



THE UNITED
REPUBLIC OF TANZANIA



CONTRACT MANUAL, 2024

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FOREWORD BY THE ATTORNEY GENERAL



Contracts are a foundational element of every business and human cooperation in a society. They enable parties to come together and collaborate towards their specific desires and needs, which creates legal obligation. Contracts play an important role in the development of a country. Through contracts, the Government performs different activities which contribute to the national economy, and therefore to the development of the country as a whole. For a contract to be of value and in the best interests of the nation, it should be well prepared, negotiated, vetted, concluded and managed.

As the chief advisor of the Government, the Attorney General has constitutional duty to advise the Government on all legal matters. Although basic decisions leading to contracts are made by various executing agencies, it is the role of the Attorney General to determine the legality of the contracts by vetting and providing legal advice. In that regard, a State Attorney in the agencies, should inevitably be involved in preparation, negotiation, vetting, management and termination of contracts in order to ensure its terms and conditions agreed upon by the parties, are in the best interest of the public.

To ensure effective participation of State Attorneys in matters pertaining to contracts, the Office of the Attorney General has prepared this Manual, which will be a guide to them by providing a common approach, standards and procedures to be observed at each stage of such contracts from the initial stage of preparation to the final stage of contract management and or termination.

Apart from offering guidance, this Manual also sets out checklists of important matters to be considered by a State Attorney when preparing, drafting, negotiating, vetting, concluding, and in the management and termination of contracts and Memoranda of Understanding. The Manual has been written in a clear and simple language to enable a State Attorney to quickly grasp what is necessary and applicable in the process involved in the contracts.

A handwritten signature in black ink, appearing to read "Eliezer Mbuki Feleshi".

Judge Dr. Eliezer Mbuki Feleshi
ATTORNEY GENERAL

EXECUTIVE SUMMARY

The aim of this Manual is to guide State Attorneys in the Office of the Attorney General and those who are in-housed in different Government Ministries, Departments, Agencies (MDAs) and Local Government Authorities (LGAs) in all aspects of preparation, negotiation, drafting, vetting, conclusion, management, and termination of contracts and Memoranda of Understanding (MoUs), including procurement contracts, natural resources contracts and investment contracts and Deed of Settlement. In particular, this manual is intended to establish a common approach when negotiating, concluding and vetting of contracts and MoUs; and to ensure that existing laws, policies and established standards are observed.

The Manual is divided into Eight Parts which provide specific procedures and checklists to be observed by State Attorneys when dealing with contracts and MoUs; Part One provides for preliminary matters and objectives of the Manual; Part Two provides for classification of Agreements; Part Three provides for guidance on MoUs; Part Four provides for guidance on negotiations of MoUs and contracts; Part Five provides guidance on negotiation of contracts in special regimes, specifically for contracts on natural wealth and resources and procurement; Part Six provides for guidance on vetting of contracts and MoUs; Part Seven provides for guidance on management of contracts and MoUs while Part Eight provides guidance on termination of contracts and MoUs.

There are notable salient common legal procedures and checklists which State Attorneys are expected to apply in advising the Government and its Institutions at different categories and regimes of contracts. The Manual guides State Attorneys to thoroughly prepare before and during negotiations of contracts and MoUs; set out the role of in-house State Attorneys in advising their institutions at all stages of contracts and MoUs including compliance with laws and concluded contracts and MoUs; involvement of the Office of the Attorney General at different stages of the negotiation and conclusion of contracts and MoUs; and finally submission of contracts and MoUs to the Office of the Attorney General for vetting.

LIST OF ABBREVIATION

BATNA	-	Best Alternative to Negotiation Agreement
BoQ	-	Bill of Quantity
Cap	-	Chapter
GCC	-	General Conditions of Contract
GN	-	Government Notice
GN	-	Government Negotiation Team
LGAs	-	Local Government Authorities
LoI	-	Letter of Intent
MDAs	-	Ministries, Department and Agencies
MoA	-	Memorandum of Agreement
MoUs	-	Memoranda of Understanding
PPRA	-	Public Procurement Regulatory Authority
SCD	-	Standard Contract Documents
SCC	-	Special Conditions of Contract
PCC	-	Particular Conditions of Contract
VAT	-	Value Added Tax

PART ONE

PRELIMINARY MATTERS

1.0 Citation

This Manual may be cited as the Contract Manual, 2024.

1.1 Application

The Manual shall apply as a guiding tool to all State Attorneys in the Office of the Attorney General, Ministries, Independent Departments and Agencies (MDAs) and Local Government Authorities (LGAs) when dealing with preparation, negotiation, vetting, conclusion, management and termination of contracts and Memorandum of Understanding.

