

# NDLAMBE LOCAL MUNICIPALITY



## SUPPLY CHAIN MANAGEMENT POLICY 2024/2025

# Contents

1. Definitions.....	5
2. Supply chain management policy .....	13
3. Amendment of the supply chain management policy.....	14
4. Delegation of supply chain management powers and duties.....	15
5. Sub-delegations .....	15
6. Oversight role of the council.....	17
7. Supply chain management unit .....	17
8. Training of supply chain management officials .....	17
9. Format of supply chain management system.....	17
10. System of demand management.....	17
11. System of acquisition management.....	19
12. Range of procurement processes .....	19
13. Special categories of bidders and suppliers.....	20
13.1 Exempted Micro-Enterprise.....	20
13.2 Qualifying Small Enterprise.....	20
13.3 Start-up enterprises .....	21
14. General preconditions for consideration of written quotations or bids.....	21
15. Lists of accredited prospective providers .....	22
16. Petty cash purchases .....	23
17. Written or verbal price quotations.....	24
18. Formal written price quotations.....	24
19. Procedures for procuring goods or services through written or verbal quotations and formal written price quotations.....	24
20. Competitive bidding process .....	25
21. Process for competitive bidding .....	26
22. Bid documentation for competitive bids .....	26
23. Public invitation for competitive bids .....	27
24. Procedure for handling, opening and recording of bids .....	29
25. Negotiations with preferred bidders .....	29
26. Two-stage bidding process .....	30
27. Committee system for competitive bids.....	30
28. Bid specification committees.....	30
29. Bid Specifications and related matters.....	31
29.1 General Requirements.....	31
29.2 Tenders to be evaluated on functionality.....	31

29.3	Identification of preference point system, designated sector, pre-qualification criteria, objective criteria and subcontracting .....	32
29.4	Pre-qualification criteria for preferential procurement.....	32
29.5	80/20 preference point system for acquisition of goods or services for Rand value equal to or above R30 000 and up to R50 million .....	33
29.6	90/10 preference point system for acquisition of goods or services with Rand value above R50 million.....	34
29.7	Local production and content.....	35
29.8	B-BBEE status level certificates and scorecards.....	37
29.9	Subcontracting as condition of tender .....	38
29.10	Miscellaneous Special Conditions of Contract.....	39
29.10.1	General .....	39
29.10.2	Subcontracting after award of tender .....	39
29.10.3	Cancellation of a bid invitation .....	40
29.10.4	Declarations .....	40
29.10.5	Remedies .....	40
30.	Procurement from tertiary institutions .....	41
31.	Bid evaluation committees .....	41
32.	Bid adjudication committees .....	44
33.	Procurement of banking services .....	46
34.	Procurement of IT related goods or services.....	46
35.	Procurement of goods and services under contracts secured by other organs of state .....	47
36.	Procurement of goods necessitating special safety arrangements .....	47
37.	Appointment of consultants .....	47
38.	Deviation from, and ratification of minor breaches of, procurement processes .....	48
39.	Unsolicited bids.....	48
40.	Combating of abuse of supply chain management system .....	50
41.	Logistics management .....	51
42.	Disposal management .....	51
43.	Risk management .....	53
44.	Performance management.....	53
45.	Prohibition on awards to persons whose tax matters are not in order.....	53
46.	Prohibition on awards to persons in the service of the state.....	53
47.	Awards to close family members of persons in the service of the state .....	54
48.	Ethical standards.....	54
49.	Inducements, rewards, gifts and favours to municipalities, officials and other role players .....	54
50.	Sponsorships.....	55

51. Objections and complaints .....	55
52. Resolution of disputes, objections, complaints and queries .....	55
53. Contracts providing for compensation based on turnover.....	56
54. Contract Management – issue of expansion and variation orders.....	56
55. Fronting.....	57
56. Commencement .....	58
ANNEXURE A - CODE OF CONDUCT FOR SUPPLY CHAIN MANAGEMENT PRACTITIONERS AND OTHER ROLE PLAYERS.....	59
1. General Principles .....	59
2. Conflict of interest .....	59
3. Accountability .....	60
4. Openness .....	60
5. Confidentiality.....	60
6. Bid Specification / Evaluation / Adjudication Committees .....	61
7. Combative Practices.....	61
ANNEXURE B - Schedule to Small Businesses Act No. 102 of 1996.....	62

