsidiary Legislation 363.12 (2007). This legislation stipulates how local councils, together with their respective Executive Secretaries and other employees, shall comply with the procedures set out in the publications and listed in the First Schedule. These comprise financial, audit, tendering, human resources, prosecuting, bye-laws, meetings and office procedures. Furthermore, Article 5 of the Local Councils (Tendering) Regulations establishes that every call for tenders by local councils shall follow the tendering procedures referred to in Subsidiary Legislation 363.12.

1.2.6 Although the procurement process is heavily regulated, summaries of audit reports presented in the NAO Annual Audit Report of the Auditor General - Public Accounts (2008, 2009 & 2010) highlight critical limitations in sourcing, tendering and contract management procedures across local councils. Such concerns include:

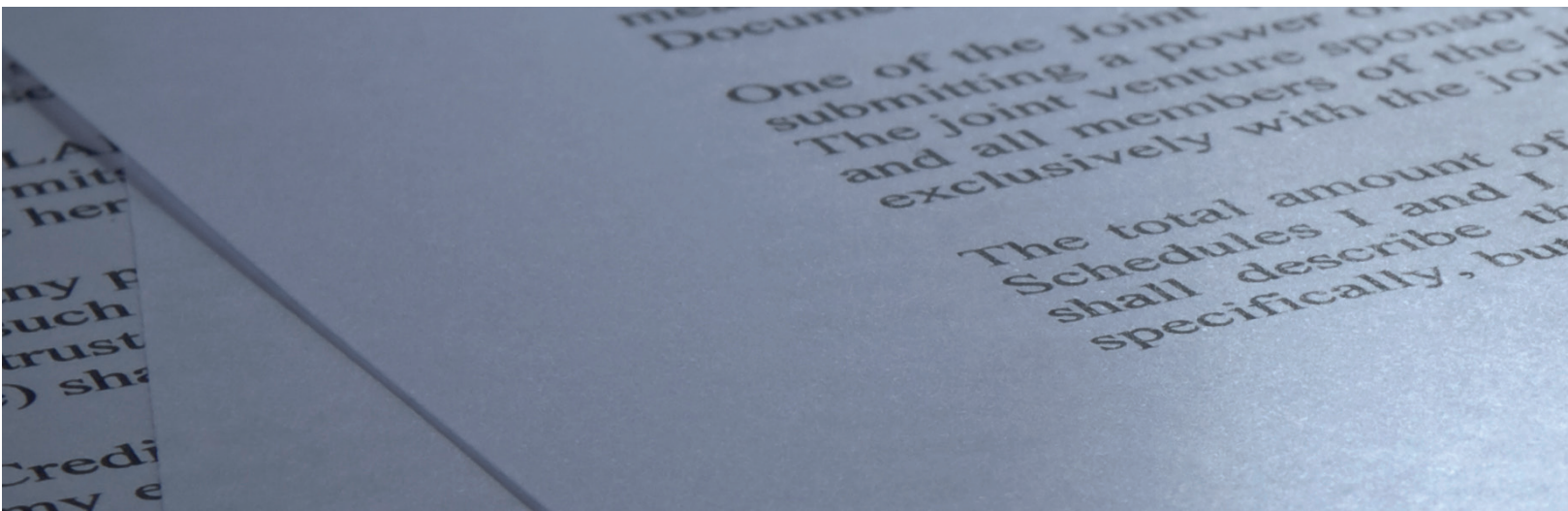
- a. Missing documentation required by local councils' procedures;
- b. Expired, unsigned or unavailable contracts;
- c. Procurement made by direct order without obtaining any quotation or through the issue of a call for tender;
- d. Quotations requested instead of tenders for purchases/services exceeding the stipulated threshold;
- e. Commissioned works outside the parameters set in the contract specifications;

- f. Closing dates for tenders less than one month from date of publication;
- g. Inappropriately prepared tender schedules, or schedules that have not been signed off on opening of the tender box (by a minimum of two local Councillors together with the Executive Secretary);
- h. New tenders issued during the year not always awarded to the cheapest bidder;
- i. Letters of Acceptance not issued to contractors on award of tender;
- j. Required bill of quantities/bid bonds/performance guarantees not provided by contractors, neither requested prior to signing of the contracts, nor ever collected;
- k. Failure to publish the name of a winning contractor and the reason justifying the decision;
- l. Councils not in possession of third party liability insurance;
- m. Works carried out by the service provider which are not certified by a contract manager;
- n. Councils overcharged by a contractor for services already covered;
- o. Invoiced rates that could not be reconciled with contracted rates;
- p. Copies of the adjudication report for a tender not filed, nor results published on the council's notice board;
- q. Local councils relying only on certifications by the supplier's architects in case of certification of projects; and
- r. Retention money not withheld to cover the council in the case of defective work.

1.3 Stakeholder Analysis

1.3.1 NAO considers the following stakeholders as having varying degrees of influence on the overall contract management process at local council level across Malta and Gozo. These include the:

- a. Department for Local Government (DLG);
- b. Local Councils' Association;
- c. Local Councils;



- d. Mayors and Councillors;
- e. Executive Secretaries; and
- f. Contract Managers/Architects/Surveyors.

Department for Local Government

1.3.2 The DLG was established on 1 June 1993, in synchronisation with the coming into force of the Local Councils Act (2011, Cap. 363). Assuming management and administrative responsibility for all local councils, DLG acts as a focal point, addressing issues arising at the local council level and strategic issues arising at ministerial level. DLG ensures that local councils have the legislative authority to respond to local needs, while offering management and administrative support along with statutory funding to all local councils. It also acts as a stimulant, furthering the devolution and decentralisation processes.

1.3.3 While facilitating the overall functioning of the local councils, the Department also ensures that they operate within the parameters of the law and make proposals for the development of policy options in consonance with the programmes set by central Government. It reviews legislation and procedures to enable local councils to function efficiently and effectively and assists in the development of strategic action plans and implementation programmes.

1.3.4 The Department has four main objectives:

- a. Coordination of all initiatives by other ministries and departments that directly or indirectly affect the functions and operations of local councils;
- b. Issuing circulars to all councils to guide them in their operations and ensuring that there is uniformity of

application and implementation of legislation and procedures;

- c. Supervising and monitoring councils’ functions and operations, in particular on areas relating to expenditure, in order to ensure compliance with legislation; and
- d. Offering training and personal development initiatives to all council members, Executive Secretaries and council staff.

Local Councils’ Association

1.3.5 The Local Councils’ Association was established in 1994, through the issue of the Local Councils (Association) Regulations (2011, S.L. 363.06). The regulations state that: *“There shall be an Association representing all the Local Councils with the aim of protecting and promoting the common interests of all the Local Councils and to represent, solely for the purposes of these regulations, all Local Councils in Malta and overseas, and on international associations of local government authorities.”*

1.3.6 The aims of the Association also include those of protecting and promoting the common interests of local councils, as well as offering consultancy services, training on its own initiative and in conjunction with any other council or councils. The Association has its own distinct legal personality and is empowered to enter into contracts. It currently represents all 68 local councils in Malta and Gozo.

Local Councils

1.3.7 Every locality is bound by law to have a council which shall have all functions as granted by the Local Councils Act (2011, Cap. 363). As outlined above, the council shall be a statutory local government authority



having the power of entering into contracts and transactions in order to perform all of its functions as established by means of the Local Councils Act.

1.3.8 Article 33 of the Local Councils Act lists all the functions under the direct responsibility of the council. Among others, such functions include:

- a. Providing for the upkeep and maintenance of any street or footpath;
- b. Providing for the collection and removal of all refuse, for the maintenance of cleanliness and for the upkeep and maintenance of all public conveniences, dustbins and other receptacles for the temporary deposit and collection of waste, and to ensure that these are accessible to all persons;
- c. Providing for the establishment, upkeep and maintenance of children’s playgrounds, public gardens and sport, cultural or other leisure centres;
- d. Providing and maintaining proper road signs and markings, providing for the installation and

maintenance of bus shelters, establishing and maintaining pedestrian and parking areas and providing for the protection of school children in the vicinity of schools;

- e. Assisting citizens by providing information relating to consumers’ rights, transport, communications, tourist facilities, taxation, social security, public health and other matters of public utility and interest; and
- f. As part of a national scheme, providing for the establishment, upkeep and maintenance of health and rehabilitation centres, government dispensaries, health district offices and homes for senior citizens, day centres for senior citizens, and night care centres.

1.3.9 In fulfilling the above listed responsibilities, local councils enter into a number of contracts regulating the general provision of services. Table 1 summarily illustrates the different contracts and major areas subject to local council agreements.

Table 1: Examples of Local Council Agreements

Street sweeping and cleaning	Emptying of open skips	Bulky refuse service
Cleaning of public toilets	Local wardens	Hiring of machinery
Resurfacing of streets and paving works	Street lighting	Printing services
Upkeep and maintenance of parks, gardens, public convenience, traffic signs, playing fields	Collection of mixed household waste	Supply of asphalt, concrete, garden furniture, lamp-posts, luminaries, library unit, road marking paint, and bus shelters
Supply and installation of closed-circuit television systems	General upkeep and maintenance	Services by individuals (such as accountants, architects, lawyers, handymen)

Source: Department of Contracts, 2008

1.3.10 As illustrated in Table 1, local councils enter into various contracts, yet for the purposes of this audit, NAO limited its scope, exclusively focusing on road resurfacing and the collection of mixed household waste. In the case of the latter type of contract, this service was previously referred to as the collection and separation at source of household and commercial waste. Further details and justification regarding the choice and scoping of focus ensues in Section 1.4.

Mayors and Councillors

1.3.11 The Local Councils Act (2011, Cap. 363) describes the Mayor as the representative of the council for all effects under the Act, who presides over all meetings of the council and supervises all of its functions. The Mayor is entrusted with the responsibility for furthering the objectives and provisions of the Local Councils Act within the locality. Moreover, the Mayor, together with the Executive Secretary, is tasked with the legal and judicial representation of the council, and they may sue and be sued on its behalf, even where the case refers to acts committed prior to the commencement of their term of office or appointment, as the case may be.

1.3.12 Supporting the Mayor are various Councillors, the number of which is directly determined by the size of the respective local council. Each Councillor is tasked with the oversight of particular areas of responsibility, depending on their assigned portfolio of duties.

Executive Secretaries

1.3.13 The Executive Secretary is requested by law to be the executive, administrative and financial head of the council. Following amendments to Article 49 of the Local Councils Act (2011, Cap. 363), Executive Secretaries are now recognised as public service officials. He/she shall be employed on a full-time (in localities where the population exceeds 2,000 persons) or on a part-time basis. The Executive Secretary is responsible for the:

- a. Issuing of all notices and preparation of agendas in consultation with the Mayor, while also attending all meetings;
- b. Drawing up and signing the minutes of any council and/or committee meetings;
- c. Submission of detailed annual administrative reports to the Mayor who then forwards such reports to the council for approval;
- d. Submission of estimates of income and expenditure of the council during the following financial year;

- e. Execution of other administrative duties as may be detailed by the Mayor, in accordance with policies decided and delegated by the council;
- f. Issuing of all orders bearing an expense as approved by the council; and
- g. Execution of the legitimate decisions of the council and stopping any activity or initiative planned by the council and which is in breach of the law, regulations, national or local strategies or policies, or any activity or initiative which has not been approved by a council decision.

Contract Managers, Architects and Surveyors

1.3.14 Contract Managers, Architects and/or Surveyors render services to various local councils, essentially managing one or more contracts or providing technical advice in relation to their particular area of expertise. For matters of consistency, this audit report makes reference to the term ‘Council Representative/s’, which encompasses Contract Managers, Architects and Surveyors rendering services to the reviewed local councils. On instances when particular reference was intended and directed at the specific role of Contract Managers, Architects and Surveyors, this is indicated through specific statements to this effect. This is particularly the case in Chapter 4, where the assignment of responsibility and role delineation is amplified upon.

1.3.15 According to the Local Councils (Tendering) Procedures (Department for Local Government, 1996), the engaged Council Representative, acting as a Contract Manager, liaises with the local council and the contractor whose contract is being managed. The duties and tasks that are to be fulfilled in this respect include:

- a. Managing and supervising the contract;
- b. Cooperating with and advising the local council and contractor on technical matters, if so required;
- c. Ensuring the satisfactory execution of contractual work;
- d. Certifying the partial or full completion of work;
- e. Approving payment to the contractor for services rendered;
- f. Bringing to the immediate attention of the local council any infringements or omissions with regard to the contract by the contractor; and
- g. Assisting in the formulation of works and recommending work prioritisation, if necessary, to local councils.

1.4 Objectives and Scope of the Study

1.4.1 The main objective of this performance audit was the examination of contract management capabilities and practices applied by local councils. The study sought to delineate the key limitations and challenges faced by local councils in the application of contract management. Subsequently, the highlighting of such limitations and challenges was intended to serve as a springboard for the identification of opportunities key to the overall amelioration of contract management practices and processes across local councils.

1.4.2 As a secondary and indirect objective, albeit also of significant importance to those aforementioned, this performance audit aimed to encourage the development and dissemination of good practices, particularly so in those local councils where contract management is not as comprehensively developed as circumstances so warrant.

1.4.3 The overall approach and perspective adopted in addressing contract management across local councils was one grounded in the principles of performance auditing. The audit team intentionally steered away from issues solely in the domain of compliance to financial regulations and procedures, focusing instead on the management of tendering regulations and procedures. NAO considered such an approach to be more conducive toward its overarching objective of identifying good practices in contract management across local councils.

1.4.4 This audit adopted a comprehensive view of the entire contract management process, commencing at the initial determination of specifications/requirements in tender/contract documentation, to the tendering/contract award process and the actual management of the contracts. NAO considers these activities to be best understood when conceptualised as a continuum rather than as distinct phases, with contract management being planned for from the start of the procurement process. More specifically, it was envisaged that the audit's focus would converge and gravitate around the key elements and issues emphasised in Section 1.1.

1.4.5 As indicated in paragraph 1.3.10, this study focused on two types of contracts, that is, contracts relating to road resurfacing and others relating to the collection of mixed household waste. The selection of these two types of contracts was based on the criterion of materiality, with road resurfacing and the collection of mixed household waste generally ranking as the two highest sources of expenditure across the selected local councils reviewed during the pilot study (further details ensue in Section 1.5).

1.4.6 In its analysis of the principles of contract management, NAO focused its attention on the most recent contracts in force that addressed the identified areas of service provision. NAO did not review, or include in the scope of this study, road resurfacing contracts operating under a public-private partnership (PPP) arrangement. The principles and issues arising from such contractual arrangements, and their subsequent implications on contract management are intrinsically different from the standard contracts employed by local councils in road resurfacing. Such a decision was based on the fact that not all local councils were participating in PPP at the time that fieldwork in relation to this audit was being carried out. Moreover, the PPP contractual set-up within the context of local councils was a relatively new method of undertaking works and services, with the overall roll-out of such arrangements only midway towards completion.

1.5 Methodology

1.5.1 In-depth research was undertaken around the central topic of contract management. Efforts at building a thorough understanding of this subject matter involved focusing on ancillary issues, such as internationally established good practices in the field of contract management, particularly concentrating on applicable legal frameworks and on the efficient and effective administration of local councils. Attention was also directed at issues and concerns identified through recent NAO financial and compliance audits. Simultaneously, the pervasive importance of the macro-environmental backdrop that contextualises the work of local councils in the immediate setting was factored in.

1.5.2 Further to the detailed review of available literature and documentation, an equally valid source of data were the numerous stakeholders involved in the contract management lifecycle, most notable among which are DLG and the actual local councils involved in this audit. Complementing the issue analysis exercise were a number of source documents compiled by various reputable authorities (Australian National Audit Office, 2007; United Kingdom Office of Government Commerce, 2002 & 2008), which together served as the basis for the development of a list of semi-structured audit questions and sub-questions that reflected conditions and requirements in the 68 local councils across Malta and Gozo.

1.5.3 Prior to the development of these semi-structured audit questions, NAO carried out a pilot study involving three local councils, namely Qormi, Tarxien and Gharghur. The main aims of this preliminary pilot study were to test and assess the:

- a. Feasibility of the considered exercise;
- b. Relevance and significance of the selected audit questions and sub-questions;
- c. Interviewing techniques that could be used in successfully carrying out this audit;
- d. Type of information and supporting documentation that could be potentially collected from the eventual case study local councils;
- e. Typical challenges faced by local councils using current approaches to contract management;
- f. The interest of the targeted councils to participate in this exercise; and
- g. Added value that can be obtained from the full study.

1.5.4 Following completion of the aforementioned pilot study, NAO readjusted and narrowed the scope of this performance audit, targeting different contracts to those originally reviewed. Due to this reason, information gathered from these three local councils was not incorporated into the main study.

1.5.5 The two sets of semi-structured interviews, intended for final deployment in the collection of required information, were revised and finalised upon completion of the pilot study. Supplementary documentary evidence was requested whenever deemed necessary or feasible. While one semi-structured interview targeted the role of Executive Secretaries, the other set of questions addressed that of the Council Representatives engaged with the various local councils. On occasion, Executive Secretaries interviewed for the purposes of this study were also accompanied by additional council members, including Mayors and Councillors, as well as other personnel. These two interview schedules are reproduced for ease of access in Appendix A and Appendix B respectively.

1.5.6 The semi-structured interviews administered to Executive Secretaries and Council Representatives were followed by the further collection of information and documentary evidence. This case study methodology allowed for the triangulation and subsequent verification of the findings arrived at following the review of primary data. Local councils were selected by means of stratified random sampling. In this case, the two strata applied in sample selection were budgetary allocation and region. The budgetary variable was based on data provided by DLG relating to the 2011 financial allocations for local councils, and is reproduced in Appendix C. The regional subdivision of all local councils was based on the Eleventh Schedule of the Local Councils Act (2011, Cap. 363), which is represented in Appendix D. Two local councils were selected from each region (five regions in all), one with a budgetary allocation of above or equal to €350,000, and another below the same indicated amount. The selected local councils against established selection strata are presented in Table 2.

1.5.7 The Executive Secretaries of the selected local councils were asked to set up a meeting with NAO. All of the 10 Executive Secretaries responded to NAO's request and several meetings were held at the selected local councils. Meetings and fieldwork undertaken at the various local councils was carried out between June 2011 and September 2011. Information collected during these interviews were minuted and confirmed by the interviewees themselves. Data collected was also processed and analysed by NAO. Key issues arrived at by means of this methodology were evaluated and ranked in terms of importance. An interim report was drawn up based on the developed structure, and was then used in the development of the final report.

1.5.8 NAO also sent questionnaires to the different Council Representatives engaged with the sampled local councils, after details were provided by the respective local council's office. This latter questionnaire, sent to Council Representatives, was to be completed and submitted electronically to NAO. The administration of this questionnaire corresponded in terms of timing to the aforementioned fieldwork carried out at the various

Table 2: Sample Selection Matrix

Budgetary Allocation	Region				
	Northern	Central	South Eastern	Southern	Gozo
Less than €350,000	Mtarfa	Iklin	Kalkara	Mqabba	Gharb
Greater than or equal to €350,000	San Pawl il-Bahar	Birkirkara	Paola	Żurrieq	Nadur

local councils. From the 12 Council Representatives that received NAO's questionnaire, and despite the various reminders sent by email and followed up by telephone calls, only five submitted the completed return. The five Council Representatives who submitted their completed questionnaire were engaged by the Birkirkara (two Council Representatives), Nadur (two Council Representatives) and San Pawl il-Baħar Local Councils, while all remaining Council Representatives corresponding to the other localities involved in this study (Table 2 refers) failed to provide a response.