1.2 Interpretation

In this Manual, unless the context otherwise requires-

“agreement” means and includes a contract;

“Constitution” means the Constitution of the United Republic of Tanzania, 1977;

“contract” means a written agreement entered into between an executing agency and another party; MA

“executing agency” means a Government institution which implements a given undertaking through contract or memorandum of understanding;

“Government institutions” means ministries, independent departments and agencies (MDAs) and local government authorities (LGAs);

“in-house State Attorney” means a State Attorney designated under the Ministries, independent departments, government authorities (MDAs) and local government authorities (LGAs);

“management of contract” means the process of managing a contract to maximize operational and financial performance by executing agency while reducing financial and other related risks;

“matrix of issues” means a document containing issues and Government position on different aspects of the matters to be negotiated;

“Memorandum of Understanding (MoU)” means a cooperation agreement between the parties serves as amutual cooperation arrangements or expression of interest to cooperate in a friendly manner and includes Memorandum of Cooperation, Cooperation Agreement, Letter of Intent (Lo) and Memorandum of Agreement (MoA);

“negotiation” means the consensual bargaining process with an intention to enter into agreement or, in the case of breach of such agreement, an attempt between parties to reach an agreement on a disputed matter;

“negotiation team” means a composition of members appointed by appointing authority to form a negotiation for negotiation of a contract or Memorandum of Understanding;

“preamble or recitals” means statement summarising the background of Memorandum of Understanding or contract;

“project agreement” includes project agreements, project appraisal document or project appraisal report, requirements of user and the related law;

“state attorney” includes a law Officer whether employed in the Office of the Attorney General or in-house State Attorney under the Ministries, Independent Departments, Government Authorities (MDAs) and Local Government Authorities (LGAs); and

“termination” means to end the Memorandum of Understanding or contract prior to it being fully performed by the parties.

1.3 Objectives of the Manual

Objectives of this Manual are to:

- (a) guide State Attorneys on common approach, standards and procedures to be followed when negotiating, preparing, vetting, concluding, managing and terminating contracts and Memoranda of Understanding;
- (b) ensure that existing laws, established principles and standards are observed in preparation, negotiations, vetting, conclusion, management and termination of contracts and Memoranda of Understanding;
- (c) provide matters (checklist) to be considered by State Attorneys when drafting, negotiating, vetting, concluding, managing and terminating contracts and Memoranda of Understanding; and

(d) ensure rights of the Government to terminate a contract is exercised where Government interests are protected and secured.



PART TWO

CLASSIFICATION OF AGREEMENTS

2.0. Classification of Agreements

Agreements can be classified based on subject matter, performance or number of parties that execute the agreement. In discharging its functions, the Government may enter into various categories of agreements including:

- (a) Memoranda of Understandings (MoU);
- (b) Bilateral Treaties including Bilateral Investment Treaties;
- (c) Inter-Governmental Agreements (IGA);
- (d) Host Government Agreements (HGA); and
- (e) other agreements that are based on specific subject matter. For example, concessions, lease, procurement, sale agreement and deeds of settlement.

2.1. Bilateral Investment Treaties - BIT

These are treaties concluded between two sovereign states in order to provide for reciprocal protection of investors and create a conducive environment for investment. In the preparation, drafting, negotiation and vetting of a BIT, a State Attorney shall ensure that the BIT includes the following features:

- (a) it involves two sovereign states;
- (b) it contains provisions relating to investment protection of nationals of both states example fair and equitable treatment, expropriation, full safety and security, repatriation of profit and most favoured nation treatment;
- (c) it provides for recourse to international arbitration particularly through the International Centre for Settlement of Investment Disputes (ICSID) established through the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 1966 which United Republic of Tanzania ratified in 1992;
- (d) it provides duration of the treaty and eventuality of investors upon termination (sunset clauses); and
- (e) BIT's provisions conform with the laws of the respective states.

2.2. Inter-Governmental Agreements - IGAs,

These are agreements made between two or more governments or quasi-governmental entities in order to provide for cooperation to address issues of mutual concern such as investment, security, cooperative planning, resource sharing or joint planning commissions. In the preparation, drafting, negotiation, vetting and managing of IGA, a State Attorney shall ensure that the IGA has the following features:

- (a) it involves two or more governments or quasi-governmental entities;
- (b) it provides for details on specific areas of cooperation;
- (c) it provides for a recourse to a defined dispute settlement mechanism including international arbitration;
- (d) it clearly provides for enabling provisions for conclusion of other agreements to operationalise the areas of cooperation; and
- (e) the provisions of IGA conform with the laws of the respective states.

2.3. Host Government Agreements - HGAs

These agreements are entered between a host government and a foreign investor to provide for a regime to govern the rights and obligations of parties with respect to development, building/construction and operation of a project by a foreign investor in the host country. The nature and extent of a host government agreement is dependent on various factors such as the status and history of the proposed project, particular sensitivities of the foreign investors, the relevancy of the host country's legal and fiscal regime, and its experience of foreign investment. In the preparation, drafting, negotiation, vetting and managing of HGAs, a State Attorney shall ensure that the HGAs contains the following features:

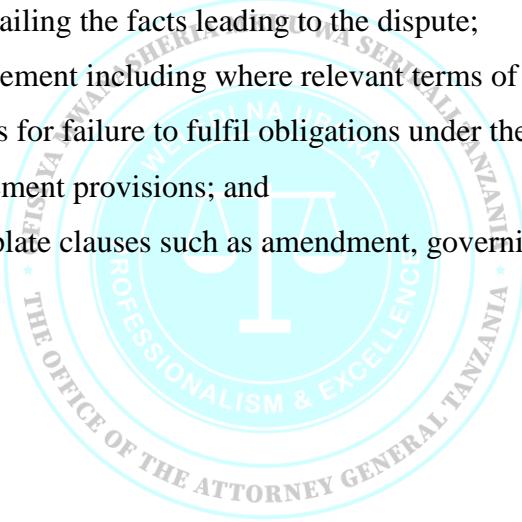
- (a) it involves a host government and a foreign investor;
- (b) it defines legal and fiscal framework;
- (c) it defines the government's economic stake and regulatory role in the project;
- (d) it addresses political risks; and
- (e) HGAs provisions conform with the laws of the host Government.