DRAFT

## 1. Definitions

In this policy and any bid documentation or directive issued in terms thereof, the singular includes the plural and vice versa, any one gender includes both genders and, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Municipal Finance Management Act has the same meaning as in this Act and -

**“The Act”** means the Local Government: Municipal Finance Management Act No. 56 of 2003 and, unless otherwise stated in this policy, any reference to “the Act” shall mean a reference to this Act;

**“Accounting Officer”** means the manager of the municipal administration and accounting officer of the municipality appointed by the council in terms of section 54A of the Local Government: Municipal Systems Act No. 32 of 2000 and includes any employee of the municipality who acts in his stead and, in the event of the municipality being subject to an intervention in terms of section 139 of the Constitution or any other applicable law, includes the “Administrator” appointed as a consequence of such intervention or in terms of the conditions pertaining thereto;

**“All applicable taxes”** includes value-added tax, pay as you earn, income tax, skills development levies and unemployment insurance fund contributions;

**“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

**“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

**“Bid”** means a written offer in a prescribed or stipulated form in response to an invitation to bid issued by the municipality for the procurement of goods, services or works through price quotations, advertised competitive bidding processes, limited bids or proposals or for the disposal of assets and **“tender”** has a corresponding meaning;

**“Bid Committees”** means the committees established in terms of this policy to prepare bid specifications, bid documentation, evaluate responsive bids and, where so authorized, to adjudicate responsive bids and any reference in section 117 of the Municipal Finance Management Act to municipal tender committees shall be construed as a reference to the aforesaid committees;

**“Bid documentation”** means all documentation relating to or necessary in order to complete a procurement or disposal including but not limited to such specification, bidding, certification and contractual documentation as may be prescribed by National Treasury or the Construction Industry Development Board, as the case may be, for municipal supply chain management purposes and the implementation of this policy;

**“Bidder”** means any person who submits a bid or quotation to the municipality in response to an invitation to bid or quote and includes a **“tenderer”**;

**“Bid rigging”** means a prohibited collusive bidding practice in terms of which bidders that would normally be expected to compete in a procurement process either singularly or by association with other persons or firms in a horizontal relationship, secretly conspire to raise prices or lower the quality of goods and/or services or agree not to compete against each other in such process; **“Black Designated Groups”** has the meaning assigned to it in the codes of good practice issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

**“Black People”** has the meaning assigned to it in section 1 of the Broad-Based Black Economic Empowerment Act;

**“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

**“Chief Financial Officer”** means the official of the municipality designated as such in terms of section 80(2)(a) of the Municipal Finance Management Act;

**“CIDB”** means the Construction Industry Development Board;

**“CIDB regulations”** means any regulations issued in terms of the Construction Industry Development Board Act No. 38 of 2000;

**“Co-operative”** means a co-operative registered in terms of section 7 of the Cooperatives Act, 2005 (Act No. 14 of 2005);

**“Codes of Good Practice”** means the Codes of Good Practice on Black Economic Empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act and contained in General Notice 12 of 9 February 2007;

**“Comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized, have been taken into consideration;

**“Competitive bidding process”** means a transparent procurement method in which bids from competing contractors, suppliers or vendors are invited by openly advertising the scope, specifications, terms and conditions of the proposed contract as well as the criteria by which responsive bids received will be evaluated;

**“Competitive bid”** means a bid in terms of a competitive bidding process;

**“Consortium or joint venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;

**“Construction works”** or **“works”** means the provision of a combination of goods and services arranged for the development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset including building and engineering infrastructure;

**“Contractor”** means a person or body of persons who undertakes to execute and complete

procured construction works for or on behalf of the municipality;

**"Contract"** means the agreement that results from the acceptance of a bid by the municipality in accordance with this policy;