1.6 Structure of the Report

1.6.1 The rest of the report is structured around the following key areas, while each chapter is subsequently followed by a series of corresponding conclusions and recommendations relating to the content addressed:

a. Chapter 2 – Inception, Design and Risk: The Pre-Tendering Phase

Chapter 2 provides a comprehensive overview of the system utilised in the inception and prioritisation process of contract design. This first stage in the contract management lifespan is based on the identification of needs that are to be addressed, the method employed in assigning different levels of priority to the identified and necessary works or services, and the budget allocation that enables all of the above. Furthermore, this chapter delves into the process of tender documentation design, focusing specifically on the building of specifications, the assignment of responsibility and the establishment of service level requirements. In conclusion, this chapter focuses on the management of risk, which is an integral aspect of the contract management function.

b. Chapter 3 – Regulation of the Tendering Process: A Contract Management Perspective

This chapter presents a comparative analysis of the structures, systems and practices that the selected case studies applied throughout their respective calls for tenders and tender submission processes. In addition, focus is channelled towards the evaluation and examination of submitted tenders, as well as the subsequent decision-making process associated with the award of contracts. This analysis aims to highlight capability requirements deemed conducive to full compliance with legal obligations and sound management practices that are to be adhered to throughout the processes. The effective application of these capabilities would ensure fairness, high levels of efficiency, selection of the most favourable contracts, professionalism, accountability and transparency, as well as the pursuance of ethical behaviour.

c. Chapter 4 – Contract Management Considerations at the Post-Award Stage

This final chapter focuses on a number of aspects relevant to the contract management process at the post-award stage. Attention is first directed at the assignment of contract management responsibilities and the delineation of corresponding roles. A number of key performance issues are subsequently presented, including the measurement of contractor performance, certification and payment for completed works or services, the assessment of the Council Representative's performance, as well as, quality of service, business continuity issues and contingency planning, among others. In conclusion of this chapter, the contractual change management process is reviewed, and consequently followed by an analysis of the relationship between the contracting local council, the contractor and the Council Representative.

d. Appendix A – Executive Secretary Interview Schedule

This interview schedule incorporates the list of questions put forward to the Executive Secretaries selected to form part of this audit by means of the random sampling exercise referred to in Section 1.5. This research tool constituted one of the main sources of data upon which the audit was based.

e. Appendix B – Council Representative Interview Schedule

The interview schedule presented in Appendix B embodies the questions sent to the various Council Representatives, being Contract Managers, Architects and Surveyors. This semi-structured questionnaire complemented the information gathered from the interviews carried out with Executive Secretaries and other source documentation collected from the sampled local councils.

f. Appendix C – 2011 Budgetary Allocation of Local Councils

These figures identify the budgetary allocation of local councils as computed and presented by DLG for 2011. This variable established one of the strata applied in the sample selection by NAO.

g. Appendix D – Regional Subdivision of Local Councils

The other stratum applied in the sample selection was the regional subdivision of local councils as represented in the Eleventh Schedule (Article 37) of the Local Councils Act (2011, Cap. 363). This appendix reproduces such regional subdivision.

h. Appendix E – Documents Required for Tendering and Contracts

This extract from the Local Councils (Tendering) Procedures lists the tender documents that are to be supplied by the local council to the prospective tendering party, the tender submission documents to be delivered by the tendering party and the contract/agreement documents.

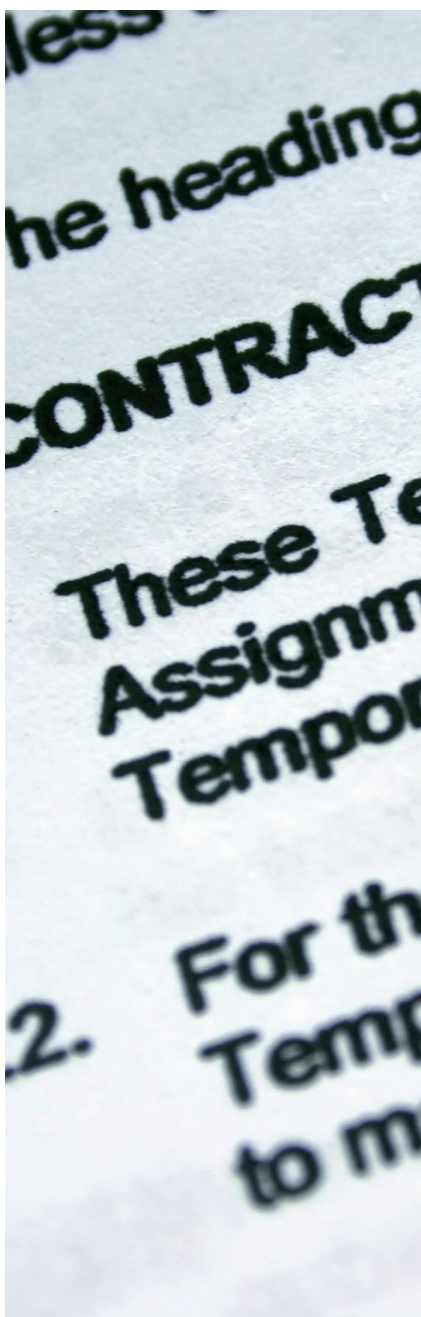
i. Appendix F – Requisites for Qualification as Contract Manager

Appendix F details the minimum requisite qualifications pertinent to the Contract Manager with respect to each

individual contract. This section was extracted from the Specific Conditions of Contract and Specification for Services, Contract for Local Council Contract Management, which forms part of the Local Councils (Tendering) Procedures.

j. Appendix G - References

Finally, a selection of the documents utilised and consulted along the various stages of this audit, are presented for ease of reference.



Chapter 2

Inception, Design and Risk: The Pre-Tendering Phase

Chapter 2 – Inception, Design and Risk: The Pre-Tendering Phase

Chapter 2 provides a comprehensive overview of the system utilised in the inception and prioritisation process of contract design. This first stage in the contract management lifespan is based on the identification of needs that are to be addressed, the method employed in assigning different levels of priority to the identified and necessary works or services, and the budget allocation that enables all of the above. Furthermore, this chapter delves into the process of tender documentation design, focusing specifically on the building of specifications, the assignment of responsibility and the establishment of service level requirements. In conclusion, this chapter focuses on the management of risk, which is an integral aspect of the contract management function.

2.1 Introduction

2.1.1 The contract management lifecycle, broadly presented in the preceding chapter commences with the pre-tendering phase. This first phase is initiated through the identification of needs that are to be presumably addressed through the contracted services or works. Such needs are commonly assessed by means of feasibility studies, which essentially seek to estimate the variables of time, cost and risk. In this phase, a service, business problem or opportunity is identified and a case that provides alternative solutions for operation is defined. The need for a service, or project, may be identified through multiple avenues, possibly emerging as a result of market demand, a business need, a customer-driven request, a technological advantage, a legal requirement and/or a social need.

2.1.2 Once the needs are identified, research should be conducted to prioritise the need for one project relative to others that are notionally competing for the local council's limited funds. After the needs have been identified and ideas for their coverage have been generated, priorities have to be set. Although multiple proposals may be addressed, shortage of resources, budgetary, and other constraints do not allow all needs to be simultaneously satisfied and so priorities have to be set. After the decision to proceed

with a project has been reached and priorities are set, the individuals chosen to design and implement such a plan should be appointed, hence the particular relevance of the local council's respective Executive Secretary and Council Representative.

2.1.3 The aforementioned feasibility study addresses the likelihood of each solution and option in the context of their corresponding business problem or opportunity. It is by means of this process that the inception phase assumes a tangible form, whereby the expected outcomes of tasks shifts from isolated requirements towards a more holistic approach. The recommended solution and design should outline the scope, objectives, activities and deliverables, roles and responsibilities of the individuals involved, the estimated budget allocated and possible risks and constraints.

2.1.4 Subsequently, when such needs for goods, services or works have been established and planned, and adequate funds have been identified, the tender documentation is then drafted, based on the identified needs. A clear and sound definition of needs is the prerequisite for efficient tender documentation. Considerable input in terms of time and expertise is required in contract design and planning, which often entails following a structured process that covers: definition of needs, the appropriate and correct procurement procedure, and other clauses and terms of the tender documents that regulate the tendering process.

2.1.5 The tender documentation clearly and accurately should describe what the contracting entity requires in clear and accurate detail, consequently highlighting what the supplier is expected to provide. Clear, accurate and complete specifications serve as the foundation of any purchase of goods, services (including consultancies) or building works. Tender specifications should clearly outline the requirements for these items, whether the purchase is for a small, simple item, or a large, complex item, in order to ensure the best chance of obtaining what the contracting authority really needs.

2.1.6 Following the successful identification of needs and specifications, which essentially constitutes the first stage in the pre-tendering phase, focus is then shifted onto the design and preparation of tender documentation. This second stage gravitates around the formulation of suitable and accurate technical specifications, which define the characteristics required of a particular product or service. In delineating a desired product or service's technical specifications, the contracting authority is effectively ensuring that it fulfils the use for which it is intended.

2.1.7 Characteristics that are commonly incorporated as technical specifications include levels of environmental performance, design for all requirements (including accessibility for disabled persons) and conformity assessments (relating to performance, safety or other dimensions), including procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, as well as production processes and methods. They shall also comprise rules relating to design and costing, testing, inspection and acceptance conditions for works, as well as methods or techniques of construction. Also incorporated are all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve.

2.1.8 Technical specifications serve to:

- a. Define requirements, which essentially encompass the process of finding out and writing down what the contracting authority wants and what is specifically required;
- b. Guide the supplier, whereby specifications provide guidance to potential suppliers, so they can supply what is demanded from the contracting authority;
- c. Facilitate agreement with the supplier. In so doing, the specifications become the basis for the contract with the supplier, thereby implying a clear agreement about what it is that is required by the contracting authority and therefore what is to be supplied. The clearer the specifications, the easier it is to manage the contract. If specifications are unclear, this can result in inefficiency, confusion, disagreement and conflict, possibly leading to litigation; and
- d. Encourage future evaluation, which is rendered possible through clear and complete specifications, enabling the contracting authority to evaluate whether the supplier provided what it actually wanted.

2.1.9 The final stage of the pre-tendering phase addresses the management of risk. This is a centrally

important aspect of the contract management process, mitigating uncertainty on the outcome of established contract objectives. In order to maximise the probability and consequences of positive events and minimise the probability and consequences of adverse events to contract objectives, risk management clauses and processes are established in the tender documentation.

2.2 Inception and Prioritisation

Identification of Needs

2.2.1 As outlined in the preceding section, it is imperative that contracting authorities, such as is the case with local councils, have the appropriate systems in place for the identification of needs. Although a variety of methods of data collection were utilised by local councils, the results of interviews with Executive Secretaries all indicated that no formalised systems for the identification of needs were in place. Such a process was informally carried out, mainly by means of discussions with a number of stakeholders. Under such circumstances, agreement on the identified needs was attained at council meetings and upon further consultation with the respective Executive Secretary. Such meetings also served to incorporate other sources of informal feedback in the identification loop, particularly, complaints submitted by residents and suggestions forwarded by other council members upon their own initiative. The Nadur Local Council, as indicated by the Executive Secretary, tapped further into public opinion through the organisation of specific events, where residents could express their concerns.

2.2.2 One particular Executive Secretary further elaborated on how each elected council had its main areas of interest, which were essentially arrived at through the fusion of the individual priorities put forward by constituent council members. For example, while one group of Councillors focused on the refurbishment and amelioration of recreational areas, others prioritised the resurfacing of roads. Factors outside of the immediate local council's environment also influence the identification of needs, such as is the case with the approval of projects funded by the European Union, thereby prompting the redesign of intended plans.

2.2.3 NAO noted that the process of identification of needs and the assignment of responsibility of such practices varied from one local council to another. However, data collected by means of interviews with Executive Secretaries indicated that the identification of needs and corresponding decisions pursuant to this were mainly the responsibility of Councillors. In this context, Councillors concentrated their efforts on recognising the most critically important necessities of the given locality to its respective residents, thereby determining the nature of undertaken contracts of works or services.



2.2.4 The role played by the Executive Secretary was also deemed to be of paramount importance in the identification of local council needs. This was rendered evident by the numerous occasions in which Executive Secretaries were consulted in this respect. In other cases, Executive Secretaries elaborated on how their involvement in need identification was carried out in close collaboration with the Mayor, particularly with regard to the address of shortcomings within the locality. Operating in this manner, identified needs were presented at council meetings, where a final decision would eventually be taken by the elected Councillors. Further to the above, the Executive Secretary provided significant administrative support, in the form of reminders, complaints and suggestions relating to already identified and prospective needs.

2.2.5 The Żurrieq Local Council's Executive Secretary remarked that there was no single appointed person tasked with the identification of needs for all services and works provided by the council, however, each Councillor was responsible for his/her own portfolio. Complaints received by the local council, if valid, were passed on to the respective Councillor and presented at council meetings. Adhering to such processes contributed to the identification of needs in a way that allowed the local council to tap on what residents perceived as necessary. The Paola Local Council's Executive Secretary also remarked that although the final decision for identification of needs is taken by the council, the conclusion was reached after advice was elicited from the local council staff and the architect.

2.2.6 Although none of the Executive Secretaries indicated that Council Representatives were responsible for the identification of needs, the interviewed Council Representatives themselves had a different view on the matter. Those who provided information to NAO, all agreed that they were in fact involved in the identification of needs for a particular service. Two of the respondents highlighted the fact that tenders were prepared following an in-depth study of the requirements and specifications of

the desired end product. They stated that such a stage in the contract management process is considered to be a crucial aspect of the design process. The need to discuss and plan for such details with stakeholders is also considered as an important step at this stage.

Prioritisation

2.2.7 Prioritisation is mainly determined by the urgency of matters at hand, while also taking into account the resources that are available. From the 10 local councils interviewed, five indicated that they implemented systems of prioritisation. One particular Executive Secretary remarked that prioritisation was an imperative, since, in his opinion, local councils were administered by crisis management. Although the above referred local councils have systems of prioritisation, simultaneous attention must be channelled towards a number of services that the locality cannot do without.

2.2.8 The other five Executive Secretaries replied that no system of prioritisation was employed, as either everything was considered to be of equal importance, or there were no structured patterns defining how needs were to be ranked. However, under such circumstances, informal means of prioritisation were still implemented. In practice, projects that affected the highest number of local residents were ordinarily given precedence, while in the case of road resurfacing, areas that were most severely damaged were prioritised over other, less damaged areas.

2.2.9 From the group of Executive Secretaries who mentioned that prioritisation systems were employed, only one confirmed that databases of such works were in fact kept. The Birkirkara Local Council recorded all works that needed to be carried out, identifying each according to its relative priority. When these tasks were subsequently completed, the date of completion and the name of the contractor who executed the job were recorded.



Budget Allocation

2.2.10 Executive Secretaries agreed that the budget allocated to each of their respective local councils was the main area of concern with respect to the effective management of local government functions. In addition, the Executive Secretaries further elaborated on how the council's budgetary allocation proved to be a pervasive and overarching concern, bearing direct influence on the systems of prioritisation of activities and projects. While the vast majority of Executive Secretaries stated that they were constrained from proceeding with scheduled projects due to allocated budget limitations, this also bore effect on the award of contracts, shifting further weight on price rather than quality.

2.2.11 One of the interviewed Executive Secretaries indicated that the budget allocation for local councils was meant to be calculated by the Field Services Unit, as the allocation was to take into consideration various aspects pertinent to such an exercise. These included area of parks, gardens and soft areas; road lengths; and number of properties. However, such a Unit ceased to exist and it was not clear to local councils how the allocation was calculated, particularly if such databases were not being updated.

2.2.12 During the interviews carried out, it was indicated that local councils must first assign a substantial part of the amount allocated by DLG for the administrative running of the office and other services that local councils were bound to provide. Subsequently, the remaining allocation was then used for capital expenditure. However, various Executive Secretaries commented that DLG had in fact ring-fenced funds for road maintenance service provision.

2.2.13 In addition, a number of Executive Secretaries mentioned how resources were further strained when Government introduced additional schemes to be

administered and funded by local councils, despite not being originally budgeted for. Executive Secretaries stated that such schemes put further pressure on local councils, leaving them with no alternative but to withdraw from other projects they had intended to undertake.

2.2.14 At a more strategic level, Executive Secretaries also expressed concern with regard to the allocation provided to local councils based on the locality's size. Large local councils complained that the budget was not sufficient due to the fact that they incorporated a large area. One clear example was the San Pawl il-Baħar Local Council, which incorporates Qawra, Buġibba, Xemxija, Burmarrad, Bidnija and Wardija. In addition, the Executive Secretary of the San Pawl il-Baħar Local Council further commented on how this locality was subject to considerable seasonal variations in terms of resident population, which were not reflected in the Council's financial allocation. On the contrary small local councils complained that the present system of allocation put them at a disadvantage, since the adjustment fund varied considerably and it did not take into consideration that a number of fixed costs were incurred irrespective of the size of the locality.

2.3 Design of Tender Documentation

Specification Design

2.3.1 As indicated in Chapter 1, the Local Councils (Tendering) Regulations (2011, S.L. 363.03), state that every call for tenders shall follow the tendering procedures. The Local Councils (Tendering) Procedures, which were drafted in 1996 by the Department responsible for Local Government, give a detailed overview of the various aspects involved in the tendering process and subsequent management by the local council.

2.3.2 The Tendering Procedures provide local councils with instructions on how to appropriately manage and

administer the various sub-processes, including publicity, closing date, examination and award of tenders. Appendix P3.I of these procedures also lists the tender documents that are to be supplied by the local council to the prospective tendering party, the tender submission documents to be delivered by the tendering party and the contract/agreement documents (Department for Local Government, 1996). For ease of reference, this list of documents is reproduced under Appendix E.

2.3.3 In addition, Appendix P3.II of the procedures presents the required instructions to tendering parties that are to be supplied by the local council to prospective tenderers. Moreover, Appendix P3.IX of these tendering procedures, provides local councils with the general conditions of contract for:

- a. Services;
- b. Goods;
- c. Leasing of Immovable Property; and
- d. Management of Immovable Property.

Due to the nature of this Performance Audit and the type of contracts selected for further analysis by NAO (collection of mixed household waste and resurfacing of roads), the study will limit its focus to the general conditions for the provision of services.