Apart from host government agreements covering investment matters, there are other agreements that are concluded with a host government in order to provide legal framework for hosting of multilateral agencies or institutions such as those falling under the United Nations, African Union or other regional blocks.

2.4 Deed of Settlement

These agreements are entered as a result of a settlement reached through amicable resolution of disputes by deploying one or more method of alternative dispute resolution either by negotiation, mediation or conciliation. In preparation, drafting, negotiation, vetting, and managing this type of agreement, a State Attorney shall ensure that it contains the following:

- (a) preamble detailing the facts leading to the dispute;
- (b) terms of settlement including where relevant terms of payment;
- (c) consequences for failure to fulfil obligations under the deed;
- (d) dispute settlement provisions; and
- (e) other boiler plate clauses such as amendment, governing law and severability.



PART THREE

MEMORANDUM OF UNDERSTANDING

3.0 Memorandum of Understanding

During preparation, drafting, negotiation, vetting, and managing a Memorandum of Understanding, a State Attorney shall:

- (a) ensure that Government interests are observed;
- (b) ensure that Memorandum of Understanding is consistent with domestic laws;
- (c) ensure that binding words or terms are avoided, since a Memorandum of Understanding is not generally intended to be binding, as it only expresses a desire of the parties to cooperate in good faith;
- (d) ensure that there are no binding financial arrangements before a definite contract is reached, costs, if any, parties bear their own costs;
- (e) depending on the nature of MoU under consideration, ensure all relevant stakeholders are involved for their inputs; and
- (f) for international Memorandum of Understanding, ensure there is involvement of the Ministry responsible for foreign affairs which is mandated to deal with all issues related to international matters.

3.1 Contents of Memorandum of Understanding

A State Attorney, when preparing, negotiating, drafting, vetting, managing a Memorandum of Understanding shall ensure that the same contains the following:

- (a) introductory part providing for-
 - (i) title reflecting the subject matter of the undertaking;
 - (ii) brief description and addresses of parties; and
 - (iii) Recitals stating the background of the undertaking;
- (b) Substantive part providing for-
 - (i) definitions: Where the Memorandum of Understanding has terms which need to be defined, parties may define them in the definition clause. Definition shall not defeat any provision of the law and should reflect the context in which the term is used in the Memorandum of Understanding;

- (ii) objectives: the MoU should provide for clear objectives;
- (iii) scope of MoU: the scope and timeline of the undertaking should be clearly stipulated;
- (iv) obligations of the parties: The Memorandum of Understanding should not create financial obligations to the Government, except that each party shall bear its own costs in implementing the MoU or the other party volunteer to bear costs of implementation;
- (v) coordination: the Memorandum of Understanding should provide for mechanism of coordinating the activities of the undertaking;
- (vi) implementation and joint working group, where applicable;
- (vii) protection of intellectual property rights, where applicable;
- (viii) protection of confidential information, where applicable;
- (ix) review or amendment: The Memorandum of Understanding should provide for review or amendment by mutual consent of the parties in writing;
- (x) a clause indicating that the MoU does not intend to create legally binding relations;
- (xi) settlement of disputes: as Memorandum of Understanding are not intended to be binding, they should only contain a clause stating that disputes arising from interpretation or application should be settled amicably by the parties through consultation or negotiation or diplomatic channel;
- (xii) clause stating the effective date, duration and renewal;
- (xiii) termination: the Memorandum of Understanding should contain a clause granting either party a right to terminate by giving the other party notice of certain number of days before termination;
- (xiv) notices and correspondences: the Memorandum of Understanding should contain proper addresses of the parties, where notices and communications will be addressed to. Furthermore, the Memorandum of Understanding should state clearly the mode of communication agreed by the parties;
- (xv) exclusivity: parties should avoid exclusivity clauses or words which infer exclusivity in the proposed MoU as Memorandum of Understanding are not intended to be binding; and

(xvi) governing law: the Memorandum of Understanding should clearly specify the applicable laws and where the activity is implemented in Tanzania, the applicable laws should be the laws of Tanzania.

Where a State Attorney finds that the proposed Memorandum of Understanding is non-compliant to the checklist, he shall accordingly, advise the Executing Agency by pointing out non-compliant provisions of the Memorandum of Understanding.

3.2 Vetting of Memorandum of Understanding

Upon finalisation of the Memorandum of Understanding, the in-house State Attorney shall-

- (a) advise the executing agency to submit a draft Memorandum of Understanding to the Office of the Attorney General for vetting;
- (b) ensure that, when the executing agency is submitting the draft Memorandum of Understanding to the Office of the Attorney General for vetting, such request is accompanied by the legal opinion of the in-house State Attorney;
- (c) ensure that, the legal opinion issued to the executing agency and transmitted to the Office of the Attorney General for vetting of the draft Memorandum of Understanding, contains facts, issues and legal advice of the in-house State Attorney on the subject under consideration.