**"Council"** means the council of Ndlambe Municipality;

**"CSD"** means the Central Supplier Data Base as maintained by National Treasury;

**"Day"** unless expressly otherwise provided in this policy, means a calendar day, provided that when any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday;

**"Delegating authority"** means the council, a duly authorized political structure or office bearer thereof, the Accounting Officer or other employee to whom original powers are assigned in terms of legislation and, in relation to a sub-delegation of a power, that delegated body;

**"Delegation"** means the issuing of a written authorization by a delegating authority to a delegated body to act in his stead and, in relation to a duty, includes an instruction or request to perform or to assist in performing the duty and "delegate" and sub-delegate has a corresponding meaning;

**"Delegated body"** in relation to the delegation of a power means the person to whom a power has been delegated by the delegating authority in writing;

**"Designated Official"** means the official of the municipality to whom the accounting officer or the chief financial officer, as the case may be, have, in accordance with sections 79 and 82 of the Municipal Finance Management Act No. 56 of 2003 delegated or sub-delegated powers, functions and duties in connection with the application and implementation of this policy provided that a sub-delegation by the chief financial officer to an official that has not been allocated to him by the accounting officer or to a person contracted by the municipality for the work of its budget and treasury office may only be so authorized with the concurrence of the accounting officer and provided further that the said chief financial officer is satisfied that effective systems and procedures are in place to ensure control and accountability by the person concerned;

**"Designated Group"** means -

- (a) black designated groups;
- (b) black people;
- (c) women;
- (d) people with disabilities; or
- (e) small enterprises, as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);

**"Designated sector"** means a sector, sub-sector or industry that has been designated by the Department of Trade and Industry in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content;

**"Disposal"** means a process of preparing, negotiating and concluding a written contract relating to the alienation of a capital asset whether movable or immovable owned by or under the control of the municipality or rights in respect thereof, by means of a sale, lease, donation or cession and **"dispose of"** has a similar meaning;

**"EME"** means an exempted micro enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

**"Final award"** in relation to bids or quotations submitted for a contract, means the final decision on which a bid or quote was accepted;

**"Firm price"** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy or tax which, in terms of any applicable law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies or the rendering costs of any service, for the execution of a contract;

**"Formal written price quotations"** means quotations referred to in paragraph 12 (1) (c) of this policy;

**"Functionality"** means the measurement according to predetermined norms, as set out in the bid specification, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;

**"Fronting"** means a deliberate circumvention or attempted circumvention of any legislation intended to address imbalances of the past relating to Supply Chain processes;

**"HDI"** means Historical Disadvantage Individual;

**"Head of Department"** means a senior manager as defined in the Municipal Finance Management Act and who is responsible for a vote as assigned by the accounting officer;

**"Imported content"** means that portion of the bid or tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its sub-contractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry;

**"In the service of the state"** means to be -

(a) A member of -

- (i) any municipal council;
  - (ii) any provincial legislature; or
  - (iii) the National Assembly or the National Council of Provinces;
- (b) A member of the board of directors of any municipal entity;
  - (c) An official of any municipality or municipal entity;
  - (d) An employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Act and the Public Finance Management Act, 1999 (Act No. 1 of 1999);
  - (e) An executive member of the accounting authority of any national or provincial public entity; or
  - (f) An employee of Parliament or a provincial legislature;

**“Line manager”** means a manager reporting directly to a senior manager and who is responsible for a cost centre as assigned by the relevant senior manager;

**“Local content”** means that portion of the bid or tender price which is not included in the imported content, provided that local manufacture does take place;

**“Long term contract”** means a contract with a duration period exceeding one year;

**“List of accredited prospective providers”** means the list of accredited prospective providers which the municipality must keep in terms of paragraph 15 of this policy;

**“Mayor”** means the councillor elected by the council as Mayor in terms of section 48 of the Local Government: Municipal Structures Act No. 117 of 1998 read with section 58 of the Municipal Finance Management Act;