2.3.4 The general conditions listed in the Tendering Procedures provide an overview of how the contract should be managed, presenting details on matters relating to confidentiality. Such conditions also cater for the performance of services rendered, together with the vehicles, plant and equipment used by contractors. Health and safety, insurances, nuisance, damage and security are among the matters regulated by these conditions. The contractor is also regulated by these procedures should the awarded contract be sub-contracted to third parties. In addition, the conditions make reference to the performance bond to be provided by the contractor, detailing how defaults on the part of the supplier or the local council are to be addressed. Settlement of disputes between parties, termination and postponement of works, and variations in the amounts to be paid are also targeted in these conditions.

2.3.5 Apart from the general conditions, Appendix P3.X of the same tendering procedures provides the specific conditions of contract and specifications for the various services rendered by local councils. The two contracts selected by NAO, that is, collection of mixed household waste and road resurfacing also form part of these specifications. The collection of mixed household waste contract was reviewed by DLG, and a revised version made available to local councils. In addition, the road resurfacing contract was also revised, yet this revision related to the new modus operandi, under the PPP arrangement. The

specific conditions of contract and specifications include the nature of work involved, the scope of the contract, work methods, duration of the contract, quality of service levels and standards, variations of service, management fees and complaints. This also includes appendices outlining council requirements, contract details, area maps, schedule of unit cost rates, pro-forma bills of quantities and council details.

2.3.6 The Executive Secretaries were asked for feedback with regard to the conditions and specifications provided by DLG. Seven out of the 10 Executive Secretaries interviewed stated that the documentation provided was outdated. In fact, almost all Executive Secretaries further confirmed that these conditions and specifications have been in place and have not been revised or altered in any way since 1996, and therefore inadequately reflect current needs. The sole exceptions to the above stated were the specific conditions of the collection of mixed household waste contract and the road resurfacing contract, which in the latter case was issued anew by virtue of the PPP arrangement.

2.3.7 Due to the limitations highlighted above and further to views put forward by some Executive Secretaries, this set of regulations only incorporated basic contracts and did not cater for more recently conceptualised schemes such as twinning projects. Therefore, local councils had to make up for such deficiencies by designing part of the documentation themselves. According to some of the interviewed Executive Secretaries, this task was complicated by the fact that they had not been provided with specific training or detailed instructions in this regard.

2.3.8 However, DLG indicated that midway through 2011, a specialised unit was established focusing on the provision of training to elected and executive local government officials. This training unit, in collaboration with the Centre for Development Research and Training, addressed various areas relevant to the role of such officials, including among others issues relating to the principles of good governance, the management and improvement of performance, public procurement, and the management of risk.

2.3.9 Although the majority of Executive Secretaries complained about the specifications set, others seemed confident in making use of such conditions. Two interviewees remarked that DLG advised local councils that the general conditions and instructions to tendering parties should be similar for all contracts, while the specific conditions should be designed by the local councils, as these must be tailored to the locality's particular needs and available resources.

2.3.10 As alluded to earlier, the outdated procedures have indirectly encouraged Executive Secretaries to amend

such conditions and specifications, with some going a step further by setting up collaborative arrangements across local councils, thereby seeking to capitalise on time and resources assigned. The Paola Local Council's Executive Secretary described how such arrangements effectively avoid the unnecessary duplication of work, amply elaborating on what NAO considers to be a good practice.

2.3.11 Although all of the Executive Secretaries agreed that local councils do add and/or amend to the specifications in order to reflect the needs of the locality, some of them further commented that amendments were made mainly to the specific conditions of the documentation and not to the general conditions. One Executive Secretary commented that local councils were left with no alternative since a number of clauses did not reflect current necessities.

2.3.12 NAO obtained a diversity of views when asking Executive Secretaries on whether it was within the remit of local councils to add or amend the specifications provided by DLG. While eight interviewees reported that it was within their remit, two other Executive Secretaries put forward divergent views. Those in agreement further added that whatever the case, changes to the specifications must be introduced in order to reflect the locality's needs, clarifying that such amendments must only be made to the specific conditions, leaving the general conditions unaltered. The Surveyor at the Birkirkara Local Council further commented that certain clauses were contradictory and equally stringent to the contractor and the council alike, arguing that a number of clauses made no sense, leaving the local council with no alternative but to modify the documentation.

2.3.13 Although the majority of Executive Secretaries remarked that it was within the remit of local councils to change part of the conditions and specifications of tendering documents, the Local Councils (Tendering) Procedures state otherwise. In fact, Clause 02 of Appendix P3.IX states that:

- a. *No omission from or addition to or variation of these conditions shall be valid or have any effect unless it is agreed to in writing by the Director of the Department of Local Councils and ratified by the local council and the Contractor; [and]*
- b. *Save for an omission, addition or variation agreed pursuant to paragraph (a) of this clause any provision inconsistent with these conditions contained in any other document or in any oral agreement is agreed to be void and without effect.*

2.3.14 NAO reviewed the documentation provided by the local councils involved in the study. From this review it was noted that, as stated by a number of Executive Secretaries, changes and additions to the conditions and

specifications set out by DLG were effected. NAO noted that major changes and additions were made with regard to the road resurfacing contracts, where documentation was largely of a technical nature, while in the collection of mixed household waste contracts, almost all local councils used the template provided by DLG. In addition, even in the case of amended road resurfacing contracts, some local councils nonetheless adhered to the guidelines provided by DLG as a basis and used a number of clauses in the modified documentation.

2.3.15 One important aspect relating to this point was that some local councils actively maintained expired contracts, which had been long outdated and therefore did not feature the newer version of the collection of mixed household waste contract. Moreover, in certain cases, copies of such contracts were not made available for NAO's review. Such issues are further addressed in Chapter 3.

2.3.16 Further to the above, NAO sought to assess whether amendments of conditions and specifications by the various local councils were subjected to adequate monitoring mechanisms by DLG. All of the interviewed Executive Secretaries stated that no monitoring in this respect is carried out by DLG. One interviewee further commented that at times, local councils were being referred to the Department of Contracts by DLG on issues relating to the tendering process.

Assigned Responsibility

2.3.17 The individuals responsible for the introduction of amendments to the conditions and specifications varied in designation from one council to another. At times, these amendments were proposed by the Executive Secretary in consultation with the Mayor and/or Councillors, while in other instances, this task was outsourced to the assigned Council Representatives. Generally, the decision to outsource was pursued when the nature of works to be undertaken was of a highly technical nature, necessitating corresponding expertise. On the other hand, tender documentation relating to day-to-day services was mainly handled by the Executive Secretary and/or council members. The Executive Secretary of the Gharb Local Council indicated that this locality was one of the first councils that amended the specifications and introduced collection of mixed household waste on a four-day period (rather than five) in order to curtail costs.

2.3.18 Almost all Executive Secretaries responded in a positive manner with regard to the level of perceived expertise in the preparation of such amendments. Individuals hailing from a diversity of professional backgrounds were contracted by the local council when circumstances so warranted, particularly in the case of works of a technical nature. In addition, Executive Secretaries perceived themselves as having the right

experience and knowledge of the locality, key in providing and implementing the necessary changes in the day-to-day management of services. However, despite the above, one particular Executive Secretary was still of the opinion that such amendments should not be carried out by the council, but by DLG. Moreover, another interviewee remarked that DLG could have provided additional detailed instructions, since Executive Secretaries lacked expertise in technical material or in the issue of new contracts.

2.3.19 Four of the five Council Representatives who submitted their questionnaire agreed that, although the guidelines were used as a basis for compiling the tender documents, they were nonetheless involved in the drafting of such documentation, as they had to be amended accordingly. One particular respondent claimed that documents were completely prepared and compiled by the engaged contract management firm. Others maintained that the tender documentation for any particular call was prepared in collaboration with local council staff. To this effect, the administrative portion of the tender documentation was prepared by the local council, while the technical part, including project drawings, bills of quantities and other technical specifications were prepared by the outsourced contract management firm.

Service Level Requirements

2.3.20 Local councils effectively establish the desired service level requirements through the delineation of conditions and specifications. Feedback obtained from the majority of interviewees indicated that service level requirements were identified through informal channels, such as complaints lodged by residents at the council's office. Executive Secretaries mentioned that residents acted as 'contract managers', regularly providing recommendations on how the service may be improved or reporting any irregularities committed by contractors. Such recommendations and complaints were reviewed by the local councils, discussed at council meetings and when circumstances so warranted, resulted in amendments to service provisions, more in line with newly established service level requirements.

2.3.21 Site inspections carried out by the Mayor or other Councillors also helped in the identification of service level requirements. One particular Executive Secretary further commented on how the setting of service level requirements depended on the nature of works being commissioned. He stressed that in the case of services such as street sweeping and waste collection there is no need for standards to be set since the contractors' work is tangible and can be visually monitored.

2.3.22 An interesting point of view was the difference between local councils of dissimilar size. Interviewees from two Local Councils (Mqabba and Mtarfa), which have

a budget allocation of less than €350,000 complained that these service level requirements are supposed to be handled by outsourced Council Representatives, however, they lack the financial resources to hire such expertise. Nonetheless, large local councils did not mention that their respective engaged Council Representatives were responsible for the establishment of service level requirements.

2.4 Risk Identification

2.4.1 The management of risk is an essential component of the contract management lifecycle. In this context, the specifications designed should cater for risk management considerations, particularly with respect to the elements of cost, quality and time. The Local Councils (Tendering) Procedures make reference to defaults in performance, stipulating that if the contractor fails to comply with the instructions as requested by the council, the council may be entitled to have such work carried out by other persons and to recover from the contractor the cost incurred by the local council. The council may also be entitled to record in writing and deliver a written notice of default to the contractor should circumstances so warrant.

2.4.2 The council is also empowered to effect percentage deductions from payments allocated to the contractor with respect to the issue of default notices; however, this is left up to the discretion of the respective local council. The deductions made by the council are withdrawn from the instalments paid to the contractor, and may range from five per cent to 20 per cent of the corresponding instalment value. The indicated percentage deduction range is determined by the amount of default notices served to the contractor, which under such circumstances may range from one to 15 in any one week.

2.4.3 In addition, the local council may determine or terminate the contract under the provision of clause 37 of these conditions, which stipulates that such a course of action may be instigated in cases where more than 25 default notices were recorded and delivered in any one week, or more than 75 in any four-week period. This clause states that if the contractor either fails to commence, or suspends execution of the service, or refuses and neglects a written notice from the council, or fails to comply with any of the provisions of the contract, the council may deliver to the contractor a notice specifying the default.

2.4.4 If the contractor either persists in any of the defaults for seven days after receipt of such notice, or repeats at any time thereafter such default, then on the advice of the Council Representative, the local council may within 10 days after such continuance, or repetition by notice forthwith, terminate the employment of the contractor under this contract, provided that such notice shall not be given unreasonably or vexatiously. The local council shall be entitled to terminate the employment of

the contractor under conditions of, among others, death, bribery and bankruptcy. In addition, the general conditions for services also present clauses attached to the risks inherent in cases of termination and/or postponement of works. These are further discussed and analysed in Chapter 4.

2.4.5 All of the Executive Secretaries, except for one, agreed that the specifications designed either by DLG or the local council catered for risk management considerations. The interviewed Executive Secretaries claimed that risk management considerations form part of the general conditions of the tender documentation, which was in fact verified by NAO through the review of relevant documentation. According to Executive Secretaries, these considerations cater for cases of delays, non-deliverance and defaults by the contractor.

2.4.6 In fact, one practical example provided in this regard was that a particular clause permits the local council to hire a new contractor at the expense of the first contractor in case of non-performance. In addition, it was remarked that the contractor must also produce the performance bond within seven days from the date of letter of acceptance, from a local bank and equivalent to 10 per cent of the tendered sum. Executive Secretaries remarked that in cases of non-deliverance, the local council may opt to withhold such a performance bond or hold up payment.

2.4.7 On the other hand, with regard to time variations, councils remarked that it depended on the type of service being delivered. In the case of services rendered on a daily basis there was no possibility for time variations. However, not the same can be said for other projects or works where time was a crucial variable. One such example was the installation of lighting material for Christmas festivities. Moreover, in the case of cost variations, these are regulated by means of percentages listed in the general conditions, which are further discussed in Chapter 4.

2.4.8 Moreover, three of the five Council Representatives corroborated what was put forward by the Executive Secretaries, agreeing that the prepared tender documentation adequately catered for risk management considerations commonly associated with commercial tendering. One particular respondent stated that conditions normally focused on the attainment of the required quality, which at no point could be compromised. Risk management considerations, regarding variations in cost, were normally provided for by the inclusion of appropriate contingencies in the bills of quantities. Contract periods were fixed and any delays in the execution of works were addressed through the enforcement of penalty clauses stipulated in the contract conditions.

2.5 Conclusions

2.5.1 From the data collected in this study, it is immediately apparent that no formal systems designed for the effective identification of needs have been implemented by the majority of sampled local councils. The process of need identification is overly reliant on informal sources of information feeding into the decision-making process, often involving the input of Executive Secretaries, council members, residents, and Council Representatives. NAO considers the risks inherently associated with such an informal system of need identification as gravitating around the issues of comprehensiveness and objectivity. Failure to establish formal systems through which council needs are identified accentuates the risk of subjective bias, potentially limiting awareness of the complete population of works or services required by the local council. Moreover, incomplete information at this initial stage of the process will inevitably impact upon subsequent processes, possibly resulting in far greater inefficiencies and ineffectiveness.

2.5.2 Consonant with the above are the findings relating to the systems of prioritisation, or absence thereof, employed by the local councils under review. Once again, only a minority of local councils formally documented their respective prioritisation processes, while others simply relied on informal feedback mechanisms. Intricately linked to the prioritisation process in the council's budgetary allocation, NAO considers the perceived limited budgets as adding further weight and importance to the prioritisation process, highlighting the necessity of utilising what funds are available in the most efficient, effective and economical manner possible. Irrespective of perceived or actual budgetary constraints, NAO is of the opinion that a fair allocation of funds may only be achieved if accurate data regarding the various dimensions key to administering a locality are known. The importance of the now defunct Field Services Unit, or some equivalent form of data gathering system is essential in attaining this goal.

2.5.3 The design of tender specifications is an area of significant concern to NAO, exhibiting numerous shortcomings that merit attention. NAO considers the source of this issue to be the outdated contract documentation, particularly the Local Councils (Tendering) Procedures, which inadequately address current needs and realities with regard to specification design. However, NAO considers the overarching weakness in relation to specification design to be the lack of suitable monitoring provided by DLG. Inadequate centralised systems of monitoring coupled with outdated documentation result in the inevitable outcome of changes being made to the conditions and specifications of contracts under review. This is expressly prohibited by virtue of the Local Councils (Tendering) Procedures (Appendix P3.IX), yet awareness or adherence to such

regulations by a number of local councils is poor, while monitoring mechanisms are weak.

2.5.4 Similar conclusions may be drawn with regard to the assignment of responsibility of specification design and the establishment of service level requirements. Limitations in terms of contract management capabilities are once again rendered evident through the lack of formal methods and procedures in arriving at the necessary service requirements. Further to the over-reliance on informal channels feeding into the decision process, NAO noted that the role of engaged Council Representatives could be utilised in a more efficient and effective manner if more actively involved at this stage.

2.5.5 NAO considers the conceptual identification and management of risk to be sufficiently addressed in the Local Councils (Tendering) Procedures. This was in fact corroborated by the Executive Secretaries and Council Representatives involved in this study. However, in its review of defaults in performance and corresponding remedial courses of action, NAO noted that at the operational level, certain provisions relating to the termination of contracts may warrant review. One such case is clause 37 of the Local Councils (Tendering) Procedures, which stipulates that a contract may be terminated after issuing 25 default notices in a one-week period, or 75 default notices over a four-week period. NAO considers the number of default notices that must be served under such a clause to be excessively high, thereby limiting the local councils' contingency in reacting to clear instances of poor performance and therefore exposing its management of such contracts to considerable risk.

2.6 Recommendations

2.6.1 NAO recommends that all local councils implement a formal system detailing the processes and mechanisms to be followed in the identification of needs. A more formal system will imbue the process with a greater sense of accountability, and indirectly strengthen the elements of objectivity and transparency. NAO considers the role played by DLG in this context as centrally important, contributing to the formalisation in a twofold manner. On one level, DLG may contribute by assuming responsibility for standardising the formalised need identification process across all local councils. Complementary to this, DLG may also ensure that local councils are also afforded sufficient flexibility in the implementation of such procedures, customising the nonetheless formal need identification process to suit and better fit their specific constraints and requirements.

2.6.2 Once again, NAO recommends that formal systems for the establishment of priorities are implemented across local councils. Such a system could possibly involve

the screening of competing proposals through analysis of their respective alignment with the local council's needs and available funding. Comparing and rating several projects against pre-established criteria through some form of decision matrix may assist the council in arriving at objective decisions representing true value for money. Critically important in the formulation and establishment of such criteria are the ancillary systems of data gathering (such as the area of parks, road lengths, number of residents and number of properties) that subsequently feed into the decision-making process.

2.6.3 NAO strongly recommends that limitations relating to specification design are addressed in a three-pronged manner. The first approach should ensure that the necessary revisions to contract documentation are driven forward by DLG. Revision of the Local Councils (Tendering) Procedures, so as to better reflect recent developments and current needs would, in NAO's opinion, improve overall contract management capabilities. Alternatively, DLG may explore the possibility of aligning local council tendering practices with Government public procurement regulations. The second approach should essentially focus on improving central control through the revision of DLG monitoring mechanisms. Suitable monitoring would ensure that local councils are adhering to regulations, maintaining standards that have been centrally agreed upon and uniform in their approach to commonly arising issues. Finally, the third approach targets the subsidiary level of operation, that is, the Executive Secretaries and other persons involved in the design of specifications at local council level. Focused and specialised training, complemented with suitable awareness of what conditions and specifications can and cannot be amended must be implemented so as to address the existent incongruence between Local Council (Tendering) Procedures and current practices.

2.6.4 Local councils stand to benefit from renewed and sustained efforts at standardising the specification design process, encompassing the assignment of responsibility and the establishment of service level requirements. NAO considers the role of DLG as pivotal in attaining and implementing the wider uniform standards necessary in this regard. Commonly shared standards would facilitate the subsequent exchange of best practices and concurrently provide the local councils with practical guidance with respect to the design of specifications.

2.6.5 Although NAO considers the coverage afforded by the Local Councils (Tendering) Procedures to sufficiently cater for risk, particularly at the conceptual level, nonetheless NAO urges DLG to consider the review of default clauses as a means of ensuring and imbuing local councils with greater influence in the determination of clear cases of non-performance.



Chapter 3

Regulation of the Tendering Process: A Contract Management Perspective

Chapter 3 – Regulation of the Tendering Process: A Contract Management Perspective

This chapter presents a comparative analysis of the structures, systems and practices that the selected case studies applied throughout their respective calls for tenders and tender submission processes. In addition, focus is channelled towards the evaluation and examination of submitted tenders, as well as the subsequent decision-making process associated with the award of contracts. This analysis highlights capability requirements deemed conducive to full compliance with legal obligations and sound management practices that are to be adhered to throughout the processes. The effective application of these capabilities would ensure fairness, high levels of efficiency, selection of the most favourable contracts, professionalism, accountability and transparency, as well as the pursuance of ethical behaviour.