PART FOUR

NEGOTIATION OF CONTRACTS AND MEMORANDA OF UNDERSTANDING

4.0 Role of in-house State Attorney in the formation of Negotiation Team

At this stage of formation of the negotiation team, the in-house State Attorney is expected to do the following:

- (a) advise the executing agency to initiate negotiation process by forming negotiation team and financing the process. The constitution of the team, shall consider among other things, persons with relevant knowledge and experience on the subject matter of the negotiation;
- (b) on complex contracts, advise the executing agency to initiate negotiation process by forming Government Negotiation Team (GNT) and technical team and financing the process. The constitution of the teams, shall consider among other things, persons with relevant knowledge and experience on the subject matter of the negotiation. Where applicable, the services of a transaction advisor may be procured; the Government Negotiation Team (GNT) in the course of performing their functions will be supported by the technical team;
- (c) where applicable, advise the executing agency to co-opt any person with the information needed at any stage of negotiation;
- (d) where there is a draft of the contract documents, to study and have a full understanding of such documents;
- (e) where there are no draft of the contract documents, to take part in the drafting of such documents; and
- (f) ensure that all necessary contract documents are in place.

4.1 Role of State Attorney in Negotiation Team in the Pre-Negotiation Meetings

The State Attorney shall advise the negotiation team, before engaging in negotiations, make a thorough preparation including:

- (a) developing a thorough understanding and analyse legal, financial and technical aspects of the subject under negotiation, set the position of the Government and gather all key documents and reference materials for the negotiation;
- (b) where necessary, strive to have a clear understanding of contemporary domestic and global economic, political, social and any other conditions that may affect the negotiation process and their parameters;
- (c) compliance with any specified Government processes;
- (d) readiness of the project implementation by the executing agency, including availability of a budget, project is within the procurement plan, feasibility studies having been conducted, economic, financial models conducted, and any necessary Government authorisation being obtained;
- (e) having a clear understanding of all contents of relevant documents, including draft project agreements and related laws;
- (f) establishing Government position on equitable balance of interests between the Government and investors on the key aspects of the contractual undertaking in respect of any contract or agreement. The matrix of issues shall contain issues and Government position on different aspects of the matters to be negotiated;
- (g) setting and agreeing on a Best Alternative to a Negotiated Agreement (BATNA). The negotiation team shall devise a procedure to enable them to anticipate and guide itself through potential pitfalls;
- (h) doing due diligence of the counterpart at earliest possible stage and full disclosure of the outcome has been provided for;
- (i) highlighting contentious areas in which issues may be expected and require Government consideration before concluding such negotiation;
- (j) approving feasibility study and detailed design which shall incorporate risk analysis and optimal risk allocation;
- (k) setting and agreeing upon institutional structure for management of the project for example project steering committee, project implementation team, etc;
- (l) establishing the Government contribution;
- (m) establishing Government's stake; and amount and proportions of investment by the parties; and

(n) such other activity as the team may find necessary.

4.2 Stages for Preparation of Negotiation

At the stage of preparation of negotiation, a State Attorney must adhere to the following:

- (a) to advise on whether or not the government team has all the mandate to negotiate;
- (b) to advise on whether or not the counter party has all the mandate to negotiate, by reviewing the respective Memorandum and Articles of Association, Charter, Board Resolution, Power of Attorney or Mandate Letter;
- (c) where necessary, to conduct due diligence on counter party;
- (d) to identify and advise accordingly, on the non-negotiable aspects of the contract, based on the laws applicable, policy or from the government negotiating position;
- (e) to advise on compliance with the prescribed legal framework stipulated under the Constitution and cross-cutting investment laws, including among others:
 - (i) The Land Act, Cap. 113, the Land (Assessment of the Value of Land for Compensation) Regulations GN. No. 78 of 2001;
 - (ii) The Land Acquisition Act, Cap. 118;
 - (iii) The Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms), Cap. 450;
 - (iv) The Natural Wealth and Resources (Permanent Sovereignty) Act, Cap. 449;
 - (v) The Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations, GN. No. 58 of 2020;
 - (vi) The Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Regulations, GN. No. 57 of 2020;
 - (vii) The Tanzania Extractive Industries (Transparency and Accountability) Act, Cap. 447;
 - (viii) The Oil and Gas Revenues Management Act, Cap. 328;
 - (ix) The Oil and Gas Revenues Management Act, Cap. 328;
 - (x) The Public Private Partnership Act, Cap. 103 and its Regulations;
 - (xi) The Government Loans, Guarantees and Grant Act, Cap. 134;
 - (xii) The Mining Act, Cap. 123;

- (xiii) The Mining (State Participation) Regulations, GN. No. 574 of 2022;
- (xiv) The Mining (Local Content) Regulations, GN. No. 3 of 2018;
- (xv) The Mining (Minimum Shareholding and Public Offering) Regulations, GN. No. 286 of 2016;
- (xvi) The Petroleum Act, Cap. 392;
- (xvii) The Petroleum (Local Content) Regulations, GN. No. 197 of 2017;
- (xviii) The Petroleum (Natural Gas Midstream and Downstream) General Regulations, GN. No. 270 of 2020;
- (xix) The Petroleum (Liquefied Petroleum Gas Operations) Rules, GN. No. 376 of 2018;
- (xx) The Foreign Exchange Act, Cap. 271;
- (xxi) The Arbitration Act, Cap. 15;
- (xxii) The Income Tax Act, Cap. 332;
- (xxiii) The Insurance Act, Cap. 394;
- (xxiv) The Tanzania Investment Act, Cap. 38;
- (xxv) The Employment and Labour Relations Act, Cap. 366; and
- (xxvi) The Labour Institutions Act, Cap. 300,

depending on the nature and magnitude of the project, adherence to existing laws may prove unattainable. In such cases, identification of areas inconsistent with existing laws is paramount in order to pave way for the enabling legislation.