**“Military Veteran”** has the meaning assigned to it in section 1 of the Military Veterans Act, 2011 (Act No. 18 of 2011);

**“Municipal Asset Transfer Regulation”** means Government Notice Nr 878 dated 22 August 2008 entitled Local Government : Municipal Finance Management Act, 2003 Municipal Asset Transfer Regulations;

**“Municipality”** means the Ndlambe Municipality, a local municipality established by way of a notice in the Provincial Gazette issued in terms of section 12 of the Local Government: Municipal Structures Act No. 117 of 1998 and includes any employee entitled to or duly authorized to perform any function or duty in terms of this policy and/or is responsible for the implementation of this policy or any part thereof;

**“Municipal Systems Act”** means the Local Government: Municipal Systems Act No. 32 of 2000 and includes the regulations under this Act;

**“National Treasury”** has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**“Non-firm prices”** means all prices other than "firm" prices;

**“Other applicable legislation”** means any other legislation applicable to municipal supply chain management, including but not limited to -

- (a) the Preferential Procurement Policy Framework Act No. 5 of 2000;
- (b) the Broad-Based Black Economic Empowerment Act No. 53 of 2003;
- (c) the Construction Industry Development Board Act No. 38 of 2000;
- (d) the Local Government: Municipal Systems Act No. 32 of 2000 (Municipal Systems Act);
  
- (e) the Promotion of Administrative Justice Act No. 3 of 2000;
- (f) the Promotion of Access to Information Act No. 2 of 2000;
- (g) the Protected Disclosures Act No. 26 of 2000;
- (h) the Competition Act No. 89 of 1998;
- (i) the Prevention and Combating of Corrupt Activities Act No. 12 of 2004;

**“People with Disabilities”** has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998);

**“Person”** includes an enterprise, partnership, trust, association, consortium, joint venture or a juristic person;

**“Petty cash”** means a relatively small amount of cash kept at hand for making immediate payment for miscellaneous small expenses incurred the municipality;

**“Preferential Procurement Regulations”** means the Preferential Procurement Regulations, 2017 contained in Government Notice R 32 of 20 January 2017 promulgated in Government Gazette No. 40553 on this date;

**“PPFA”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);

**“Price”** includes all applicable taxes less all unconditional discounts;

**“Procurement”** means the processes leading to the negotiation and conclusion of contracts whether in writing or verbally for the acquisition of goods, services or construction works or any combination thereof means of purchase, sale, lease or donation and includes the preparation of all associated bid and contractual documentation and **“procured”** or **“procuring”** has a similar meaning;

**“Proof of B-BBEE status level of contributor” means-**

- (a) the B-BBEE status level certificate issued by an authorised body or person;
- (b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
- (c) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act;

**“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

**“Quotation”** means a stated price that a supplier expects to receive for the provision of specified services, goods or works;

**“Rand value”** means the total estimated value of a contract in South African currency calculated at the time of bid invitations, and includes all applicable taxes and excise duties;

**“Responsive bid”** means a bid that complies in all material aspects with the requirements set out in or contained in an invitation to bid including the applicable specification;

**“Rural Area”** means-

(a) a sparsely populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or

(b) an area including a large settlement which depends on migratory labour and remittances and government social grants for survival, and may have a traditional land tenure system;

**“Senior Manager”** means Section 57 employees;

**“Small enterprise”** means a separate and distinct business entity, together with its branches or subsidiaries, if any, including cooperative enterprises, managed by one owner or more predominantly carried on in any sector or sub-sector of the economy which is contained in Annexure B to this policy and classified as a micro-, a very small or, a small enterprise by satisfying the criteria mentioned in columns 3, 4 and 5 of the said schedule;

**“Stipulated minimum threshold”** means that portion of local production and content as determined by the Department of Trade and Industry from time to time;

**“Sub-contract”** means the primary contractor's assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of a contract;

**“SANAS”** means the South African National Accreditation System;

**“Total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice;

**“Township”** means an urban living area that any time from the late 19th century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994;