3.1 Introduction

3.1.1 The contract management process, from the call for tenders, up to its subsequent award, is regulated by virtue of subsidiary legislation, namely the Local Councils (Tendering) Regulations (2011, S.L. 363.03), as well as other procedures and criteria that aim to ensure fair treatment during the selection of suppliers. Article 40 of the Local Councils Act (2011, Cap. 363), states that, *“Where a Council offers for tender or for quotations any works, goods or services related to its functions or the transfer of any land it shall give notice of its intention by publishing a notice in the Gazette. In addition to this requirement a Council may also give notice of its intention by publishing a notice in the Gazette and in one daily newspaper. The regulations relating to the publication of tenders and quotations shall be made by the Director and communicated to the Local Councils.”*

3.1.2 This notice should provide a short explanation of the work involved and state the period of time during which the work will be undertaken. Moreover, it should specify a time-period throughout which any person may, at no cost and at a specific location and time, examine a

detailed work specification. The notice should also state that during the period when the work is being undertaken, any person will be provided with a copy of the detailed work specifications, on request and upon payment of a specified fee. In addition, it should contain a further statement declaring that any person wishing to undertake the work should inform the council about this within a specified period of time. The date and location when all the tenders are to be opened in the presence of the public should also be included.

3.1.3 The Act also stipulates that a local council must make copies of all submitted tenders and supplementary documents accessible to any concerned person at a fair price. The local council must also decide on a date and location when it will attend to suggestions on all or any one of the submitted tenders from any concerned person. It should also publish its decisions along with the reasons for these and provide a copy to any concerned person at a fair price.

3.1.4 Clause P3.02 of the Local Council (Tendering) Procedures clearly states that the Executive Secretary should allow at least one month to lapse from the date of publication of the call for tenders to the closing date for the submission of tenders. Only in cases of urgency (for instance, in cases concerned with public health) can the minimum tendering period be reduced to no less than eight days. As is also pointed out in Article 40 of the Local Councils Act, the prospective tendering party may obtain the full set of tender documents from the local council’s administrative office against a fee stipulated in the published notice, thereby connoting to the local council his/her intention to bid.

3.1.5 When the call for the submission of tenders reaches its closing date, the tender box must be sealed without delay and by the respective Executive Secretary. Moreover, the Local Councils (Tendering) Regulations (2011, S.L. 363.03) and Local Councils (Tendering) Procedures grant authority to the Executive Secretary,

who together with two other appointed Councillors, are entrusted to publicly unseal the tender box that would have been issued in accordance with Article 40 of the Act, as per the scheduled date and time. It is also stipulated that the appointed individuals are to carefully examine each submitted tender and identify any significant departure or omission from the tender documents. A schedule of the tenders received is to be drawn up and signed by the Executive Secretary and the two Councillors.

3.1.6 According to the Local Councils (Tendering) Procedures, tendering parties should submit a number of documents to the local council prior to the closing date of the submission of tenders. For a tender to be valid for award, the following duly filled-in documents (Appendix E refers) should be forwarded to the local council:

- a. Form of tender;
- b. Non-collusive tendering certificate;
- c. Tender guarantee (bid bond);
- d. Completed bill of quantities (if applicable);
- e. Contractor's programme (if applicable); and
- f. Any other document specifically required by the local council.

3.1.7 The Executive Secretary must ensure that all tendering parties submit a tender guarantee issued by a Maltese bank. The Tendering Procedures state that the guarantee shall be valid for a period of 60 calendar days from the closing date set for the submission of tenders. This guarantee is intended to assure the respective local council that the tendering party will enter into a contract according to the terms stated in its tender and will furnish a performance bond covering the dutiful performance of the contract. This guarantee is also intended to ensure that the payments of all subsequently arising obligations are honoured. Moreover, this guarantee is subject to forfeiture when the tendering party refuses to enter into the contract with the local council on the terms specified in the tender, or if he/she fails to furnish the local council with the performance bond.

3.1.8 The careful examination of the submitted documents is then followed by the evaluation of the bids. The processing, evaluation and adjudication of submitted tenders is to be affected by the local council or a tender committee appointed by the council. The Tendering Procedures allow local councils to engage external assistance or seek alternative advice if the decision at hand involves technical specifications or necessitates knowledge on a certain area of expertise. The Tender Committee is therefore formed by Councillors (including Mayors and Deputy Mayors) and/or any individual/s identified to evaluate and assess the tenders.

3.1.9 During the evaluation and subsequent adjudication of tenders, it should be ensured that prices quoted are fair and reasonable, and that decisions taken are the most advantageous to the local council, based on both price and quality considerations. The Tendering Procedures state that local councils are not constrained to invariably accept the lowest-priced tender. However, the council or Tender Committee appointed to adjudicate tenders must publish its decisions, as well as the reasons thereof, in accordance with Article 40(2)(c) of the Local Councils Act (2011, Cap. 363). Nonetheless, it must still be the intent of the Local Council to award contracts on the basis of the most favourable tenders, provided that the tender has been submitted in accordance with the requirements of the tender documents.

3.1.10 Following the decision taken by the council or committee, the successful tendering party must be advised accordingly through a 'letter of acceptance', which should indicate the commencement date of the service to be provided. The letter of acceptance sent by the local council should also contain a request for the submission of the acceptance of a performance bond from a local bank equal to 10 per cent of the tendered sum, within seven days from the date of the letter. The Local Councils (Tendering) Regulations (2011, S.L. 363.03) also state that within seven days from the letter of acceptance (or within such longer period as the Tender Committee may allow for, in exceptional circumstances), the contractor shall provide the bonds, guarantees or insurances required under the tendering procedures and the tender documents. A contractual agreement between the council and the contractor would subsequently be signed by both parties.

3.1.11 The contractual documents signed govern the relationship between the local council and the contractor whose tender was selected. The Tendering Procedures set out the requirement for the local council to retain the following documents (Appendix E refers):

- a. Completed contract agreement form;
- b. General conditions of contract/agreement for services, goods, lease and management of Government immovable property;
- c. Specific conditions of contract/agreement and specifications (if applicable);
- d. Letter of acceptance; and
- e. Performance bond.

3.2 Regulations Governing the Submission and Examination of Tenders

3.2.1 As highlighted in Chapter 1, this study focused on contracts entered into for the collection of mixed household waste and road resurfacing. NAO assessed the issue of public calls and the subsequent awards for tenders. Although NAO requested Executive Secretaries to provide it with both contracts, only six of the 10 local councils acceded to such a request. All the contracts made available to NAO were implemented through a public call for tenders.

3.2.2 NAO noted that the contract for the collection of mixed household waste at the Mqabba Local Council was jointly entered into with the Safi Local Council. This system was considered to be more cost-effective than the standard approach ordinarily taken when contracting out this work. On the other hand, the Paola Local Council provided NAO with two road resurfacing contracts and the Executive Secretary explained that since the first issued contract included additional works that amounted to a significant percentage increase over the originally submitted sum, a new public call for tenders had to be subsequently issued. Variations are further elaborated upon in Chapter 4.

3.2.3 From the remaining four local councils, three provided road resurfacing contracts that were recently awarded through a public call for tenders. However, the contracts for the collection of mixed household waste pertaining to the same local councils were by contrast expired. It was also noted that although the Nadur Local Council had issued a public call for tenders, and the adjudication had eventually taken place, the unsuccessful bidder appealed against the local council and the decision was in fact still pending after several months. This denotes that the Council continued working with an expired contract.

3.2.4 On the other hand, the Executive Secretary at the Gharb Local Council provided the relevant collection of mixed household waste contract signed in 2003, covering a five year period, valid to 2008. Following expiry in 2008, this contract was subsequently extended on a year by year basis, and such an arrangement was still in place while carrying out this audit's fieldwork. The aforementioned approach of extending expired contracts on a year by year basis is not in accordance with the Tendering Procedures. In this context, the Executive Secretary stated that in cases where the Local Council recognises that it can benefit from more affordable rates, it attempts to extend expired contracts. NAO also noted that the San Pawl il-Bahar Local Council was operating its collection of mixed household waste contract despite its expired status.

3.2.5 From the 10 local councils interviewed, the Mtarfa Local Council was the only one that did not provide any form of documentation whatsoever with respect to the contracts under review. Tender documentation was inexistent in this case and, according to the interviewee, this had been the case prior to his appointment. During the interview, it was stated that no road resurfacing had been recently carried out, and the Council had therefore, not of late, issued a contract. On the other hand, the tender document for the collection of mixed household waste was prepared and issued, with the bidders duly submitting their offer. According to the Executive Secretary of the Mtarfa Local Council, DLG instructed the said Council to discontinue the process, as it was noted that the tender documentation presented conflicting and inconsistent information. Following this observation, the Council postponed the issuing of the tender from month to month, as it discerned that the arrangement, which was already in place, was better-priced than the offers submitted by the other bidders. In this case, the Executive Secretary confirmed that the collection of mixed household waste continued to be carried out by the contractor whose contract had expired.



3.2.6 Eight local councils provided evidence that the necessary submission documents, as listed in the Tendering Procedures, were being collected from the tendering parties. The San Pawl il-Baħar Local Council provided the relevant tender submission documents with respect to its road resurfacing contract yet did not follow suit in the case of collection of mixed household waste contract. Finally, as alluded above, the Mtarfa Local Council did not make such documents available for NAO review, and verification of this process was therefore not possible.

3.2.7 NAO noted that, for instance, the Mqabba, Birkirkara and Żurrieq Local Councils maintained a checklist in order to assess the documentation provided by tendering parties. Żurrieq Local Council maintained a notably detailed checklist, including the following items: form of tender; non-collusive tendering certificate; tender guarantee; declaration of employees; bill of quantities; requirements in compliance with the Malta Environmental and Planning Authority; vehicular insurance; references; default notices; as well as other documents associated with the programme of works for road resurfacing projects.

3.2.8 Once a public call is advertised on the Government Gazette or on any other local newspaper, bidders are accorded a definite period for the submission of their offers. As calls reach their closure, tenders should be opened in public, as in fact regulated by Article 7 of the Local Councils (Tendering) Regulations (2011, S.L. 363.03). Offers submitted in response to a call for tenders issued in accordance with Article 40 of the Act should be opened by the Executive Secretary, together with two Councillors, who are all entrusted with the responsibility of drawing up a schedule of all the received tenders.

3.2.9 All the interviewed Executive Secretaries confirmed that tenders were opened in public, either during the council meeting, or as the call reached its closure. This was deemed as good practice by NAO,

due to the elimination of risk of late submissions, while simultaneously ensuring the integrity of the process. Out of the 10 local councils reviewed as part of this study, eight councils provided the relevant schedule of tenders received corresponding to road resurfacing and collection of mixed household waste contracts. In the case of the remaining two local councils, the San Pawl il-Baħar Local Council provided the schedule for only one of the two reviewed contracts, while the Mtarfa Local Council provided none.

3.2.10 The majority of Local Councils confirmed that it was standard practice for the Executive Secretary, together with two elected Councillors (the Mayor included), to publicly open the submitted tenders. Moreover, interviewees at Birkirkara Local Council indicated that the Surveyor, or the Council's Accountant, also formed part of this process. This comment was substantiated by the Surveyor who was the only one from the Council Representatives who stated in his returned questionnaire that he was involved in the process of opening tender offers in public in the capacity of a tender/finance committee member.

3.2.11 Local councils also confirmed that the respective Executive Secretary, Councillors and/or other individuals present, signed the schedule of tenders. Furthermore, the bidders who attended the opening of tenders (if any) were also able to obtain a copy of the submitted offers. The interviewees at the Birkirkara Local Council indicated that a copy of this document was also appended to the Local Council's notice board for public disclosure.

3.3 A Defined System for the Award of Tenders

Evaluation

3.3.1 According to Executive Secretaries interviewed as part of this study, the evaluation of tenders was largely determined by the type of service being contracted. In the

majority of reviewed local councils, Councillors (including Mayors and Deputy Mayors) assumed responsibility for the evaluation of submitted tenders relating to services rendered on a day-to-day basis. In the evaluation of non-technical contracts, this process was ordinarily carried out during council meetings, or, in the case of a few local councils, specifically addressed through Tender Committees. However, when the evaluation process relates to works or services of a technical nature, the council appoints its Representative to form part of the Tender Committee. Furthermore, other instances requiring specialised expertise in different fields were addressed in a similar manner.

3.3.2 This was corroborated by the majority of Council Representatives when stating their role and involvement throughout the evaluation stage. In this context, Council Representatives indicated that they were responsible for the evaluation of the tenders' technical and financial aspects, and formed part of the tendering or finance committees.

3.3.3 Moreover, NAO positively noted that although the collection of mixed household waste was a day-to-day service, a number of local councils illustrated significant effort in the setting up of committees or independent boards in order to evaluate such tenders. These not only included Council Representatives who were entrusted with the responsibility of assessing the technical aspects of tendered bids, but also other independent individuals. As a point of clarification, NAO was informed that the involvement of technical experts in the evaluation process was instigated as a matter of procedure by DLG following numerous related problems encountered during adjudication.

3.3.4 From the 10 local councils reviewed, the Birkirkara Local Council presented positive results in terms of it exceeding the quasi-standard process used by all councils. This Council confirmed that the evaluation of tenders for all works and services outsourced by the Council was invariably carried out by its Surveyor, who prepared reports on each tender submitted for adjudication.

Award

3.3.5 According to a number of Executive Secretaries, selection and subsequent award of the successful bid was under the responsibility of the Tender Committee, which generally included the Mayor and/or Deputy Mayor and other Councillors, together with other experts or appointed individuals as indicated in the preceding text. However, despite the important role fulfilled by the Tender Committee, the majority of Executive Secretaries replied that the final decision was still ultimately to be approved by the council members during the council meeting. One particular Executive Secretary also indicated that the Council had the power to overturn a decision taken by the Tender Committee.

3.3.6 Two Council Representatives confirmed that the adjudication of award was carried out by their respective council and was normally based on the recommendations they provided with respect to the technical and financial aspects of adjudicated offers. On the other hand, the remaining three Council Representatives confirmed that they were involved in the adjudication of the tender. However, they indicated that they were not further involved in the subsequent award stage, since the final decision was taken by the council members, as was in fact remarked by the Executive Secretaries.

3.3.7 An integral part of the award process revolves around the establishment of selection criteria and the subsequent compilation of evaluation sheets. In fact, the award of tenders should be based on these aforementioned sub-processes, as established in the tendering specifications prepared at the beginning of the process. Such evaluation sheets may utilise various criteria upon which are established eventual selection and award, including, the most economically advantageous offer, the most effective offer, the selection that best fits the designed specifications, and/or the supplier's compliance with non-performance issues (for example compliance with employment legislation).

3.3.8 The two contracts reviewed by NAO starkly contrasted one another in terms of evaluation methods. Road resurfacing contracts essentially involved the establishment of bills of quantities and the evaluation of unit cost rates for the different types of material. On the other hand, the collection of mixed household waste contract was based on performance and financial criteria.

3.3.9 The newly issued tender document prepared by DLG, relating to the collection of mixed household waste was standardised with respect to its evaluation, whereby 60 per cent of the total mark would be based on performance criteria, while the remaining 40 per cent would correspond to financial criteria. The performance component was further sub-divided into finer criteria, including the necessary capacity and experience to conduct the required services, references to successfully completed contracts of a similar nature and execution, as well as the number of default notices issued to the bidder over the past 36 months. With regard to the financial criteria, the finer details regarding how this percentage was to be scored was left at the discretion of the individual local councils.

3.3.10 Reviewed local councils all stated that evaluation sheets were prepared. However, despite numerous requests, not all councils provided the necessary documentation for NAO to verify such an assertion. On a related note, feedback obtained from Council Representatives was in accordance with that stated by the various Executive Secretaries, confirming that established criteria and/or evaluation sheets were used in the award of tenders. All

Council Representatives stated that these criteria favour the selection of the most economically advantageous offer. Limited results were obtained regarding the utilisation of other criteria, such as selection based on the most effective offer, the selection of the best fit designed specifications or supplier's compliance with non-performance issues. When requesting samples of evaluation reports prepared for works carried out at the different local councils, only one Contract Manager provided such reports.

3.3.11 The Birkirkara, Żurrieq and Mqabba Local Councils provided very detailed evaluation reports, which included an analysis and comparison of submitted rates in contrast to other councils, whose reports lacked certain details at times, and were notably far less comprehensive in other cases. The road resurfacing and collection of mixed household waste contracts were awarded to the cheapest bidder by the aforementioned local councils, although in the case of the latter contracts, performance criteria as established by DLG were also taken into consideration.

3.3.12 The Iklin Local Council awarded the collection of mixed household waste contract to the cheapest bidder; however, the road resurfacing contract was awarded to the fourth cheapest bidder. Nonetheless, the Council provided reasons for not awarding the contract to the cheapest three bidders. The Iklin Local Council explained that the other bidders had either previously abandoned awarded contracts or provided substandard works. In the case of the Kalkara Local Council, the road resurfacing contract was awarded to the cheapest bidder while the collection of mixed household waste contract was awarded to the second cheapest bidder. The reason provided by the Local Council with respect to the latter contract was that the most economically advantageous bid did not present the full complement of documentation.

3.3.13 As indicated in Section 3.2, the Nadur Local Council presented the evaluation decision on the collection of mixed household waste contract; however, the unsuccessful bidder appealed the decision on grounds that the other tendering party had not provided the necessary documentation. With respect to the road resurfacing contract, the Nadur Local Council awarded this tender to the cheapest bidder. Contrary to this, the Paola Local Council did not provide any evaluation reports, but only the minuted decisions recorded during the Council meeting. In the case of these two contracts, such a course of action was undertaken due to the fact that only one tendering party submitted an offer in both circumstances.

3.3.14 The San Pawl il-Baħar Local Council did not provide an evaluation report on the collection of mixed household waste, as the contract had been long-standing and was expired. In the case of road resurfacing, this Local Council decided to allocate portions of the works to be contracted out to two tendering parties (the cheapest offer

and the second cheapest). However, this decision was not consonant with the tender specifications, and as a result, the cheapest bidder decided to appeal such a decision. Although the Għarb Local Council did provide documentation on the award of both contracts to the cheapest respective bidder, the collection for mixed household waste contract was expired at the time when fieldwork was being undertaken. The Mtarfa Local Council did not provide any sort of evaluation reports as both contracts were either inexistent or expired.

3.3.15 It may be concluded that, all things being equal, the majority of interviewed Local Councils awarded the contract to the bidder submitting the cheapest offer, while simultaneously taking into consideration that the offer met the designed specifications. In addition, the requested documentation as listed in the tendering procedures was also a key variable, determining an offer's validity for selection. Furthermore, as highlighted in previous paragraphs, a number of local councils made use of checklists in order to assess the documentation presented by submitting bidders.

3.3.16 Apart from the financial aspect and the documentation requested, other performance and non-performance issues were also taken into account by local councils when awarding tenders. These included the credibility of the bidder, past experience (including years in business), previous track record operating within local councils, in addition to other documents relating to human resources and available assets. Executive Secretaries clearly indicated that in order not to award the cheapest offer, the local council must put forward a valid reason justifying such a decision.