- (f) to identify and advise on the negotiable aspects of the contract and develop negotiation position as well as fall-back positions; and
- (g) to participate and advise in the formulation of a matrix of issues to guide the negotiating team during negotiation.

4.3 Stages of Negotiation

At all stages of negotiation, a State Attorney must adhere to the following:

- (a) ensure that the counter party possess a valid legal negotiation instrument;
- (b) advise the negotiation team on the mandate of the other party to negotiation, that is, whether they have the power to reach a decision on every aspect of negotiation;
- (c) advise the negotiating team on the legal aspects of the contract;

- (d) keep constant consultation and feedback with superiors in office;
- (e) provide the Office with updates and status of negotiations at each stage;
- (f) prepare back-to-office report at each session of negotiation; and
- (g) refrain from giving binding commitments, where he has no mandate to do so.

4.4 Checklist for Negotiations of Contracts

The key checklist to be considered by the State Attorney during the negotiation of contracts, may include the following:

- (a) stating specifically the name and address of the parties to the contract;
- (b) clearly stating the purpose, objective and expectations of the parties under the contract for avoidance of doubt;
- (c) ensuring all documents negotiated as part of the contract form integral part of the contract, to avoid any confusion or miscommunication at a later date;
- (d) ascertain mandate of the parties to the contract on the following:
 - (i) authority and capacity of the other party to negotiate and reach an agreement; and
 - (ii) mandate to sign the ultimate contract;
- (e) ensuring that obligations of each party to the contract are clearly stipulated therein;
- (f) ensuring all conditions necessary for a valid contract are clearly specified, such as existence of offer, acceptance, consideration and intention to create legal relations;
- (g) ensuring that the contract clearly addresses a lawfulness of object to warrant its enforceability;
- (h) for certainty of consideration, to ensure that the payment terms are clearly stipulated in the contract. The contract should indicate whether the payment method is a fixed-price contract (lump sum), cost-plus contract or time and materials-based contract;
- (i) specifying the length of the contract term by stating clearly the duration of the same;

- (j) ensure that the contract categorically state the governing law of the contract, where applicable, the laws of Tanzania be preferred;
- (k) ensuring that the contract complies with all changes in the law before the contract is signed;
- (l) where a law specifically provides for approval process, ensuring the same has been adhered to, pursuant to the provisions of the laws of Tanzania;
- (m) ensuring that the contract contains a limitation of liability provision that limits liability of the Government, proportionate to the assumed or allocated risks to the Government in the Contract. In making such a provision, the State Attorney must ensure that the government does not carry a liability incommensurate with the risks;
- (n) ensuring that the contract contains adequate remedies to the government for any default by the other party;
- (o) whenever possible, dispute settlement provision, strive to adopt Laws of Tanzania;
- (p) ensuring that events of force majeure are not widely defined to include events that can be reasonably foreseeable by an experienced party or events that can have alternative remedial measures;
- (q) where there is a termination clause, ensuring that such clause provides for notice procedure and timelines for each party to act as such; and
- (r) ensure that the contract has review and amendment clauses.

PART FIVE

CONTRACTS WITH SPECIAL REGIMES

5.0 Conditions for use of Natural Resources for Economic Gain

This part shall apply to all contracts involving extraction, use or commercialization of natural resources which have been defined in the Natural Wealth and Resources (Permanent Sovereignty) Act, Cap. 449 to include materials or substances occurring in nature such as soil, subsoil, gaseous, water resources, flora, fauna, genetic resources, aquatic resources, micro-organisms, air space, rivers, lakes and maritime space, including the Tanzania's Territorial Sea and the Continental Shelf, living and non-living resources in the Exclusive Economic Zone which can be extracted, exploited or acquired and used for economic gain whether processed or not.

5.1 Attainment of Equitable Balance of Interest between Government and Investor

When dealing with contracts on natural wealth resources, a State Attorney shall take into account the need of having an equitable balance of interest between Government and investor by adhering to the following:

- (a) the contract should be consistent with the Constitution, the Natural Wealth and Resources Contracts (Permanent Sovereignty) Act, Cap. 449, and other relevant laws of Tanzania; However, depending on the nature and magnitude of the project, adherence to existing laws may prove unattainable. In such cases, identification of areas inconsistent with existing laws is paramount in order to pave way for enabling legislation;
- (b) the contract should provide for exploitation of natural resources in a sustainable manner;
- (c) the term of the contract should not exceed the term of the Licence;
- (d) involvement of sector Ministry and all relevant stakeholders;
- (e) involvement of the Attorney General from the beginning of the process to conclusion of contracts;
- (f) that the ways and means of managing contracts are in place and clearly understood by the parties;

- (g) due diligence of the investor should be done at earliest possible stage and full disclosure of the outcome has to be provided;
- (h) feasibility study should be done and findings thereof be the basis for contractual terms;
- (i) Environmental Impact Assessment should be done prior to commencement of any investment project as required by the law;
- (j) subject to the requirements of the law, contracts should provide flexibility for the Government to participate in the investment;
- (k) incentives, if any, should be time based and provide room for review;
- (l) the contract should be negotiated and crafted to the effect that risks to the Government are minimised or avoided; and
- (m) reserve the right to exercise sovereignty over exploitation of natural resources in terms of possession, means of exploitation, use and disposal.