**“Trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person;

**“Trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person;

**“Treasury”** has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**“Treasury guidelines”** means any guidelines on supply chain management issued by the

Minister of Finance in terms of section 168 of the Municipal Finance Management Act;

**“The Regulations”** means the Local Government: Municipal Finance Management Act, 2003: Municipal Supply Chain Management Regulations published by Government Notice 868 of 2005;

**“Verbal Quotations”** means a verbal process of inviting quotations from an identified limited number of potential suppliers for the supply goods, services and/or works;

**“Verification Certificate”** means a B-BBEE certificate issued in compliance with the B-BBEE Codes of Good Practice and all Sector Codes issued in terms of Section 9(1) of the Broad- Based Black Economic Empowerment Act;

**“Written quotations”** means quotations referred to in paragraph 12(1)(c) of this policy; and

**“Youth”** has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).

DRAFT

## 2. Supply Chain Management Policy

### (1) Policy Statement

#### (a) Introduction

(i) Section 111 of the MFMA requires each municipality and municipal entity to adopt and implement a supply chain management policy, which gives effect to the requirements of the Act.

(ii) In addition, the PPPFA requires an Organ of State to determine its Preferential Procurement Policy and to implement it within the framework prescribed. This requirement is given effect to in the Preferential Procurement section of this Policy.

#### (b) Desired Outcomes

The desired outcome of this Policy is to provide a mechanism to ensure sound, sustainable and accountable supply chain management within Ndlambe Municipality, whilst promoting black economic empowerment, which includes general principles for achieving the following socio-economic objectives:

- (i) to stimulate and promote local economic development in a targeted and focused manner;
- (ii) to promote resource efficiency and reduce the negative environmental impact of daily operations of the City;
- (iii) to facilitate creation of employment and business opportunities for the people of Ndlambe with particular reference to B-BBEE;
- (iv) to promote the competitiveness of local businesses;
- (v) to increase the small business sector access, in general, to procurement business opportunities created by Council;
- (vi) to implement e-Procurement as an alternative to a manual process, to enhance efficiency and service delivery.

This Policy will also strive to ensure that the objectives for uniformity in supply chain management systems between organs of state, in all spheres, not undermined and that consistency with national economic policy on the promotion of investments and doing business with the public sector is maintained.

- (2) All officials and other role players in the supply chain management system of the municipality must implement this policy in a way that -
- (a) gives effect to Section 217 of the Constitution and Part 1 of Chapter 11 and other applicable provisions of the Act;
  - (b) is fair, equitable, transparent, competitive and cost effective;
  - (c) complies with the Regulations and any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
  - (d) is consistent with other applicable legislation;
  - (e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
  - (f) is consistent with national economic policy concerning the promotion of

investments and the conduct of business with the public sector.

- (3) This policy applies when the municipality -
  - (a) procures goods or services or undertakes construction works through a procurement process;
  - (b) disposes of goods no longer needed;
  - (c) selects contractors to provide assistance with the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
  - (d) selects external mechanisms referred to in section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.
- (4) This Policy, except where specifically provided otherwise, does not apply if municipality or municipal entity contracts with another organ of state for-
  - (a) the provision of goods or services to the municipality or municipal entity;
  - (b) the provision of a municipal service or assistance in the provision of municipal service; or
  - (c) the procurement of goods and services under a contract secured by that other organ of state, provided that the relevant supplier has agreed to such procurement.
- (5) Notwithstanding anything to the contrary in this policy, the municipality shall not award a contract to a contractor in respect of the undertaking, carrying out or completion of any construction works or a portion thereof in terms of a competitive bidding process provided for in this policy unless such contractor is registered with the Construction Industry Development Board established by section 2 of the Construction Industry Development Board Act No. 32 of 2000 and holds a valid registration certificate issued by such Board or is exempted from such registration either in terms of this Act or the "CIDB Regulations".
- (6) Ndlambe Municipality must use the CSD supplier number starting with (MAAA) which is auto generated by the Central Database System after successful registration and validation of the prospective provider as a mandatory requirement as part of listing criteria for accrediting prospective providers in line with Section 14(1)(b) of the Municipal Supply Chain Management Regulations.