3.3.17 In fact, a number of examples (not necessarily related to the two contracts assessed by NAO) were provided by local councils, where it was claimed that the cheapest offer was not selected. At times, bidders were eliminated as their offers were not feasible and possible for the council to accept. One such example was the case of the Birkirkara Local Council, where a bidder claiming he would provide the service using six trucks on a daily basis, only had four employees registered with the Employment and Training Corporation. Under such circumstances, the Tender Committee opted to eliminate such a bidder. The San Pawl il-Baħar Local Council had a particular bidder who had only one vehicle from which to render the service requested, which in effect presented a significant risk in terms of not being able to provide the service in the case of a vehicular breakdown, and therefore was eliminated from selection.

3.3.18 Local councils may also encounter situations where the submitted offers do not meet the established technical criteria or budgetary estimates for selection. Under such circumstances, the interviewed Executive Secretaries

commented that they retained the option to either issue a new public call for tenders, or alternatively abandon the project outright. Instances when projects were abandoned were primarily due to their exceeding budgetary limits set by the local council. Executive Secretaries stressed that a local council has the right to reject all offers presented to it. In addition, it was remarked that in cases where a new public call for tenders was issued, the local council had to extend the contract to the existing contractor by a number of months.

Decision Communicated

3.3.19 Almost all Executive Secretaries confirmed that the decision regarding the award of tender was communicated to the successful and unsuccessful bidder/s, with the exception of the Mtarfa Local Council, where it was pointed out that the decision was placed on the office's notice board and a letter was sent to the winning bidder. Successful bidders received an awarding letter and were subsequently asked to produce the performance guarantee, while on the other hand, the unsuccessful bidder/s received correspondence indicating that their bid-bonds were released. In addition, few local councils further commented that together with the decision taken, further information including offers submitted and details relating to the selected tendering party were handed to the bidders.

3.4 Conclusions

3.4.1 At a general level of analysis, the local councils reviewed in this study adequately adhered to the regulations governing the submission and examination of tenders. A select group of councils engaged in practices that are to be commended by NAO, such as the Mqabba Local Council in its coordination of the collection of mixed household waste contract with neighbouring localities, and the Birkirkara Local Council, which has further endeavoured at improving the accountability and transparency of the tender submission process.

3.4.2 One of NAO's most pressing concerns with regard to the contract management process across local councils relates to the significant proportion of active contracts that were in effect expired. NAO noted that a considerable number of local councils endorsed and sustained this poor practice by extending already expired contracts on a year by year basis. NAO considers arguments put forward by a number of local councils justifying such practices as unacceptable and considers the indefinite extension of expired contracts, albeit on a year by year basis, to infringe upon the principles of good governance.

3.4.3 Further deviations from the principles of good governance were significantly pronounced in the case of the Mtarfa Local Council. This particular Local Council

did not provide any form of documentation when requested by NAO, somewhat perplexingly stating that it had not carried out any road resurfacing works, while maintaining its mixed household waste contract in a perpetually expired state, which nonetheless, does not justify the absence of required documentation.

3.4.4 In stark contrast to the above, NAO noted that three particular Local Councils, namely Birkirkara, Mqabba and Żurrieq, exhibited good practices in the collection and collation of tender documents, specifically through the utilisation of a checklist system.

3.4.5 From information provided by interviewed Executive Secretaries, NAO noted a considerable difference in mechanisms and systems employed in the evaluation of technical and non-technical contracts. Evaluation of the former type of contracts were generally characterised by established Tender Committees, often involving externally appointed Council Representatives. On the other hand, non-technical contracts were mostly evaluated within the council meeting setting. Despite the aforementioned, NAO observed that some local councils positively persisted in the setting up of committees or independent boards to evaluate the mixed household waste contracts.

3.4.6 A number of issues emerge from the evidence collected by NAO regarding the award of contracts, particularly with respect to the evaluation criteria employed. The system utilised in the selection of road resurfacing contracts, which closely ties in with the role of the technically proficient Council Representatives, ensures reliability of method, validly making reference to key indicators through the respective bills of quantities and unit cost rates. The majority of local councils made appropriate use of such a system, and selection of contractors not ranked as most favourable by means of the aforementioned indicators was justified, agreed to by the council members and minuted.

3.4.7 On the other hand NAO's analysis of the evaluation criteria utilised in the collection of mixed household waste tenders provided mixed results. Scoring on performance criteria was performed in a fair, reliable and accurate manner, largely due to the sound guidance provided by DLG in the form of an addendum to the Tendering Procedures, which specifically delved into the finer details of how such criteria were to be scored. However, the scoring system employed by a number of local councils with regard to the financial criteria failed to appropriately classify the various tender bids. Employing a system that awards maximum marks to the most financially favourable bid, no marks at all to the least financially favourable bid, and scoring all other bids pro-rata will invariably result in a method of classification that is heavily skewed. Minor variations in terms of values of submitted tender offers

are incongruently reflected in the wide range of awarded marks, rendering irrelevant the ratings awarded under the performance criterion.

3.4.8 While a few Local Councils, such as Birkirkara, Mqabba and Żurrieq, exhibited significant good practices in the compilation of detailed evaluation reports, others were rendered conspicuous by their poor, and at times, anomalous practices. The persistent theme of poor documentation and record-keeping practices can once again be applied to this context, and despite asserting to the contrary, some local councils failed to provide NAO with the relevant evaluation sheets pertaining to the contracts under review. Clearly incongruent with established tendering practices is the decision taken by the San Pawl il-Baħar Local Council, whereby road resurfacing works were awarded to two tendering parties, eventually resulting in the lodging of an understandable appeal by one of the tendering parties.

3.4.9 Finally, NAO noted that the vast majority of reviewed local councils provided feedback to the successful and unsuccessful tendering parties following due completion of the evaluation process. Such feedback included details corresponding to which tendering party was awarded the contract of works or services, and additional information relating to the actual bids submitted by all tendering parties, including tendered amounts. In the case of the Mtarfa Local Council, official correspondence was sent to the successful tendering party, while the unsuccessful parties were informed by appending the respective evaluation sheets to the Council's notice board.

3.5 Recommendations

3.5.1 NAO considers the role played by DLG as integral to the development of contract management capabilities across local councils, thereby ensuring the integrity and validity of employed procedures. It is against this backdrop that NAO recommends that DLG should seek to establish a stronger and more robust monitoring presence among all local councils. Such a presence is envisaged to particularly contribute towards addressing the numerous instances of contracts expiring and not being renewed through the established tendering process, but simply extended on an interim, yet indefinite basis.

3.5.2 Additionally, DLG is best positioned to serve as a platform for the exchange of good practices, arrived at and adopted by various local councils, thereby serving its purpose of ensuring the promulgation of good governance practices at this subsidiary level of government. NAO recommends that DLG further embraces such a role, through the active coordination and encouragement of local councils in the emulation of good practices.

3.5.3 Further to the important role and function fulfilled by DLG in the overall management of the local government function, so too is the part played by the local councils themselves, which must be assigned a centrally prominent role in the sustained evolution towards modern control management practices and eventual overall good governance. NAO strongly recommends that local councils operating with expired contracts should rectify their position without delay. In addition, NAO urges the relevant authorities involved in overseeing the lengthy appeals procedures referred to by various local councils, to streamline and resolve pending cases in a more acceptable timeframe. NAO considers the role assumed by local councils in such contexts to be the primary driving force and impetus pushing for speedy resolution of such contractual standstills.

3.5.4 NAO specifically urges the Mtarfa Local Council to revise and reform its contract management practices, particularly with respect to its organisation of documentation, management and renewal of active contracts, as well as its overall record keeping. Such measures would regularise Mtarfa Local Council's position in line with the established Tendering Procedures and more importantly, safeguard transparency and accountability.

3.5.5 The evaluation of submitted offers is an integral part of the contract management process, and it is in this respect that NAO considers the establishment of designated committees and independent boards as a positive contribution towards good governance. NAO recommends the adoption of similar mechanisms employed in the context of technical contract evaluations to be extended so as to also encompass non-technical contract appraisals.

3.5.6 NAO considers the evaluation criteria utilised by local councils in the selection of contractors for road resurfacing works to be reliable and valid, and therefore encourages such a system to be maintained and consolidated. Similarly positive is NAO's feedback with regard to the performance criteria employed in the evaluation of tender bids submitted in view of the mixed household waste collection contract. However, NAO recommends that DLG, in collaboration with local councils, devise and agree upon a standard system for scoring tender bids on their financial component. NAO considers such a revision to be of utmost importance if fairness of the evaluation process is to be ensured.

3.5.7 The evident disparity in terms of good practices relating to the preparation of evaluation reports among the reviewed local councils presents a window of opportunity for DLG. NAO encourages DLG to capitalise on the various good practices adopted by a number of local councils and extend such standards among other councils.

3.5.8 Finally, NAO urges local councils to adhere to established procedures and regulations throughout all stages of the contract management process. Moreover, NAO recommends that local councils should strive towards identifying opportunities for improvement, particularly with regard to information provided to tendering parties following conclusion of the tender evaluation process, thereby ensuring greater accountability, transparency and overall good governance.



Chapter 4

Contract Management Considerations at the Post-Award Stage

Chapter 4 – Contract Management Considerations at the Post-Award Stage

This final chapter focuses on a number of aspects relevant to the contract management process at the post-award stage. Attention is first directed at the assignment of contract management responsibilities and the delineation of corresponding roles. A number of key performance issues are subsequently presented, including the measurement of contractor performance, certification and payment for completed works or services, the assessment of the Council Representative’s performance, as well as, quality of service, business continuity issues and contingency planning, among others. Finally, the contractual change management process is reviewed, and an analysis of the relationship between the contracting local council, the contractor and the Council Representative is consequently carried out.

4.1 Introduction

4.1.1 Following the end of the tendering process and the subsequent signature of the contract, the contractor is called upon to start delivering works and services, in accordance with the terms and conditions of the agreement. The authority, in turn, is called upon to manage the contract that has been signed with the contractor, thereby monitoring the contractor’s performance during the execution of works.

4.1.2 The modus operandi implemented at the post-award stage ordinarily incorporates: contract-related administrative practices in which the control and management of the contract takes place; the monitoring of contractor’s performance during which the local council ensures that the contractor is executing duties and fulfilling obligations in accordance with the contract; managing changes that may arise and impact upon the contract; and the management of the relationship with the contractor, referring to the initiatives and actions of the local council to build and maintain a positive relationship with the contractor.

4.1.3 Contract administration concerns the smooth operation of routine administrative functions in addition to the implementation of works tendered for. For minor contracts, a single appointed individual is usually enough to undertake all contract management responsibilities; however, in the case of larger contracts, a contract management team is frequently required. It is necessary to ensure that the adequate staff and management resources to administer the process of works or services carried out are available.

4.1.4 Moreover, an organisation which has awarded a contract must also monitor whether the service is being delivered to the agreed specifications and to the appropriate quality levels, thereby fulfilling the terms of the signed contract. By implication, the local council must be able to check three fundamental criteria in this respect, that is, whether the:

- a. Service is being delivered well and to the agreed standards;
- b. Costs of the service are no higher than expected; and
- c. Service is delivered in the estimated timeframe.

4.1.5 There should be a detailed agreement of the required service levels, identified in the specifications outlined in Chapter 2, establishing the expected performance to be delivered. The contract should clearly define the service levels and required standards under which works or services are to be provided. Time and cost are intricately related to the level of quality of works or services provided. Improving quality may imply greater financial outlay, or longer duration, while reducing costs and time may mean compromising quality. Therefore, contracting authorities must balance the trade-off between quality, cost and time in order to ensure optimum value for money.

4.1.6 As further outlined in Chapter 2, the concept of contract management is linked to risk management. The risks planned for in the specifications of the tender documentation may arise during the administration and execution phase of the contract. These may either be due to the contractor's inability to fulfil contractual obligations, or, the local council's inability to effectively manage the contract and honour its compensation towards the contractor.

4.1.7 Besides performance and risk measures, contractual relationships are also subject to changes emanating from fluctuations within the business setting. Such changes further highlight the importance of preparing a contract document capable of evolving efficiently and effectively. This is ideally carried out through formal change control procedures, rather than resorting to informal arrangements in reaction to changing requirements.

4.1.8 However reliable the works or services being delivered, and however good the relationship between local councils, contractors and end users, difficulties may nonetheless arise. Hence, the importance of sound relationship management procedures being in place and agreed upon is further accentuated. The ultimate objective of such procedures is the crystallisation of a relationship in which all stakeholders co-operate in order to ensure that problems are recognised and resolved efficiently and effectively. The way in which this relationship facilitates interaction between the different parties is vital in ensuring the eventual success of the arrangement.

4.2 Assignment of Responsibility and Role Delineation

Assignment of Responsibility

4.2.1 Clear administrative procedures ensure that all parties to the contract understand who does what, when, and how. The administration proper of the contract is one function that must be assigned to the appropriate and designated individuals. To this effect, the contract administration function must also be assigned to an identified person or group of persons, which in this study's context would imply delegation of such responsibility to the engaged Council Representative, or shared across individuals within the local council's office.

4.2.2 Among the 10 case studies evaluated by NAO, responsibility and management of contracts varied from council to council. The Birkirkara Local Council shared responsibility for the administration and management of contracts between the Executive Secretary and other outsourced individuals. The Council employed a Quantity and Quality Surveyor, who supervised construction and road resurfacing works, while another Contract Manager monitored other cleaning and maintenance services,

including the collection of mixed household waste and general upkeep of public gardens. During the interview with the Executive Secretary of the Birkirkara Local Council, it was pointed out that the Quantity and Quality Surveyor was also responsible for the examination and verification of calculations carried out by the Council's Architect.

4.2.3 On the other hand, interviewed Executive Secretaries at the Għarb and Mqabba Local Council confirmed that responsibility for the administration and management of contracts was vested within their respective Offices. Mqabba's Executive Secretary reiterated, that due to financial constraints, the Council could not bear the cost of hiring a Council Representative in order to supervise particular works and services, such as cleaning contracts. Furthermore, Għarb's Executive Secretary declared that the Council never felt the need to contract a Council Representative since monitoring was still carried out and achieved in-house, essentially due to the small size of the locality. However, in the case of road resurfacing and other works that entailed a significant technical component, the Għarb and Mqabba Local Councils subcontracted the services of Contract Manager/Architect responsible for the effective monitoring of such agreements. The Executive Secretary of the Mtarfa Local Council also expressed similar concerns, indicating that in larger councils, it was more feasible to engage Council Representatives, and therefore, at Mtarfa, contracts were only supervised by the Executive Secretary.

4.2.4 A similar arrangement was in place at the Iklin and Nadur Local Councils, with the respective Executive Secretary assuming responsibility for the administration of contracts, with the exception of road resurfacing and other construction works, which were supervised by the engaged Contract Manager/Architect. In addition, the Kalkara Local Council assigned responsibility for contract administration and monitoring to the Executive Secretary and Mayor. In this particular case, the management of road resurfacing contracts was also assumed by the Executive Secretary and Mayor, as the Council Architect's responsibility focused on the evaluation and certification of conducted construction works.

4.2.5 The Paola, San Pawl il-Baħar and Żurrieq Local Councils employed an altogether different style of contract administration. Executive Secretaries commented that each Councillor had his/her own portfolio of responsibilities, and was therefore responsible for the monitoring of corresponding services in direct collaboration with the Executive Secretary. However, in the case of road resurfacing works commissioned by the San Pawl il-Baħar Local Council, the services of a Contract Manager for the supervision and monitoring of contractor performance were engaged, thereby meeting the requirements established in the contract document. The Executive Secretaries of the



Paola and Żurrieq Local Councils confirmed that Architects were engaged to evaluate and verify calculations presented by the contractor upon request.

4.2.6 San Pawl il-Bahar’s Executive Secretary further declared that it would be beneficial if the Local Council had the financial resources to outsource a Council Representative on all service contracts tendered by the Council. He outlined that since San Pawl il-Bahar’s Local Council was responsible for overseeing a relatively large area of land, it was impossible for its Executive Secretary alone to effectively monitor certain activities that were broadly spread across the entire locality.

Role Delineation

4.2.7 Throughout the conduct of this Performance Audit, NAO noted the considerable obfuscation that characterises and surrounds the functions of outsourced Council Representatives, particularly in delineating the services rendered by Contract Managers with those rendered by Architects, very often due to the overlapping of roles. Furthermore, the local councils interviewed only employed minimal use of Contract Managers, eliciting the above referred financial constraints as the main limitation in this regard. This ambiguity in roles is in stark contrast with Appendix P3.X (03) of the Specific Conditions of the Tendering Procedures, which state that the Contract Manager has strict and key responsibilities to adhere to. For instance, the formulation of the monthly work plan should be carried out in liaison between the local council and the contractor.

4.2.8 As highlighted in Chapter 1, an individual acting in the capacity of Contract Manager should, among other duties, be responsible for the following: management and supervision of the contract; cooperation with and provision of advice to the local council and contractor on technical matters; ensuring satisfactory execution of contractual

work and specifically the monthly work plan; certification of work in order for the subsequent approval of payment to the contractor; and drawing the immediate attention of the local council with regard to any infringements or omissions from the contract by the contractor.

4.2.9 Four Contract Managers and one Surveyor also provided information to NAO about their role in the administration and management of contracts. Feedback gathered by NAO in this regard indicated that the main tasks fulfilled by their respective roles related to ensuring that works were carried out according to specifications and that the contractor abided by all contract conditions through the conduct of site inspections. Furthermore, Contract Managers had to certify works carried out, help in the preparation and finalisation of the final account of works, including negotiation of variations, and at times also issue default notices. These various responsibilities are further delved into in subsequent sections.

4.2.10 The Tendering Procedures also state that the Contract Manager must be competent, qualified, and able to perform the Contract Management function. In addition, the said Contract Manager must have completed a course bearing relevance to the contract or contracts that are to be managed. The Contract for Local Council Contract Management (Appendix P3.X) of the same Procedures presents the qualifications pertinent to the Contract Manager for each individual contract. This extract from the Specific Conditions of Contract and Specifications for Services is reproduced in Appendix F.

4.2.11 The Procedures, as set by DLG, formally establish the roles of Contract Managers in the administration and management of contracts. However, when prompted with such a statement, Executive Secretaries provided contrasting replies. A number of Executive Secretaries claimed that the role of the Contract Manager was determined by the contract agreement set by the respective



council, while others remarked that these were centrally established by DLG.

4.2.12 In distinct contrast to all of the above, four Local Councils, namely, the Kalkara, Mtarfa, Paola and Żurriq Councils indicated that they did not make any use of services rendered by Contract Managers. The Executive Secretaries hailing from the aforementioned Local Councils reiterated that they only utilised services provided by architects, primarily in the certification of road resurfacing works. Under this scenario, the service that would normally be provided by Contract Managers was either considered as an extra expense, or alternatively viewed as a task that could be accomplished in-house, by the Executive Secretary or other Councillors.