5.2 Key Terms Natural Wealth and Resources

When drafting natural wealth and resources contracts, a State Attorney shall be guided by the following aspects:

- (a) provision for definitions on agreed terms, and such definitions should not defeat any provision of any applicable law;
- (b) that the contract clearly states parties' obligations, and such obligations must be realistic and measurable;
- (c) incorporation of an integrity pledge provision in the contract to ensure that in the event that the counter party is in breach of the pledge, the contract can be deemed terminated and the executing agency be entitled to compensation;
- (d) that the contract has a specific provision to safeguard interests of the local community from unlawful acts and practices of the counter party, by providing for appropriate remedies, including compensation, resettlement or restitution; among others. In this regard, the contract should categorically state who should bear the costs for such claim;

- (e) that the contract includes clear provisions regarding corporate social responsibility to ensure that communities surrounding the investment will reap socio-economic benefits, such as education, health and infrastructure;
- (f) incorporation of provisions relating to transparency and confidentiality clauses, although a State Attorney should ensure that, there should be a balance between confidentiality and transparency clause; and
- (g) that the contract contains a clause on adherence to local content and mechanisms that will ensure skills and technological transfer to local staffs.

5.3 Procurement Contracts

5.3.1 Government Financed Procurement Contracts

In dealing with Government financed procurement contracts, a State Attorney shall observe the requirements of the Public Procurement Act, Cap. 410 and its Regulations and shall take into account the following:

- (a) tender validity period: ensure that procurement processes are completed within the prescribed tender validity period;
- (b) due diligence on the successful tenderer was conducted;
- (c) subject matter of the contract: whether the subject matter relates to Goods, Plants and Equipment, Works, Consultancy, Non-Consultancy, Leasing of Public Assets or Disposal of Public Assets;
- (d) the appropriate and updated Standard Contract Documents (SCD) published by the PPRA are used. The SCD include the following:
 - (i) form of contract or form of agreement;
 - (ii) General Conditions of Contract (GCC);
 - (iii) Special Conditions of Contract (SCC), Particular Conditions of Contract (PCC) or Contract Data (where applicable); and
 - (iv) other documents, annexes, etc.
- (e) form of contract or agreement, shall ensure that:
 - (i) the title to the document is either form of contract or form of agreement;
 - (ii) the names and addresses of parties have been correctly stated;

- (iii) goods, works or services are properly described and stated in accordance with the bidding documents;
- (iv) the agreed contract price is stated both in numerical and words;
- (v) where the contract price is stated in the preamble, the same is also inserted in the operative part of the contract for enforceability purpose;
- (vi) it is clearly stated whether the contract price is “VAT inclusive” or “VAT exclusive”;
- (vii) a clause listing other documents which form an integral part of the contract has been inserted;
- (viii) the contract is to be signed by authorized person or competent representatives of the parties after the respective vetting by the Attorney General or in-house State Attorney; and
- (ix) all other relevant information in the form of contract is consistent with SCC, letter of acceptance or award and minutes of negotiation;

(f) payment terms are clearly stated: mode of payment and time should be clearly stated, whether payment will include advance payment, lumpsum or installments.

(g) where applicable, verification of attachments to the contract, including-

- (i) letter of acceptance or notification of award: check whether there is a properly executed letter of acceptance or notification of award from the procuring entity to the contractor or supplier or service provider;
- (ii) tender or bid form: ensure that a signed tender or bid form from the contractor or supplier or service provider is attached;
- (iii) GCC: ensure that the appropriate GCC is used and no modifications or alterations have been made thereto;
- (iv) specifications: on this item the contractor or supplier or service provider is required to set out precise and clear specifications responding realistically and competitively to the requirements of the procuring entity;

(v) *for works contracts:*

- (a) drawings: where the project work involves drawings make sure that the list of drawings is inserted and the actual drawings, including site plans, are attached or annexed in a separate folder;
- (b) Bills of Quantities (BoQ): under this part the contractor should provide sufficient information on the quantities and costs of materials and labour to be used in the works;
- (vi) *for goods and supply contracts:* schedule of requirements indicating quantities and prices of goods to be delivered should be attached;
- (vii) *for consultancy contracts:* clear terms of reference should be attached;
- (viii) performance security: evidence of furnished security should be provided;
- (ix) where the advance payment is required, the evidence of advance payment guarantee should be provided;
- (x) valid Power of Attorney: when dealing with a company make sure that a valid Power of Attorney has been attached; and
- (xi) verify veracity and authenticity of all documents listed and attached as the contract

(h) verification of the SCC-

- (i) ensure that the appropriate version of SCC is used;
- (ii) for framework agreements or contracts: ensure that the contract price ceiling has been properly stated and the duration of the contract is clear;
- (iii) check and ensure that each SCC clause corresponds with the referred GCC clause;
- (iv) ensure all the required fields in the SCC are properly filled in and where they are not applicable (N/A) it should be so stated;
- (v) ensure the name and identification number of the contract are consistent with the bidding documents, form of contract, letter of acceptance and other documents;