### **3. Amendment of the Supply Chain Management Policy**

- (1) The accounting officer must at least annually review the implementation of this policy and, when necessary, submit proposals for the amendment thereof to the council through the Mayor acting in conjunction with the mayoral committee.
- (2) If the accounting officer submits proposed amendments to this policy to the council, he must ensure that same comply with the Regulations and Treasury guideline standards determining standards for municipal supply chain management policies.
- (3) The accounting officer must report any deviation from the Regulations and Treasury guideline standards determining standards for municipal supply chain management policies to the National and Provincial Treasuries.
- (4) When amending this policy, the need for uniformity in supply chain practices, procedures and forms between all spheres of organs of state particularly to promote accessibility of supply chain management systems for small businesses, must be taken

into account.

#### **4. Delegation of Supply Chain Management powers and duties**

- (1) The council hereby delegates all powers and duties to the accounting officer which are necessary to enable him -
  - (a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of -
    - (i) chapters 8 or 10 of the Act; and
    - (ii) this policy; and
  - (b) to maximize administrative and operational efficiency in the implementation of this policy; and
  - (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this policy; and
  - (d) to comply with his responsibilities in terms of section 115 and other applicable provisions of the Act.
- (2) Sections 79 and 106 of the Act apply to the sub-delegation of powers and duties delegated to an accounting officer in terms of subparagraph (1).
- (3) The accounting officer may not sub-delegate any supply chain management powers or duties to a person who is not an official of the municipality or to a committee which is not exclusively composed of officials of the municipality.
- (4) This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 27 of this policy.

#### **5. Sub-delegations**

- (1) The accounting officer may, in terms of section 79 of the Act, sub-delegate any supply chain management powers and duties, including those vested in him in terms of legislation or delegated to him in terms of this policy or by resolution of the council, but any such sub-delegation must be consistent with subparagraph (2) and paragraph 4 of this policy.
- (2) The power to make a final award -
  - (a) above R10 million (VAT included) may not be sub-delegated by the accounting officer;
  - (b) above R2 million (VAT included), but not exceeding R10 million (VAT included), may be sub-delegated by the accounting officer but only to -
    - (i) the chief financial officer;
    - (ii) a senior manager ; or
    - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member;

- (c) not exceeding R2 million (VAT included) may be sub-delegated by the accounting officer but only to -
    - (i) the chief financial officer;
    - (ii) a senior manager;
    - (iii) a manager directly accountable to the chief financial officer or a senior manager; or
    - (iv) a bid adjudication committee.
  - (3) An official or bid adjudication committee to whom or which the power to make final awards has been sub-delegated in accordance with subparagraph (2) must, within five days of the end of each month, submit to the official referred to in subparagraph (4) a written report containing particulars of each final award made by such official or committee during that month, including -
    - (i) the amount of the award;
    - (ii) the name of the person to whom the award was made; and
    - (iii) the reason why the award was made to that person.
    - (iv) the contract numbers and descriptions of goods, services or infrastructure project.
  - (4) A written report referred to in subparagraph (3) must be submitted-
    - (a) to the accounting officer, in the case of an award by -
      - (i) the chief financial officer;
      - (ii) a senior manager; or
      - (iii) a bid adjudication committee of which the chief financial officer or a senior manager was a member;
    - (b) to the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by -
      - (i) a manager referred to in subparagraph (2)(c)(iii); or
      - (ii) a bid adjudication committee of which the chief financial officer or a senior manager was not a member.
  - (5) Subparagraphs (3) and (4) do not apply to procurements out of petty cash.
  - (6) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub-delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 27 of this policy.
  - (7) No supply chain management decision-making powers may be delegated to an advisor or consultant.
-

## **6. Oversight role of the council**

- (1) No councillor may be a member of a bid committee or any other committee evaluating or approving quotations or bids nor attend any meeting of such committees as an observer.
- (2) The council must maintain oversight over the implementation of this policy to ensure that the accounting officer implements all supply chain management activities in accordance therewith.
- (3) For the purposes of such oversight, the accounting officer must -
  - (a) within 30 days of the end of each financial year, submit a report on the implementation of this policy to the council through its mayor;
  - (b) whenever there are serious and material problems in the implementation of this policy, immediately submit a report thereon to the council through its mayor.
- (4) The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of this policy to the mayor.
- (5) The aforesaid reports must be made public in accordance with section 21A of the Municipal Systems Act.