4.2.13 NAO also evaluated the financial aspect involved when hiring Council Representatives. According to Appendix P3.X of the Specific Conditions for a number of contracts referred to in the Tendering Procedures, the contractor shall be deemed to have included, in the sum tendered for the performance of works or services, a contract management fee equivalent to five per cent of the total value. Executive Secretaries agreed that the contract management fee in all tenders was formally determined at a maximum capping of five per cent of the tendered sum, out of which the Council Representative was paid depending on the actual percentage tendered for. In the various cases where the Council Representative charged less than the established five per cent, or where no individual was outsourced by the Local Council, the contract management fee of five per cent remained at the Council's disposal.

4.3 Key Performance Issues

Measuring Contractor Performance

4.3.1 It is the local council's responsibility to ensure that the quality of the service being delivered is satisfactory and

according to the projected costs and timeframes. By clearly defining the required and agreed quality of service, the local council and engaged contractors know and understand what targets have to be met in the delivery of works and services. In the eventuality of service levels not being achieved, such circumstances are ordinarily addressed by means of specific contractual clauses detailing possible avenues of redress and mechanisms regulating compensation, as is in fact the case with the Tendering Procedures.

4.3.2 The General Conditions of Contract for Services in the Tendering Procedures outline how the awarded contractor shall perform the services in a manner consistent with the contract documents, to the satisfaction of the local council and the Council Representative. The contractor shall be bound by, and carry out all instructions given by the Council Representative, including: the omission or cessation of performance of all or part of the service for a stated period; the performance of the service or any part thereof as the Council Representative may require; and the performance of any additional service provided that such a service is similar to the service described in the contract documents; varying the specific conditions (without changing standard details), provided that the Council Representative obtained written permission from DLG.

4.3.3 The Tendering Procedures further outline that the programme and method of work shall be carried out in accordance with instructions given by the Council Representative. The contractor is bound to provide the Council Representative with the proposed programme and method of work for the performance of the service. If during the contract period the Council Representative notices that the contractor is not adhering to the signed contract, the Council Representative shall be entitled to instruct the contractor to produce a revised programme to ensure compliance, while the contractor would subsequently be obliged to provide copies of any amendments taking into account the instructed variations or modifications. In



addition, the contractor shall maintain accurate records of all the work carried out in the delivery of the service, which records shall be open for inspection and scrutiny by the Council Representative at all reasonable times.

4.3.4 The majority of interviewed Executive Secretaries remarked that where works involved road resurfacing or other construction developments, it was the responsibility of the Contract Manager, or Architect, or Surveyor to act as the Council Representative, and therefore assumed responsibility for measuring contractor's performance. However, with regard to other services, including the collection of mixed household waste, contractor performance was measured by means of onsite inspections and routine checking carried out by the Mayor and the Executive Secretary. Councillors, whose assigned portfolio was directly related to the contracted works or services, were at times tasked with the responsibility to verify the contractor's performance. In addition, as intimated at in Chapter 2, when reviewing the identification of needs process, Councillors make reference to residents' complaints brought to the fore during Council meetings as a source of information utilised in determining a contractor's overall performance.

4.3.5 If a service was not delivered according to the acceptable standard levels, residents would presumably forward complaints to the Council and subsequently instigate corrective action by the Executive Secretary. According to the feedback provided by a number of Executive Secretaries, residents were proactive enough to complain in cases where contractors were not adhering to their contractual obligations. In this context, some Executive Secretaries remarked that at times local residents acted as 'contract managers', and in fact all local councils confirmed that feedback from residents was registered in databases and other systems of recording feedback. As a matter of procedure, after the due assessment of complaints

forwarded by residents, the local councils communicated with the various contractors. This point is further elaborated upon in Section 4.5.

4.3.6 According to NAO's analysis of results, the Birkirkara Local Council was a step ahead in its measurement of contractor performance. The standard of quality provided by suppliers was measured and determined by the appointed Architect, or the Quantity and Quality Surveyor, or the Contract Manager, depending on particular circumstances. The Architect and the Surveyor were involved in assessing contractor performance with regard to road resurfacing and construction works, while the Contract Manager was tasked with the responsibility of measuring performance with respect to cleaning services, as was outlined in Section 4.2. The Executive Secretary further commented that for instance, cleaning services cannot be subject to time variations, since they are effectively rendered on a daily basis. However, time variations were not particularly monitored, except if the matter demanded urgency. Still, there were cases where the Mayor warned a particular road construction contractor that if works were further delayed, the contract would be terminated. On the other hand, cost variations always needed the approval of the local council in order to proceed with intended works. This issue is discussed further on in this Chapter.

4.3.7 The few Council Representatives who responded to NAO's questionnaire confirmed their involvement in the performance measurement process of work carried out by contractors, by way of the certifications issued covering jobs executed, which also detailed duration, value and variations that were recorded and priced accordingly. However, one Council Representative commented that, although contractor's performance was noted, it was not carried out by means of a formal measuring procedure.

Non-Performance Issues

4.3.8 The General Conditions of Contract for Services also make reference to other non-performance issues. Extracts from the Tendering Procedures oblige the contractor to ensure compliance with all health and safety legislation, good practices and any other requirements instituted by DLG and/or the relevant local council. If the Council Representative considers that the conditions set under these requirements are not being complied with, the contractor may be ordered, in writing, to halt the delivery of service or take the necessary measures so as to ensure compliance with all the requirements. Furthermore, the contractor is also expected to keep accurate and updated records of all the employees who are providing the tendered service. These records must also be made available for inspection should the Council Representative request to be furnished with them.

4.3.9 From the 10 reviewed local councils, only the Nadur Local Council stated that non-performance issues, such as safety measures, were being monitored throughout the course of road resurfacing works. The majority of local councils, however, commented that non-performance issues were accorded more weight during the evaluation stage rather than throughout the duration of the contract.

4.3.10 Nonetheless, these councils' offices were made aware, through residents' complaints and/or observations made by Councillors, of any irregularities committed by contractors. Finally, some local councils remarked that no monitoring whatsoever was carried out in connection with non-performance issues, since their respective Council Representatives were only concerned with whether the services and works were delivered as established in the contract agreement.

4.3.11 Moreover when Council Representatives were prompted about the issue of non-performance criteria, only one out of the five who acceded to NAO's request stated that the relevant criteria were monitored throughout the contract. However, it must be conceded that, although not necessarily considered to be a formal and unremitting process, one of the respondents stated that materials used by suppliers were, in fact, examined for safety purposes.

Certification and Payment

4.3.12 According to the Tendering Procedures, the contractor shall submit to the Council Representative, a monthly statement, in writing, presenting the instalments and the sum to which the contractor considers himself/herself entitled to, for any addition to, or modification in the service carried out according to instructions given by the Council Representative. The Council Representative has the authority to amend any monthly statement provided by the contractor, in order to provide for:

- a. Deductions for work either not carried out, or not to the acceptable standards;
- b. Variations of the value of any additional work that has been duly authorised;
- c. Deductions, if the contractor fails to abide by the instructions of the Council Representative; and
- d. Deductions for repair of any assets loaned to the contractor.

4.3.13 In order for the monthly statement (prepared by the contractor) to be approved and eventually settled through payment, the Council Representative must certify the works carried out. The amount certified must include any adjustments based on the criteria underlined in the preceding paragraph. In addition, a copy of the monthly statement, including any amendments that the Council Representative utilised in calculating the amount to be certified, shall be sent to the contractor.

4.3.14 All local councils agreed that certification of works were carried out. In order to officially declare that services and works were carried out in accordance with the specified tender documentation, the Council Representative must certify all or part of the concluded works. Moreover, the majority of interviewed Executive Secretaries declared that the various Council Representatives engaged with their respective localities prepared a technical report, in which works conducted were assessed and evaluated. However, the subsequent verification of corresponding documentary evidence conducted by NAO indicated that such certifications were, in the vast majority of cases, limited to road resurfacing or other construction works, while certifications for other services were not mentioned by all Executive Secretaries. The sole exception to the above was the Birkirkara Local Council, which provided evidence detailing certification for other cleaning services.

4.3.15 Further to the above, NAO also sought feedback from the various Council Representatives with regard to the maintenance of accurate data detailing the work performed, including among others, records of inspections and corresponding certification of completed works. From the five Council Representatives who provided responses, all agreed that works (four were referring to road and construction works, while one was referring to the provision of cleaning services) were certified in order for payment to take place. Despite the above assertions, only two out of the five Council Representatives provided NAO with examples of such certifications upon further request.

4.3.16 Apart from the certifications prepared by Council Representatives, Executive Secretaries were asked to elaborate on the processes utilised in the execution of the appropriate checks and authorisation procedures

employed for the payment of invoices, especially when considering the fact that for a number of services, no official documentation recognising completion or partial completion of services or works were issued. All local councils reiterated that in the case of road resurfacing and construction works, certifications were necessary in order to proceed with payment. Evaluations by the Council Representative were carried out through site visits, inspections and the undertaking of necessary samples, following the submission of a statement of works by the contractor. Once the statement was approved, certification was vetted at Council meeting level, and, if deemed necessary, further administrative assessments would be carried out by the Executive Secretary or another council member. Payment was subsequently effected following approval by the council members.

4.3.17 The certification of services rendered on a daily basis was conspicuous by its absence across the majority of reviewed local councils, with the sole exception being the Birkirkara Local Council, where one particular Council Representative was specifically assigned to such services. Executive Secretaries from the other local councils commented that day-to-day services were monitored all year round in order to carry out the appropriate checks and balances. Under such circumstances, the main monitoring system used by local councils was the evaluation of defaults of service by the contractors, and/or complaints lodged by residents. In addition, local councils assessed works carried out in relation to the signed tender document by conducting invoice checking, through general observation and site inspections. If works were found to be within the parameters of established projections, and subsequently approved by the council members, the Executive Secretary would then proceed with payment on the agreed terms.

4.3.18 When reviewing the system of checks and overall authorisation process in place for the payment of invoices, all Council Representatives agreed that prior to the authorisation of payments, a thorough technical inspection was carried out to ensure that all works conformed to the agreed specifications. In addition, all works were measured and a final bill of quantities was drawn up. Moreover, any disputes between the Council and the contractor were discussed and resolved prior to the authorisation of the final request for payment.

Assessing the Council Representative's Performance

4.3.19 The Council Representative's performance, similar to that of other contractors, is subject to the scrutiny and review of the contracting local council. Contrasting feedback was obtained in this respect from the various interviewed Executive Secretaries. The Executive Secretary of the San Pawl il-Baħar Local Council remarked that the performance of the outsourced Council Representative was reviewed as was that of any other contractor. On the

other hand, another Executive Secretary elaborated on the considerable difficulty encountered in reviewing the performance of professionals such as architects given the disparity in terms of specialist technical knowledge. Other Local Councils confirmed that, despite issuing various reminders requesting the Council Representative to complete the assigned tasks, no formal performance review was ever carried out.

4.3.20 Such a scenario was further delved into by the Birkirkara and Nadur Local Councils, where, although no formal appraisal was carried out, both Councils took the necessary corrective actions in instances when the Council Representative was not delivering up to the required standards. The Birkirkara Local Council encountered problems with respect to the payment of invoices following the completion of construction works. After reviewing certifications carried out by the Council's appointed Architect, the Birkirkara Local Council noted that its Architect was certifying works that significantly exceeded the originally contracted value without providing the required and expected justifications. The Birkirkara Local Council addressed such a situation by engaging the services of a Quality and Quantity Surveyor by profession, to double check estimates and calculations presented.

4.3.21 In the case of the Nadur Local Council, the Mayor was actively involved in addressing the difficulties arising with respect to the poorly performing Council Representative, and took the necessary measures in order for works to be completed. In such occasions, the Local Council deducted part of the payment due to the Council Representative. A similar scenario to that of the Birkirkara Local Council was identified with respect to the Nadur Local Council, in which case, measurements submitted by the contractor and subsequently confirmed by the Council Representative were found to be significantly incongruent with original plans. The Nadur Local Council reported that it contested the alleged significant variations, rectified erroneous measurements and replaced its Council Representative.

4.3.22 The other four local councils remarked that they do not have any Council Representatives in their service, specifically designated to address contract management duties, and therefore did not carry out any form of appraisal.

Addressing Unattained Standards

4.3.23 In the event where standards set by local councils are not dutifully met by the engaged contractors, the Tendering Procedures regulate occurrences of default in performance. As outlined in greater depth of detail in Chapter 2, set procedures clearly outline and dictate how such defaults should be determined. In addition, the Tendering Procedures stipulate that the local council may, through the use of its own, or other workmen, perform a

service in an alternative capacity to the contractor, who for whatever reason fails to act in accordance with the provisions of the contract documents. Moreover, the costs and charges incurred by the local council in absorbing or reassigning such a service shall be paid by the defaulting contractor to the local council on request, or deducted from any payment due to the contractor.

4.3.24 In cases where local councils noticed that the established level of service was not being adhered to by the contractor, Executive Secretaries illustrated a common process of redress. Initially, local councils submitted informal complaints with the contractor, either verbally, or through the use of other means of communication. Subsequently, if the problem persisted, the local council issued a number of default notices. If the contractor pursued in non-conforming with the indicated specifications, the contract would eventually be terminated. Under such circumstances, local councils ordinarily opted to either cash in the Performance Guarantee, or deduct part of the payment owed to the contractor.

4.3.25 Clause 42 of the General Conditions of Contract for Services stipulates that local councils must give prior notice of intention to terminate a contract with a supplier by means of submission of a written notice. However, the effective date of termination shall be not less than 30 days after receipt of such a notice, or an altogether shorter or longer period, as may be agreed between the parties. In addition, upon receipt of such a notice, the contractor shall take the immediate and necessary steps to bring the contract to a close and limit any additional expenditure to a minimum.

4.3.26 Termination or postponement of works and services may also take place if the contractor, as a result of any situation or event arising from circumstances beyond his/her control, and which could not be anticipated, makes it impossible to honour agreed contractual obligations. In these circumstances, the contractor shall notify the local council in writing. In the event that the contract is postponed, the local council shall be free to enter into other agreements in order to ensure that the service is not disrupted. In addition, should the local council decide that such postponement of works would severely disrupt the service, the local council may choose to terminate the contract.

Business Continuity and Contingency Planning

4.3.27 The above highlighted issues serve to underscore the importance of a principal aspect of contract management, that is, the introduction of measures and safeguards that suitably address instances of service failure and interruption. It is normally the contractor's responsibility to ensure service continuity, and this level of accountability should be stipulated in the contract. Nonetheless, the contracting

authority should also be responsible to ascertain continuity of service. This practice would ensure the delivery of a pre-established base level of crucial services, even when operating under certain unforeseen circumstances. Planning should quintessentially identify prerequisites that enable the unremitting provision of each critical service, and simultaneously develop service continuity plans. The costs of drawing up a contingency plan may, however, prove to be prohibitive for certain local councils.

4.3.28 Business continuity and contingency planning is part of managing risk as emphasised in Chapter 2. Almost all local councils reiterated that in cases where contracts were terminated, replacement contractors were hired on an ad hoc basis. In such cases, the local councils were also allowed the option of commissioning the replacement contractor at the expense of the defaulting one, until another public call for tenders was issued (as stipulated by the Tendering Procedures). A further point raised was that in the eventuality that the suspended service gave rise to sanitary concerns within a given locality, the particular local council retained the option to issue an urgent call for tenders. The latter provided bidders with a seven-day time window for the submission of their offer.

4.3.29 The interviewee from the Nadur Local Council indicated that when faced with such a predicament, the Local Council assumed responsibility for the service provision in question and utilised employees that were engaged by the same Council, until a new call for tenders was issued. One particular case in point with regard to the Nadur Local Council, put forward by the Executive Secretary, was the preservation of a garden that was still being run by employees that were deployed by the Local Council following the termination of another contract. On the other hand, the Żurriq Local Council's Executive Secretary stated that in cases where the contract was terminated, the supplier was provided with a three-month notice period, thereby allowing the Local Council ample time to issue a new public call for tenders.

Maintaining Common Databases

4.3.30 NAO enquired whether local councils registered the respective level of service of various contractors, fed such information back into a commonly accessed system and in so doing, shared information across multiple councils. Moreover, Executive Secretaries were asked if poorly performing contractors were ever blacklisted, and conversely whether positively performing contractors were recommended. Executive Secretaries commented that the closest system to such an arrangement was predominantly informal, involving an unstructured exchange of views primarily by means of email. This practice was introduced after DLG instructed local councils to share information relating to the tender assessment of submitting bidders (especially in cases when default notices were issued)

for the collection of mixed household waste contract. However, NAO observed that there is no formal system to regulate such a practice.

4.3.31 Moreover, some Executive Secretaries considered such practices to be largely informal and subject to personal initiative. This was notably accentuated in the case of the Gozitan local councils. Gozo's smallness in scale and its limited pool of potential contractors influenced Executive Secretaries based there, particularly when stating that if a particular local council had any issues with a defaulting contractor, all localities would eventually get to know through their respective informal networks. With regard to blacklisting and recommendations on defaulting and positively performing contractors respectively, this took place only once, when a Maltese manufacturer of road marking paint, was blacklisted throughout Government.

4.4 Contractual Change Management

4.4.1 A successful arrangement between the contracting authority and the contractor requires a mutual commitment to meeting changing business requirements, particularly when one considers the fact that the operational environment of the contracting authority will most likely change during the contract's lifespan, necessitating modification and alterations. In addition, the execution of a contract may be accompanied by newly identified problems or risks, the handling of which requires the implementation of changes to the terms of the contract. Introducing properly managed change can be a good opportunity to either alter or improve the previously agreed upon service. The drivers for change, both internal and external, for the duration of a contract, can come from a range of sources. Internal drivers for change could include modified business requirements, while external changes embrace wider economic trends that affect value for money and changes in legislation.

4.4.2 Changes are always easier to manage when they are planned for in advance. Even if changes may take place without any warning, it is often possible to predict what could happen in the future. Fluctuating external factors may make change unavoidable; however, modification of the service is always voluntary. According to the type of relationship in place between the contracting authority and the contractor, the supplier may be closely involved in planning the changes into the contract agreement. It is imperative that incorporated changes must be negotiated between the contracting authority and the service provider.

4.4.3 It may be the case that due to additional works that arise or due to other changes in economic factors, amendments to the bill of quantities, in the rates charged or quantities estimated, may be requested by the local council or the contractor. Executive Secretaries were invited to comment on the changes and variations they had to introduce, if any, within the bills of quantities or

contracts signed. In addition, NAO also evaluated if the revisions were instigated by particular circumstances and if clear processes existed for the management of changes and contract variations.

4.4.4 According to the interviewed Executive Secretaries, contract variations were generally experienced due to discrepancies in original estimations and measurements taken at the initiation and termination stages of the project in focus. Mainly, differences occurred due to complications that arose during the course of the service, materialising in the identification of further works, especially during road resurfacing contracts. In addition, a number of Executive Secretaries indicated that the procedures issued by DLG instruct Local Councils to adhere to set thresholds. Nonetheless, it was noted by NAO, that Executive Secretaries gave contrasting responses with regard to limits set, and whether upon certain amounts, local councils may or are obliged to discontinue works and issue another call for tenders.