- (vi) ensure that the commencement date and intended completion date are clearly stated:
 - (a) commencement/effective date be pegged on the date of signature or a certain number of days or weeks after contract signing or upon fulfillment of conditions precedent, whichever is convenient; and
 - (b) for intended completion date be pegged to the commencement date (specific number of dates, weeks, months, or years from the commencement date).
- (vii) ensure that law applicable is cited as “Laws of Tanzania”;
- (viii) verify whether addresses for purposes of notices and communication are accurately inserted;
- (ix) insurance: ensure that there is sufficient insurance cover to mitigate possible risks;
- (x) adjudicator: ensure appointing authority of adjudicator is specified;
- (xi) arbitrator: ensure appointing authority of arbitrator is specified;
- (xii) rules of arbitration: ensure the name of appropriate rules of arbitration is inserted;
- (xiii) place of arbitration: the place of arbitration shall be within United Republic of Tanzania, preferably the place where the contract is executed;
- (xiv) rate of fee and types of reimbursable expenses to be determined by the rules and regulations of the appointing authority of the adjudicator or arbitrator;
- (xv) interest rate on late payments: as far as reasonably practicable interest on late payment should be avoided. Where avoidance is impracticable then interest rate on late payment to be fixed to the agreed rate of liquidated damages or below;
- (xvi) for supply and installation of plants and equipment contracts: ensure the following:

- (a) the timeline for completion, guarantee test and acceptance of the facilities is provided in the form of either days or weeks, written in words and figures from the date of completion;
- (b) applicable rate of liquidated damages is provided; and
- (c) the defect liability period is provided; and

(xvii) *for supply of goods contracts*: ensure the right to inspect as to whether goods conform to the agreed specifications.

5.3.2 External Financed Procurement Contracts

In dealing with externally financed procurement contracts, be it by loan or grants, a State Attorney has to be aware that the Public Procurement Act, Cap 410 which allows the use of specific Forms of contracts other than those issued by the Public Procurement Regulatory Authority. Among others, there are forms made by the International Federation of Consulting Engineers (FIDIC), the New Engineering Contract made by the United Kingdom Institution of Civil Engineers; and there is also the Joint Contract Tribunal Forms (JCT Forms). A State Attorney has to acquaint himself with the framework provided therein.

PART SIX

VETTING OF CONTRACTS AND MEMORANDA OF UNDERSTANDING

6.0 Requirement for Contract Vetting

During submission of a draft contract to the Office of the Attorney General for vetting, the executing agency shall submit a letter containing concise brief facts, probable issues and legal opinion.

Upon completion and satisfaction of the requirements of the Contract and in any case before signing and pursuant to the provisions of section 22 of the Office of the Attorney General (Discharge of Duties) Act Cap. 268 and this Manual, and pursuant to the relevant law(s) in respect of such contract, the in- house State Attorney, shall advise the executing agency to submit the draft contract and Memorandum of Understanding to the Office of the Attorney General for vetting.

The in-house State Attorney must ensure that, when the executing agency is submitting the draft contract or Memorandum of Understanding to the Office of the Attorney General for vetting, such request must be accompanied with the legal opinion of the in-house State Attorney that was issued to the executing agency on the subject at issue.

6.1 Important Issues to be Considered during Contract Preparation and Vetting.

The State Attorney shall ensure that the following important issues are taken into consideration during preparation and vetting of contract:

- (a) Price adjustment: As a general rule price adjustment is not applicable in contracts particularly FIDIC contracts, except that when parties have agreed to indicate price adjustment formula. It is advisable to seek professional advice when one wishes to include price adjustment in the contract;
- (b) Insurance and advance payment: It is important to ascertain the application of laws under these issues. In many donor funded projects insurance and advance payments are regulated by the laws of where the donor comes from. Therefore,

one must be aware and acquittance of such foreign laws as they will be applicable during implementation of the contract;

- (c) For projects which require compliance with local contents provisions or aspects kindly ensure that the same is complied in drafting respective agreements for instance insurance requirements;
- (d) Economic or index baseline formula in some contracts which has an effect of changing the final price (for instance flight purchase contracts) must be properly and carefully checked and one is advised to consult professionals in the area before the contract is conducted;
- (e) Tax concession: Any contract or agreement which has elements of tax concession should be preceded with a written advice or confirmation from the Commissioner General of Tanzania Revenue Authority; and
- (f) Stakeholders: Before a contract is conducted and during its preparation all stakeholders must be involved particularly in contracts of significant projects or complex subject matter.

PART SEVEN

CONTRACT MANAGEMENT

7.0 Submission of Signed Contract

Upon completion of vetting and signing process, the executing agency shall submit a copy of the signed contract or Memorandum of Understanding, both hard and soft, to the Office of the Attorney General within seven days from the date of signing for record purposes.

7.1 Contract Management

7.1.1 Procedure for submission of contracts for vetting

- 7.1.1.1 After drafting a contract, the inhouse state attorney shall advise the executing agency to submit the draft contract to the Office of the Attorney General for vetting.
- 7.1.1.2 The inhouse State Attorney shall ensure that the executing agency provides the authority's legal opinion on the draft contract and parties obligations and the time frame for implementation are clearly stated.
- 7.1.1.3 The legal opinion issued by the executing agency shall contain facts including parties obligation, timeframe for implementation and legal advice of the inhouse State Attorney.

7.2 Procedure for vetting

- 7.2.1 The Division responsible for vetting of contracts at the Office of the Attorney General, shall register the draft contract into the Contract Management Register stating parties obligation and timeframe for implementation.
- 7.2.2 The Office of the Attorney General shall vet the submitted contract and provide a legal opinion to the executing agency.