## **7. Supply Chain Management Unit**

- (1) A supply chain management unit is hereby established to assist in implementing this policy.
- (2) The supply chain management unit shall operate under the direct supervision of the chief financial officer.

## **8. Training of supply chain management officials**

The training of officials involved in implementing this policy should be in accordance with any Treasury guidelines on supply chain management training and applicable prescribed competency level requirements.

## **9. Format of supply chain management system**

This policy provides systems for -

- (1) Demand management;
- (2) Acquisition management;
- (3) Logistics management;
- (4) Disposal management;
- (5) Risk management; and
- (6) Performance management.

## **10. System of demand management**

- (1) The accounting officer must establish and implement an appropriate demand management system in order to ensure that the resources required by the municipality

supports its operational commitments and its strategic goals as outlined in the municipality's Integrated Development Plan.

- (2) The demand management system must -
  - (a) include timely planning and management processes to ensure that all goods, services and works required by the municipality are quantified, budgeted for and timely and effectively delivered at the right locations and at the critical delivery dates and are of the appropriate quality and quantity procured at a fair cost;
  - (b) take into account any benefits of economies of scale that may be derived in the case of procurements of a repetitive nature;
  - (c) provide for the compilation of the required specifications to ensure that municipal needs are met;
  - (d) allow for the undertaking of appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.
- (3) The accounting officer must, prior to issuing an invitation to bid-
  - (a) properly plan for, and, as far as possible, accurately estimate the costs for the provision of goods, services and/or works for which an invitation to bid is to be issued;
  - (b) determine the appropriate preference point system to be utilized in the evaluation and adjudication of bids to be received in response to the contemplated invitation to bid; and
  - (c) determine whether the goods, services and/or works for which an invitation to bid is to be issued has been designated for local production and content in terms of section 9 of the Preferential Procurement Regulations and paragraph 29(5) of this policy.
- (4) The accounting officer must indicate in an invitation to submit a bid and in the applicable bid specification or terms of reference-
  - (a) that such bid will be evaluated on functionality and, in such event, the following shall be clearly stated:
    - (i) the evaluation criteria for measuring functionality which criteria must be objective;
    - (ii) the weight of each criterion which should not be generic but be determined separately for each bid on a case by case basis;
    - (iii) the applicable values that will be utilized when scoring each criterion which values must be objective;
    - (iv) the minimum qualifying score for functionality in order to enable the bid concerned to be further evaluated in terms of this policy provided that the aforesaid qualifying score:
      - (a) should not be generic but be determined separately for each bid on a case by case basis; and

- (b) should not be prescribed so low that it may jeopardize the quality of the service or works required nor be so high that it may be restrictive to the extent that it jeopardizes the fairness of the supply chain management system;
  - (b) the fact that no bid will be regarded as an acceptable bid if the bidder or the goods, services and/or works to be procured, as the case may be, fails to achieve the minimum qualifying score for functionality as indicated in the invitation to bid and the relevant bid specification or terms of reference; and
  - (c) that bids that have achieved the minimum qualification score for functionality will be evaluated further in terms of the preference point systems referred to in paragraphs 29.5 and 29.6 of this policy.
- (5) Any system designed in terms of this paragraph shall take cognizance of the provisions of this policy.

## **11. System of acquisition management**

The accounting officer must implement an efficient system of acquisition management in order to ensure -

- (1) that goods, services and works are procured by the municipality in accordance with authorized processes only;
- (2) that expenditure on goods, services and works is incurred in terms of an approved budget in terms of section 15 of the Act;
- (3) that the threshold values for the different procurement processes are complied with;
- (4) that bid documentation, evaluation and adjudication criteria and the general conditions of a contract, are in accordance with any applicable legislation; and
- (5) that any Treasury guidelines on acquisition management are properly taken into account.