4.4.5 Clause 47 of the General Conditions of Contract for Services states that in cases where the local council requires an omission, decrease or increase in the service, which does not exceed 2.5 per cent of the contract sum in any one-year period, the Council Representative may instruct in writing any such variation. In such cases, no additional payment shall be due to the contractor. However, when the variation exceeds 2.5 per cent, but not 10 per cent of the contract sum in any one-year period, the difference shall be instructed in writing by the local council. Moreover, these variances in payments to the contractor shall be based upon the rates set out in the bill of quantities presented with the tender documents.

4.4.6 The Tendering Procedures declare that cases where the local council requires an omission, decrease or increase in the service, which varies the contract sum by more than 10 per cent, ranging upwards to a maximum of 20 per cent, the local council reserves the right to terminate the contract awarded to the contractor and issue a fresh call for tenders for the performance of the service. In the case of instances where variations exceed the 20 per cent threshold, Legal Notice 28 of 2000, amending the Local Councils (Tendering) Procedures, states that, "... *the Local Council shall either definitely terminate the contract awarded to the Contractor and issue a fresh call for tenders, or shall only issue a call for tenders for that part of the variation, provided that if the part of variation is less than Lm2,000 or 5% of the financial ordinary allocation, the limitations for direct orders or quotations shall apply.*"

4.4.7 Almost all local councils commented that when variations arose, it was necessary that these discrepancies were checked and approved by the respective and corresponding Council Representative. Subsequently,



it is the council, through its members, that approved the need for further works, and in the majority of cases the contractor was requested to continue offering the service as agreed, taking into consideration all variations. Apart from Executive Secretaries, Council Representatives also provided their responses to NAO, and in so doing agreed that any variations were to be approved by them prior to their execution through formal requests brought forward to the contractor.

4.4.8 Meanwhile, the Mqabba Local Council's Executive Secretary provided a detailed account of the logistical process involved in the implementation and management of contractual changes and variations experienced by the Local Council. In the case of road resurfacing contracts, used as a basis for discussion, the assigned Council Representative carried out pilot testing in order to evaluate whether works involved higher expenditure than originally planned. In circumstances where the Council and the contractor disagreed over a particular bill of quantities, further checking was carried out, and an agreement was reached during informal ad hoc meetings. However, the Executive Secretary further maintained that in particular circumstances, the Local Council may only carry out estimates of variations. A case in point put forward to substantiate such an argument is the bulk refuse collection service, which presented significant difficulties in building accurate forecasted service requirements.

4.4.9 Moreover, Executive Secretaries observed that at times, suppliers instigated requests for adjustments in the rates payable, despite the fact that the Tendering Procedures only permit local councils to request variations to work agreed upon, due to arising discrepancies. In this context, it was only the San Pawl il-Bahar Executive Secretary who commented that if the tender document did not permit such

changes, requests from contractors for revision of rates were not accepted. In addition, four out of the five Council Representatives who supplied information to NAO agreed that clear processes for the management of changes and contract variations in the tender documentation were present, as these were catered for in the tender documents.

4.4.10 Furthermore, during interviews carried out with Executive Secretaries, it was indicated to NAO that in the new issue of the collection of mixed household waste contract, cost variations were incorporated into the specific conditions. Such conditions state that there should be an agreement between the waste carrier and the local council in order to effect monthly adjustments, if necessary, to the fuel cost component as quoted in the bill of quantities. Also, on a monthly basis, the waste carrier is obliged to revise this component with the increase or decrease of that particular month. Furthermore, Article 12 of the Specific Conditions affirms that the fuel price to be taken in this exercise is the official price quoted by the competent regulatory authority. However, this was criticised by one particular Executive Secretary, who maintained that anomalies exist in the documentation provided by DLG, since a provision for fuel increase was incorporated in the mixed household waste contract, as explained above, but not in other services where fuel was also considered to be a critical variable.

4.4.11 Although the Tendering Procedures provide guidelines with respect to the application of good governance principles when variations arise, the majority of Executive Secretaries stated that when local councils were confronted with significant variations on works or services, such works were approved nonetheless. From the 10 local councils selected, only Paola Local Council provided the relevant documentation illustrating instances

where variations exceeding 10 per cent of the contract sum resulted in a new road resurfacing works contract being issued. On the other hand, when variations substantially exceeded the maximum 20 per cent threshold, with the Iklin Local Council on one occasion exceeding the originally contracted amount by 47 per cent, no corrective action was deemed necessary by the Council.

4.4.12 In addition, various Executive Secretaries mentioned that in cases where works were already underway, it would have been impractical and not viable to stop midway through works and wait for another public call for tenders to be issued. Moreover, it was argued that such action would further aggravate an already tenuous situation, especially if a different contractor was to be awarded the new public call for tenders. NAO observed that although a number of variations were noted, the actual detection of discrepancies was outside the scope of this Performance Audit, given that the major focus revolved around the actual contract management process. Nonetheless, NAO considers the issue of variations to be a significant area of risk.

4.5 Managing the Relationship

4.5.1 After contract award, the relationship between the contracting authority and the service provider can be further developed by engendering a culture of information sharing, where objectives are openly discussed. The sharing of information regarding the future direction the contracting authority is to adopt can help in the further development of the relationship, reacting to possible changes in business requirements. In addition, any arising concerns, whether relating to performance, progress or cost, should be thoroughly discussed. This ideally takes place as early as possible into the process of delivery, as problems and issues left unattended can quickly turn into crises.

4.5.2 During the early stages of the contract the Council Representative, or any individual responsible for contract administration is ordinarily tasked with ensuring that all information flows between the service provider, the local council, and other possible stakeholders. The Council Representative responsible for liaison with the contractor must exhibit the required level of flexibility in managing the relationship with the contracted party, which will vary depending on the type of contract at hand. There is no one style that is appropriate for every contract, or for every service provider, and it is in this context that the Council Representative's proficiency comes to the fore.

4.5.3 Therefore, in managing the relationship, it is essential for the Council Representative to put together systems of feedback and communication, thereby connecting all stakeholders involved. The stakeholders involved in this communication process include: local

councils' administration together with the Executive Secretary and elected Councillors; Council Representatives engaged in the administration and management of contracts; contractors and service providers; and local residents who have a vested interest as the intended final beneficiary of the services being provided.

4.5.4 All local councils confirmed that they generally made use of informal communication lines; however, periodically, other more formal communication means were used. Communication between local councils, contractors and Council Representatives was mostly carried out by means of telephone calls, emails and site visits. This was substantiated through the corresponding file review carried out by NAO, where an extensive use of emails was noted.

4.5.5 Although not a frequent occurrence, other formal settings included meetings with contractors, which would ordinarily be attended by the Mayor, the Executive Secretary, and Council Representatives. Such meetings were held throughout the various stages of the contract lifespan, including the initiation and execution stages. Interviewees stated that at the end of such projects, meetings were organised to discuss the bill of quantities and payments due to the contractor, in addition to settlements over disputed amounts. Executive Secretaries further remarked that at times, meetings were also organised with national bodies or authorities. In addition and contradictory to the above stated, NAO also obtained feedback from Executive Secretaries stating that no formal meetings were organised throughout the contract lifespan, or only in the case of serious disagreement, often due to a disparity in the contract sum to be paid for rendered services or works.

4.5.6 All Council Representatives agreed that they were provided with clear objectives and reporting lines. Objectives were target oriented and were based on the successful completion of the project in focus; therefore, any reports requested by the local council were provided according to the particular circumstances and needs of the council. Feedback to suppliers was also normally provided on most aspects of the project being undertaken. However, a noteworthy point in this regard is the fact that two particular Council Representatives claimed that communication with any contractor was dealt with directly by the local council.

4.5.7 One important aspect of an established communication system is to underline any deficiencies on the part of the contractor; hence, the Tendering Procedures instruct the Council Representative to forward any complaints in writing to the local council on the same day of receipt. When the complaint relates to an infringement or omission by the contractor with respect to the contract that is being managed, the Council Representative shall, in writing, immediately bring this to the contractor's attention for remedial action in writing.

4.5.8 The majority of Executive Secretaries confirmed that difficulties relating to the execution of tendered works were initially identified, communicated and addressed through informal communication means. According to the interviewed Executive Secretaries, there were few instances where difficulties were formally addressed through meetings among the stakeholders involved. On the other hand, if non-adherence to the signed contract persisted without the contractor taking into consideration warnings issued by the local council, the contractor was then asked to report at the council's office. Subsequently, if no action was taken, the complaint was formally registered and a default notice issued. If the service provider persevered in non-adherence despite being issued with a number of default notices, Executive Secretaries would then take drastic action and inform the contractor that the council would be terminating the contract and requesting the services of another contractor.

4.5.9 Moreover, Council Representatives maintained that whenever difficulties relating to issues of non-compliance arose, principally due to unforeseen circumstances, the contractor and Executive Secretary were dutifully informed. In addition, they remarked that such difficulties were often addressed through meetings among all stakeholders, intended to establish clear technical solutions having the least impact on project cost and execution times.

4.6 Conclusions

4.6.1 The reviewed local councils adopted various approaches and styles in the assignment of responsibility and overall management of contracts. NAO noted that this variety in terms of contract management approaches and styles emanates from the prevalent idiosyncrasies that characterise each local council. One dominant factor in this discourse relates to the issue of financial constraints, with a number of Executive Secretaries contending that limited funds restricted their engagement of external contract management service providers. The councils' decision to outsource contract management services or otherwise was also influenced by the technical or non-technical nature of the contract to be managed, ordinarily outsourcing in the former case, and adopting in-house arrangements in the latter case. Notwithstanding all of the above, NAO noted that the assignment of responsibility of the contract management function was often shared between various persons, most commonly including the Executive Secretary, Councillors, the Mayor and the externally appointed Council Representative.

4.6.2 The issue of role delineation is intricately linked to the aforementioned responsibilities assigned to outsourced Council Representatives, particularly in delineating the services rendered by Contract Managers with those rendered by Architects, very often due to the overlapping

of roles. Data collected throughout this study indicates the significant confusion and ambiguity relating to the role of the Contract Manager, which is in stark contrast with the Specific Conditions set out in the Tendering Procedures, clearly outlining the key responsibilities that must be adhered to. The varied responses obtained by NAO in this regard are testament to this issue of poor awareness by the Executive Secretaries with respect to the contract management roles and functions expected to be fulfilled by outsourced Council Representatives.

4.6.3 Two distinct systems of performance measurement characterise the evaluation of technical and non-technical contracts, as was respectively the case with the road resurfacing works contract and collection of mixed household waste contract. Analysis of data relating to contract management practices across the reviewed local councils indicates that externally appointed Council Representatives were entrusted with the evaluation of technical contracts, whereas other non-technical contracts were internally addressed, primarily through the input of Executive Secretaries, Councillors and Mayors. In the latter case, NAO noted that residents' feedback on services rendered was utilised as an informal source of performance measurement. To this effect, NAO is somewhat concerned with the fact that evaluation of contractor performance, for non-technical contracts, was in the vast majority of cases not carried out in a formal manner.

4.6.4 A secondary issue in terms of the overall measurement of performance of contracted works or services is the monitoring of non-performance issues, such as, the regularity of employment of the contractors' employees, as well as health and safety concerns, among others. NAO is of the opinion that the general level of monitoring of non-performance issues in this respect is poor.

4.6.5 Consonant with the findings put forward in relation to performance measurement, the process of certification of completed road resurfacing works and collection of mixed household waste services rendered was characterised by its significant disparity. NAO considers this difference to be largely attributable to the appointment of a specifically designated Council Representative in the former case. In the general absence of certification regarding the collection of mixed household waste, NAO's concern focuses on the documentation used in endorsing payment. Although NAO acknowledges that the risk of services not being delivered with respect to this contract are minimal, particularly given the regular feedback received from residents, NAO still considers the appropriate certification of services rendered to be a good management practice.

4.6.6 Although the Council Representative's performance, similar to that of other contractors, is subject to the scrutiny and review of the contracting local council, the

specialist technical knowledge, that is at times an intrinsic part of the service, renders performance assessment all the more complex. NAO considers this difficulty in evaluating the performance of engaged Council Representatives as a risk to local councils, which is in fact substantiated by the two scenarios put forward by the Birkirkara and Nadur Local Councils. NAO commends the two aforementioned Local Councils in their efforts at mitigating such risk.

4.6.7 Despite DLG’s instructions for the sharing of information with respect to the assessment of submitting bidders, particularly with regard to the collection of mixed household waste contracts, NAO noted that no formal systems central to the administration of common databases were maintained. Further to the above, NAO noted that the exchange of information regarding the positive or negative performance of contractors was informally carried out, largely dependent on the personal initiative of particular Executive Secretaries and other council members. NAO considers such an informal and uncoordinated approach towards management of essentially similar contracts across various localities as representing an opportunity not being capitalised upon.

4.6.8 Numerous issues come to the fore with regard to contract management considerations in the address of changes and variances of contractual terms. On a positive note, Executive Secretaries confirmed adherence to the established Tendering Procedures, with the approval of variations obtained by channelling requests through the Council Representative (when applicable) and seeking final authorisation by the council proper. Less clear was the level of awareness of particular Executive Secretaries when providing significantly contrasting and varied replies with regard to the established financial thresholds governing the means by which local councils should address instances of contractual variations.

4.6.9 Another similarly anomalous situation was that of contractors instigating revisions in contractually binding agreed rates. Such a method of contractual change is not in accordance with corresponding regulations established in the Tendering Procedures, which clearly state that requested variations to the agreed plan of works or services should be put forward by the local council. One particular arrangement that in principle appears to address a common root cause of the need to revise contractual terms is the incorporation of cost variations, which when in-built into the contract and appropriately monitored, result in a fair agreement between the contracting parties. A monthly adjustment mechanism that compensates for fluctuations in fuel prices was the most appropriate and successful example of the aforementioned cost variations.

4.6.10 An issue of significant concern to NAO relates to the principles of good governance, specifically in the

endorsement of contractual variations well in excess of the 10 per cent threshold but within the 20 per cent capping, at which point the local council may exercise its right to terminate the contract and issue a fresh call. Of utmost concern to NAO is the situation where contractual variations exceeded the 20 per cent capping. Such circumstances should imply the immediate termination of the contract and the issue of a fresh call for tenders, or the issuing of a call specifically corresponding to the variations. A case in point was a road resurfacing contract issued by the Iklin Local Council, which exceeded the originally contracted amount by 47 per cent. NAO’s concern in this regard focuses on the clear breach of regulations governing the administration of such tenders. NAO acknowledges the difficulties associated with circumstances when planned works are subjected to substantial variations midway through a given project. However, the appropriate utilisation of the skills and proficiencies of a duly appointed Council Representative would presumably mitigate such a risk.

4.6.11 NAO considers the appropriate management of the relationship between the involved parties to be an integral component of the eventual successful implementation and execution of the contract. One key aspect of this relationship relates to the communication channels flowing between the Council Representative, the Executive Secretary or local council members, and the service provider. From data collected, NAO is of the opinion that such communication is predominantly characterised by its informal and unstructured nature, often featuring on an intermittent basis, depending on the need to address particular issues. Furthermore, NAO noted the anomalous situation where communication with the engaged contractor was dealt with directly by the local council without involving the Council Representative. NAO considers the circumvention of Council Representative involvement as a risk that could possibly undermine the continuity of the contract management function.

4.7 Recommendations

4.7.1 NAO recommends greater streamlining and standardisation with respect to the assignment of responsibility and overall management of contracts. DLG’s role in the implementation of such reform would be critical and address various aspects. One such aspect is the issue of financial constraints, which was allegedly a determining factor in the decision by certain local councils of not engaging Council Representatives. Given that tendering parties formally determine a contract management fee of five per cent of the tendered sum, NAO considers the above justification as unacceptable and recommends a more widespread engagement of Council Representatives, and in so doing, further ensure the establishment of appropriate management structures, key in supervision of ongoing works and services.

4.7.2 In addition to the above, and in order to ensure the smooth transition and continuity of the contract management process, NAO recommends that persons, involved in the design of tender specifications and tender adjudication, participate as members of the contract management team. NAO considers the adoption of this team approach to mitigate various risks, including among others, the formalisation of shared responsibility, which under present arrangements takes place in a variety of unstructured and unorganised ways.

4.7.3 Clearly evident among Executive Secretaries is the need for greater awareness of the roles and functions that can be fulfilled by an engaged Contract Manager, particularly in view of the detailed Specific Conditions set out in the Tendering Procedures, which clearly outline the key responsibilities that must be adhered to. Once again, NAO recommends that DLG assumes a pivotal role in the dissemination of relevant information and awareness building, while encouraging the active participation of Executive Secretaries and other local council members.

4.7.4 NAO encourages DLG and all local councils to introduce more robust systems of performance measurement, which would ideally be based on a proactive management approach rather than the reactive one currently in place, possibly encompassing formally set criteria and benchmarks. NAO understands that such a system would address the present situation of local councils' over-reliance on informal and unstructured systems of feedback as the basis for performance measurement. Furthermore, NAO considers it imperative that a formal evaluation report determining contractor performance, corresponding to each instance of contracted works or services, be compiled. Such an evaluation should not be exclusively restricted to the narrowly defined and contracted works or services, but also extended accordingly to encompass non-performance issues. In this latter context, NAO considers the sustained cooperation between local council and Council Representative as critically important in the formal monitoring of such issues.

4.7.5 NAO recommends the introduction of appropriate procedures required for the certification of all contracted works, particularly absent in this audit in the case of the collection of mixed household waste contract. It is in NAO's considered opinion that such certification further contributes to good governance practices across local councils, thereby providing the necessary checks and balances in the endorsement of payment. Furthermore, NAO reiterates its previous recommendation regarding the appointment of designated Council Representatives across all contracts, which would subsequently serve to facilitate the certification process.

4.7.6 While acknowledging the inherent difficulties associated with the review of the Council Representative's performance, NAO proposes a two-pronged approach in the address of such an issue. At a central level, NAO encourages DLG to devise a standard tool to be utilised in the evaluation of works and services rendered by the Council Representative on behalf of the contracting council. At the subsidiary level, NAO encourages councils to adopt a critical approach in their respective performance review of engaged Council Representatives, taking as an example the corrective action instigated by the Birkirkara and Nadur Local Councils.

4.7.7 NAO considers the aforementioned lacuna regarding the overall performance evaluation of engaged contractors to be more comprehensively addressed through the establishment of a formal system of information sharing that would be readily accessible to all local councils. Due to the essential coordination involved in the setting up of such a process, NAO considers it opportune for DLG to assume the relevant central coordinating function.

4.7.8 Although not all contractual variations may be anticipated, NAO nonetheless recommends that local councils strive towards enhancing their employed systems of planning and change management. At a basic level of redress, NAO considers the need for a heightened level of awareness of particular Executive Secretaries, thereby refining their knowledge and understanding of the established financial thresholds governing the means by which local councils address instances of contractual variations. In addition, NAO is of the opinion that rigorous change management control may only be achieved if the Council Representative acts as an interface, facilitating the council and contractor relationship through the processing of requests for incorporating newly identified contract requirements. Moreover, NAO recommends that the designed framework and specifications should include in-built provisions that adjust for cost variations, as is the case with fluctuating fuel prices. A monthly adjustment mechanism allows for the appropriate compensation of cost variations, and if appropriately monitored, results in a fair agreement between the contracting parties.