7.3

Procedure for submitting signed contracts

- 7.3.1 Within seven days after signing of the contract the executing agency shall submit a copy of a signed contract to the office of the Attorney General.
- 7.3.2 The Division responsible for vetting at the Office of the Attorney General shall verify whether the executing agency adhered to the opinion of the Attorney General provided during the vetting of the draft contract and register an opinion at the contract management register.
- 7.3.3 If the opinion of the Attorney General was not adhered to, the Division responsible for vetting at the Office of the Attorney General shall notify/report the same to the Attorney General for his guidance.
- 7.3.4 If the opinion of the Attorney General was adhered to, the Division responsible for vetting at the Office of the Attorney General shall submit the signed contract to the Division responsible for contract management.
- 7.3.6 The Division responsible for contract management shall prepare schedule/timelines for submission of implementation report and submit to the contracting authority together with a letter acknowledging receipt of the signed contract.

7.4

Role of in house State Attorney in Contract Management

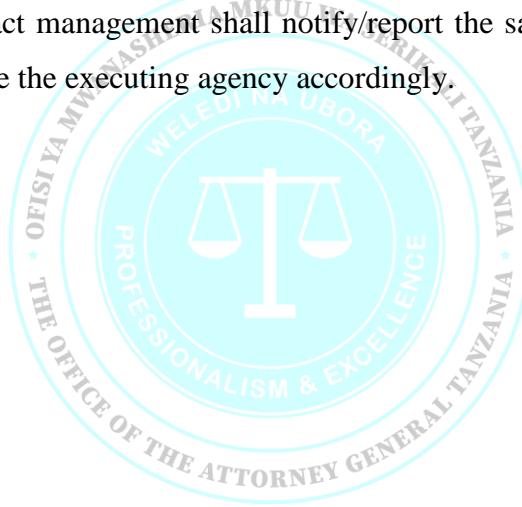
- 7.4.1 The role of Inhouse State Attorney in Contract Management shall include:
 - (a) to advise the executing agency on compliance to the provision of the contract in the course of implementation of the said contract, such as extension of time, expiry, renewal and financial liabilities;
 - (b) to identify and advise the executing agency on all available contractual remedies in the event of breach of contract by either party; and

(c) advise executing agency to submit reports on the implementation of the contract to relevant authorities, including the Office of the Attorney General.

7.5 Procedure for submitting implementation reports

7.5.1 The executing agency shall submit implementation report of the contract according to the schedule/timeframe submitted by the Office of the Attorney General.

7.5.2 The Division responsible for contract management shall register implementation of the contract into the Contract Management Register. If the implementation report indicate non implementation of parties obligation the Division responsible for contract management shall notify/report the same to the Attorney General and advise the executing agency accordingly.



PART EIGHT

TERMINATION OF CONTRACTS

8.0 Conditions for Termination of Contracts

Termination of a contract should be the last resort after exhausting all other contractual remedies under the respective contract. Where the circumstances dictate, the executing agency may terminate a contract in accordance with the terms of the contract. In such termination, the State Attorney should ensure:

- (a) opinion of the Attorney General is sought by the executing agency prior to decision to terminate is invoked;
- (b) grounds or reasons for the executing agency to terminate such contract are provided as incidence of default under the respective contract; and
- (c) procedures for termination under the respective contract are adhered to, including timely issuance of notification of default to the other party.

Where termination is considered to be the best option in the circumstances, the executing agency shall ensure termination of contract is made in accordance with the terms of the contract and governing laws, the State Attorney shall advise the executing agency to-

- (a) assess and mitigate consequences of termination;
- (b) consult relevant authorities;
- (c) seek advice of the Attorney General in accordance with the provisions of section 22 of the Office of the Attorney General (Discharge of Duties) Act Cap. 268; and
- (d) make a decision to terminate the contract on merit.

8.1 Procedure for Termination

Where a decision to terminate the contract is made by the executing agency, a State Attorney shall advise the executing agency on the applicable procedure(s) to be followed, such that-

- (a) to issue a notice of intention to terminate the contract. The notice of intention to terminate shall contain the following information:
 - (i) description of the parties to the contract;

- (ii) brief particulars of contract;
- (iii) date of signing, commencement and the contemplated completion date;
- (iv) particulars of breach or statement of facts that constitute grounds of termination;
- (v) time frame of notice;
- (vi) statement requiring the other party to remedy breach, if any; and
- (vii) requirement to show cause why the contract should not be terminated.

(b) after lapse of time specified in the notice of intention to terminate, and the defaulting party has not remedied the default or shown cause as why the contract should not be terminated as the case may be, shall issue a notice of termination to the defaulting party;

(c) in case of termination for reasons other than default, after lapse of time specified above, the State Attorney shall advise the executing agency to issue a notice of termination to the other party;

(d) where the executing agency has any claim against the other party, a State Attorney shall advise the executing agency to initiate forfeiture of performance guarantees or securities to satisfy the claim for damages in accordance with terms of the contract or law; and

(e) where forfeiture measures are inadequate or unavailable, the State Attorney shall advise the executing agency, to initiate legal proceedings to claim for damages.

Upon completion of procedures for termination under this Part, the State Attorney shall advise the executing agency to submit a detailed report within seven days to relevant authorities, including the Office of the Attorney General.



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