4.7.9 In conclusion, NAO strongly recommends that DLG and local councils alike address instances of gross discrepancies in variations through the introduction of appropriate mechanisms central to ensuring good governance. One possible means of imbuing the tendering process with greater control with respect to variations would involve further scrutiny by DLG, thereby monitoring such discrepancies from originally tendered contract sums. Centrally integral to the entire tendering process is the adherence of local councils to established procedures and regulations. NAO strongly urges local councils to abide

by the parameters set by means of the various financial thresholds, and DLG to take corrective action when instances of non-adherence are brought to light. Finally, NAO recommends that variations should be accompanied by some form of discrepancy report, in which case the local council and engaged Council Representative would provide the relevant justification for the disparity with the originally tendered bid.



Appendices

Appendix A – Executive Secretary Interview Schedule

Semi-structured Interview with _____, Executive Secretary at _____ Local Council, held on _____.

Introduction

The National Audit Office is undertaking a performance audit related to Contract Management Capabilities across Local Councils.

Ten Local Councils have been randomly selected as case studies for this evaluation: two Councils from each of the five regions across Malta and Gozo, one with a budget of less than €350,000, and the other with a budget of equal or over to €350,000. In addition in each Local Council, the focus will be on two main contracts: Collection of Mixed Household Waste and Road Resurfacing within the locality.

The study focuses on the policies, structures, systems, procedures and processes in place in each of the ten case studies that ensure efficient and effective contract management from the initial determination of specifications/requirements in tender/contract documentation, to the tendering/contract award process and the actual management of contracts.

1. The importance of contract management

The following points will be highlighted:

- a. Definition and focus;
- b. Legislation, structure and policy;
- c. Stakeholders; and
- d. Objective, scope and methodology.

2. The development of specifications and tendering documentation

NAO would like to understand how the identification of needs and specifications is carried out in respect to the selected contracts:

- a. Is there an appointed person tasked with the identification of needs for each service?
- b. Are there systems in place that help in the identification of needs?
- c. Is there a system of prioritisation that is employed?
- d. Does the Local Council maintain any databases in this regard?
- e. How are service level requirements identified?
- f. How is the Local Council's budget matched to established priorities?

The design and preparation of tender documentation:

- a. The Local Government Department (LGD) provides a set of specifications for each type of service. Are these specifications provided by the Department adequate?
- b. Are these specifications revised from time to time?
- c. Do Local Councils amend or add to such specifications in order to reflect the needs of their locality?
- d. If such, is it within the remit of Local Councils to amend or add to such specifications?
- e. Are such changes monitored?

- f. If changes or added detail are introduced within the specifications, who is responsible for such changes?
- g. Does the person tasked with the design of such specifications have the right expertise?
- h. Do the specifications (both those designed by the LGD and those amended by the Local Council) cater for risk management considerations?
 - i. Do these risk management considerations factor in the element of cost?
 - ii. Do these risk management considerations factor in the element of quality?
 - iii. Do these risk management considerations factor in the element of time?

3. The tendering process

The regulations governing the submission and examination of tenders:

- a. Have the contracts been awarded using a public call for tenders? NAO would like to be provided with all the necessary documentation as regards contracts for Collection of Mixed Household Waste and Road Resurfacing.
- b. Is the Local Council collecting all the necessary documentation relating to submitted offers?
- c. Are tenders opened in public?
- d. Is somebody specifically designated for this task?

A defined system for the award of tenders:

- a. Who is responsible for the evaluation of tenders?
- b. Who is responsible for the adjudication of award of tenders?
- c. Are established criteria or evaluation sheets used in the award of tenders?
 - i. Do these criteria favour the selection of the most economically advantageous offer?
 - ii. Do these criteria favour the selection of the most effective offer?
 - iii. Do these criteria favour the selection of the best fit designed specifications?
 - iv. Is the supplier's compliance with 'non-performance' issues (e.g. compliance with employment legislation) a criterion for selection?
 - v. NAO would like to be provided with the evaluation sheets for the adjudication of tenders for Collection of Mixed Household Waste and Road Resurfacing
- d. Is the decision of the Tendering Committee communicated to both the successful and unsuccessful bidders? If yes, how?
- e. Is any action taken when all submitted offers do not meet the established criteria for selection?
 - i. Is any action taken when all submitted offers do not meet the established technical criteria?
 - ii. Is any action taken when all submitted offers do not meet the established budgetary constraints?

4. Post-Award Issues

Administration and management of contracts:

- a. Does the contract agreement reflect the specifications outlined in the public call?
- b. Is somebody specifically responsible for the administration and management of this contract?
 - i. Are particular Councillors responsible for the administration and management of this contract?
 - ii. Is the Executive Secretary responsible for the administration and management of this contract?
 - iii. Is the Contract Manager responsible for the administration and management of this contract?
- c. Are the functions of the Contract Manager in the administration and management of contracts formally established?
 - i. Do Contract Managers have job descriptions established directly by LGD?
 - ii. Do Contract Managers have job descriptions that are set by the Local Council?
- d. Does the Contract Manager (or anyone in charge) monitor the supplier's compliance with 'non-performance' issues (e.g. compliance with employment legislation)?
- e. Is payment to the Contract Manager formally determined?

- f. If no Contract Manager is employed what happens to that percentage of the total offer submitted that was instated as a payment to the Contract Manager?
- g. Is a Contract Manager also assigned by the contractor, or is it simply the Local Council Contract Manager?
- h. Are there appropriate checks and authorization processes in place for the payment of invoices?
- i. Are the established bills of quantities subject to revision?
 - i. Are such revisions instigated by particular circumstances?
 - ii. Are such revisions regulated by formal mechanisms?
- j. Are there clear processes for the management of minor changes and contract variations?
- k. Are there rigorous processes to handle major contractual changes?
 - i. Do these processes include clear approval mechanisms and accountabilities?
 - ii. Are there controls in place which demonstrate that such changes offer value for money?

Measuring performance and level of service:

- a. Is the contractor's performance measured, particularly in terms of quality, cost and time?
- b. Who measures contractor performance?
- c. Are works certified?

- d. Is feedback from local residents tapped in a formalized way as a source of measurement on the level of service provided?
- e. Are the levels of service registered on a particular contract fed back into the system and shared across councils?
 - i. Are poorly performing contractors blacklisted?
 - ii. Are good contractors recommended?
- f. Is risk managed through business continuity and contingency planning addressing instances when the contractor cannot deliver?
 - i. Are risks relating to service failure identified?
 - ii. Are risks relating to reputation damage identified?
 - iii. Are risks relating to additional costs identified?
- g. What action is taken when the established level of service is not met by the contractor?
- h. Is the performance of Contract Managers formally reviewed and appraised?

Managing the relationship:

- a. What systems of feedback and communication are in place between all stakeholders involved?
 - i. Local Councillors / Executive Secretary / Contract Manager / Contractor / Local Residents
 - ii. Do Contract Managers have clear objectives and reporting lines?
 - iii. Is feedback provided to suppliers?

- b. Are regular formal and informal meetings organized between these stakeholders? Who participates?
- c. Are the respective responsibilities of the Contract Manager and the supplier formally defined through documentation?
- d. How are difficulties relating to execution of the tendered works identified, communicated and addressed?
- e. How are instances of poor performance and communication by the Contract Manager addressed?

Appendix B – Council Representative Interview Schedule

Semi-structured Questionnaire with _____, Council Representative engaged by _____ Local Council. Email sent on _____.

Introduction

The National Audit Office is undertaking a performance audit related to Contract Management Capabilities across Local Councils.

Ten Local Councils have been randomly selected as case studies for this evaluation: two Councils from each of the five regions across Malta and Gozo, one with a budget less than €350,000 and the other with a budget of equal or over to €350,000. In addition in each Local Council the focus will be on two main contracts: Collection of Mixed Household Waste and Road-Resurfacing within the locality.

The study focuses on the policies, structures, systems, procedures and processes in place in each of the 10 case studies to ensure efficient and effective contract management from the initial determination of specifications/requirements in tender/contract documentation, to the tendering/contract award process and the actual management of contracts.

1. The importance of contract management

- a. What are your functions as a Contract Manager and/or Architect and/or Surveyor?
- b. Are all of these tasks stipulated in the contract or are there any other functions which arise along the period of the contract that were not catered for before?

2. The development of specifications and tendering documentation

NAO would like to understand how the identification of needs and specifications is carried out in respect to the selected contracts:

- a. As a Contract Manager and/or Architect and/or Surveyor were you tasked with the identification of needs for a particular service?

The design and preparation of tender documentation:

- a. Were you involved in the preparation of the tender documentation?
- b. The Local Government Department (LGD) provides a set of general conditions and other specifications to be used. Were these guidelines useful and only slightly amended or was the tender documentation completely redesigned?
- c. Do the specifications (those designed by LGD or the Local Council) cater for risk management considerations?
 - i. Do these risk management considerations factor in the element of cost?
 - ii. Do these risk management considerations factor in the element of quality?
 - iii. Do these risk management considerations factor in the element of time?
- d. Are there clear processes for the management of changes and contract variations in the tender documentation?

e. In addition to tender documentation were you tasked with other responsibilities such as:

- i. Drafting any reports on the locality?
- ii. Compiling databases of roads and other furniture within the locality?
- iii. Designing any new buildings or sites?
- iv. If so, NAO would like to be provided with some of the additional work carried out for the Local Council.

3. The tendering process

The regulations governing the submission and examination of tenders:

- a. Were you involved in the process of opening tender offers in public?

A defined system for the award of tenders:

- a. Are you responsible for the evaluation of tenders?
- b. Are you responsible for the adjudication of award of tenders?
- c. Are established criteria or evaluation sheets used in the award of tenders?
 - i. Do these criteria favour the selection of the most economically advantageous offer?
 - ii. Do these criteria favour the selection of the most effective offer?
 - iii. Do these criteria favour the selection of the best fit designed specifications?
 - iv. Is the supplier's compliance with 'non-performance' issues (e.g. compliance with employment legislation) a criterion for selection?

- v. If possible please provide any evaluation report samples that you carried out.

4. Post-award issues

Administration and management of contracts:

- a. What are your responsibilities in administering and managing a particular contract?
- b. Do you, as a Contract Manager and/or Architect and/or Surveyor monitor the supplier's compliance with 'non-performance' issues (e.g. compliance with employment legislation)?
- c. Is a Contract Manager and/or Architect and/or Surveyor also assigned by the contractor, or is it simply the Local Council's Contract Manager and/or Architect and/or Surveyor?
- d. Are there appropriate checks and authorisation processes in place for the payment of invoices?
- e. Are the established bills of quantities subject to revision?
 - i. Are such revisions instigated by particular circumstances?
 - ii. Are such revisions regulated by formal mechanisms?

Measuring performance and level of service:

- a. Is the contractor's performance measured, particularly in terms of quality, cost and time?
- b. Are you involved in measuring contractor performance?

- c. Are works certified? (If possible please provide a work certificate as provided to the Local Council on work carried out by the contractor)

Managing the relationship:

- a. What systems of feedback and communication are in place between all stakeholders involved from your point of view?
 - i. Local Councillors / Executive Secretary / Contract Manager / Contractor / Local Residents
 - ii. Do you have, as Contract Manager and/or Architect and/or Surveyor, clear objectives and reporting lines?
 - iii. Is feedback provided to suppliers?
- b. Are regular formal and informal meetings organised between these stakeholders?
- c. How are difficulties relating to execution of the tendered works identified, communicated and addressed?

Appendix C - 2011 Budgetary Allocation of Local Councils

Council Number	Locality	Allocation in €
1	Valletta (Citta' Umilissima)	664,863
2	Mdina (Citta' Notabile)	178,355
3	Birgu (Citta' Vittoriosa)	253,698
4	Isla (Citta' Invicta)	256,585
5	Bormla (Citta' Cospicua)	406,207
6	Qormi (Citta' Pinto)	976,375
7	Zebbug (Citta' Rohan)	699,788
8	Zabbar (Citta' Hompesch)	721,172
9	Siggiewi (Citta' Ferdinand)	681,663
10	Żejtun (Citta' Beland)	721,318
11	Rabat (Citta' Vittoria)	477,781
12	Attard	529,821
13	Balzan	244,888
14	Birkirkara	1,089,450
15	Birżebbuġa	613,163
16	Dingli	291,202
17	Fgura	503,170
18	Floriana	314,061
19	Fontana	130,312
20	Gudja	245,980
21	Gżira	463,130
22	Għajnsielem	290,442
23	Għarb	200,768
24	Għarghur	211,907
25	Għasri	155,431
26	Għaxaq	293,687
27	Hamrun	602,930
28	Iklin	215,250
29	Kalkara	227,794
30	Kerċem	231,857
31	Kirkop	180,863
32	Lija	226,314
33	Luqa	348,225
34	Marsa	458,539
35	Marsascalea	676,106
36	Marsaxlokk	319,173
37	Melieha	952,926
38	Mġarr	380,986
39	Mosta	973,959
40	Mqabba	237,569
41	Msida	439,177
42	Munxar	205,962
43	Nadur	396,679
44	Naxxar	803,388
45	Paola	603,730
46	Pembroke	338,597
47	Pieta'	264,596
48	Qala	246,986
49	Qrendi	305,562
50	Rabat	930,583
51	Safi	214,211
52	San Ġiljan	577,373
53	San Gwann	640,931
54	San Lawrenz	141,622
55	San Pawl il-Bahar	1,171,557
56	Sannat	200,208
57	Santa Luċija	285,533
58	Santa Venera	364,401
59	Sliema	917,471
60	Swieqi	490,338
61	Ta' Xbiex	191,536
62	Tarxien	437,611
63	Xaghra	442,003
64	Xewkija	306,570
65	Xgħajra	161,218
66	Zebbug	395,920
67	Zurrieq	660,683
68	Mtarfa	227,846
Total		30,010,000

Appendix D – Regional Subdivision of Local Councils

ELEVENTH SCHEDULE

[Article 37]

Regions

*Added by:
XVI. 2009.50.
Amended by:
L.N. 231 of 2011;
L.N. 313 of 2011.*

Gozo Region	Northern Region	Central Region	South Eastern Region	Southern Region
Ir-Rabat (Città Victoria)	L-Imdina (Città Notabile)	H'Attard	Il-Belt Valletta (Città Umilissima)	Hal Qormi (Città Pinto)
Il-Fontana	Had-Dingli	Hal Balzan	Il-Birgu (Città Vittoriosa)	Haz-Żebbuġ (Città Rohan)
Ghajnsielem	Hal-Gharghur	Birkirkara	L-Isla (Città Invicta)	Is-Siggiewi (Città Ferdinand)
L-Gharb	Il-Mellieha	Il-Gzira	Bormla (Città Cospicua)	Birzebbuġa
L-Ghasri	L-Imġarr	L-Iklin	Haz-Żabbar (Città Hompesch)	Il-Gudja
Ta' Kerċem	Il-Mosta	Hal Lija	Iz-Żejtun (Città Beland)	Hal Ghaxaq
Il-Munxar	In-Naxxar	L-Imsida	Il-Fgura	Il-Hamrun
In-Nadur	Pembroke	Tal-Pietà	Floriana	Hal Kirkop
Il-Qala	Ir-Rabat	San Ġiljan	Il-Kalkara	Hal Luqa
San Lawrenz	San Pawl il-Baħar	San Ġwann	Il-Marsa	L-Imqabba
Ta' Sannat	Is-Swieqi	Santa Venera	Marsaskala	Il-Qrendi
Ix-Xagħra	L-Imtarfa	Tas-Sliema	Marsaxlokk	Hal Safi
Ix-Xewkija		Ta' Xbiex	Rahal Ġdid	Santa Luċija
Iz-Żebbuġ			Hal Tarxien	Iz-Żurrieq
			Ix-Xgħajra	

Appendix E – Documents Required for Tendering and Contracts

P3.1 Documents required for Tendering and Contracts

Tender Documents

These Documents are to be supplied by the Local Council to the prospective tenderer.

1. Instructions to Tenderers (Appendix P3.II)
2. Form of Tender (Appendix P3.III)
3. Non-Collusive Tendering Certificate (Appendix P3.IV)
4. Tender Guarantee (Bid Bond) (Appendix P3.V)
5. General Conditions of Contract / Agreement for Goods and Services, including Lease and Management of immovable property (Appendix P3.IX)
6. Specific Conditions of Contract and Specifications (Appendix P3.X)*

This document will include five annexes as follows:

- Council Requirements
- Contract Details
- Maps / Drawings
- Monthly Work Plan
- Pro-forma Bill of Quantities
- Council Details

Tender Submission Documents

The following completed documents are to be delivered by the tenderer to the Local Council before closing date for the submission of tenders.

1. Form of Tender
2. Non-Collusive Tendering Certificate
3. Tender Guarantee (Bid Bond)
4. Completed Bill of Quantities *
5. Contractor's Programme *

Contract / Agreement Documents

These documents are to govern the relationship between Local Council and Contractor / Lessee / Manager whose tender has been accepted.

1. Completed Contract Agreement Form
2. General Conditions of Contract / Agreement for Services, Goods, Lease and Management of Government immovable property
3. Specific Conditions of Contract / Agreement and Specifications*

In case of Contract for Services this shall include Annex 1 to 6 including the completed Bill of Quantities and Contractors Programme.

4. Letter of Acceptance (Appendix P3.VI)
5. Performance Bond (Appendix P3.VII)

* If applicable.

Appendix F – Requisites for Qualification as Contract Manager

Specific Conditions of Contract and Specifications for Services

Contract for Local Council Contract Management

Annex 4 - Requisites for Qualification as Contract Manager for Individual Contracts

Contract	Minimum Requisite Qualifications	Certificate of Completion of Course on Contract
Street Sweeping and Cleaning	Supervisory, and/or Quantity Surveying and/or Project Management Experience, preferably in Public Cleansing	Required
Collection of Household and Commercial Waste	Supervisory, and/or Quantity Surveying and/or Project Management Experience, preferably in Public Cleansing	Required
Collection of Bulky Refuse	Supervisory, and/or Quantity Surveying and/or Project Management Experience, preferably in Public Cleansing	Required
Cleaning and Attendance of Public Conveniences	Supervisory, and/or Quantity Surveying and/or Project Management Experience, preferably in Public Health	Required
Beach Cleaning and Maintenance	Supervisory, and/or Quantity Surveying and/or Project Management Experience. Beach Cleaning / Environmental Protection experience would be considered an asset	Required
Upkeep and Maintenance of Roads	Holder of A&CE Warrant preferably with Project Management Experience	Required
Maintenance of Traffic Signs and Road Markings	Supervisory, and/or Quantity Surveying and/or Project Management Experience	Required
Cleaning and Maintenance of Parks and Gardens	Supervisory or Project Management Experience, preferably with post-secondary qualifications in Agriculture / Horticulture	Required
Cleaning and Maintenance of Non Urban Areas	Supervisory or Project Management Experience, preferably with relevant work experience (e.g. Quantity Surveying) . Environmental Protection experience would be considered an asset	Required

Appendix G – References

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January 2012	Work and Activities of the National Audit Office 2011
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