## **12. Range of procurement processes**

- (1) Goods and services may only be procured by way of -
  - (a) at least one written quotation for procurements of a up to R2,000 (VAT included);
  - (b) formal written quotations for procurements of a transaction value over R2,000 up to R30,000 (VAT included);
  - (c) formal written price quotations for procurements of a transaction value over R30,000 up to R200,000 provided that, in addition to any other relevant requirements contained in this policy, procurement invitations shall be advertised for at least seven days on the website and an official notice board of the municipality;
  - (d) a competitive bidding process for -
    - (i) procurements above a transaction value of R200 000 (VAT included); and

- (ii) the procurement of long term contracts.
- (2) The accounting officer may, in writing:
  - (a) lower but not increase, the different threshold values specified in subparagraph (1) above; or
  - (b) direct that written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2000;
  - (c) direct that formal written price quotations be obtained for any specific procurement of a transaction value lower than R10 000; or
  - (d) direct that a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000.
- (3) Procurement invitations may not deliberately be split into parts or items of a lesser value than the threshold amounts referred to in subparagraph (1) merely to avoid compliance with the requirements of this policy or any applicable legislation. When determining transaction values, a requirement for goods, services or works consisting of different parts or items must, as far as possible, be treated and dealt with as a single transaction.

### **13. Special categories of bidders and suppliers**

In order to promote B-BBEE and comply with applicable legislation including the Codes of Good Practice, this policy recognizes the following special categories of bidders and suppliers:

#### **13.1 Exempted Micro-Enterprise**

- (a) An exempted Micro-Enterprise (EME) is an entity with an annual turnover of R5 million or less provided that this amount may be reduced in accordance with sector charter thresholds for specific sectors or industries.
- (b) The current thresholds for the Tourism and Construction Sector charters are R2.5 million and R1.5 million respectively.
- (c) Exempted Micro-Enterprises are deemed to possess a B-BBEE Status of "Level Four Contributor", having a B-BBEE procurement recognition of 100%, provided that:
  - (i) an EME that has at least 75% black beneficiaries qualifies for elevation to "Level One Contributor", having a B-BBEE recognition level of 135%; and
  - (ii) an EME that has at least 51% black beneficiaries qualifies for elevation to "Level Two Contributor", having a B-BBEE recognition level of 125%.
- (d) An EME is only required to obtain a sworn affidavit annually confirming information set out in subparagraph 29.8.

#### **13.2 Qualifying Small Enterprise**

- (a) Any enterprise with an annual Total Revenue of between R10 million and R50 million qualifies as a Qualifying Small Enterprise provided that this amount may be amended in accordance with sector charter thresholds for specific sectors or industries;

- (b) Enterprises claiming qualifying small enterprise (QSE) status must include in any bid submitted to the municipality, an original and valid B-BBEE status level certificate or a certified copy thereof, substantiating their B-BBEE rating. This certificate must be issued by a verification agency accredited by SANAS or a Registered Auditor approved by the Independent Regulatory Board of Auditors.

### 13.3 Start-up enterprises

- (a) Start-up enterprises must be measured as Exempted Micro-Enterprises for the first year following their formation or incorporation. This provision applies regardless of the expected total revenue of the start-up enterprise.
- (b) Start-up Enterprises are deemed to have a "B-BBEE Status of Level Four Contributor".
- (c) In order to qualify as a Start-up Enterprise, the enterprise must provide an independent confirmation of its status.
- (d) Notwithstanding subparagraphs (a) and (b), Start-up Enterprises must submit a QSE Scorecard when tendering for any contract or seeking any other business with a value higher than R10 million but less than R50 million. For contracts above R50 million, they should submit the generic scorecard. The preparation of such scorecards must use annualised data.
- (e) The accounting officer shall reserve the right to require a Start-up Enterprise referred to in subparagraph (d) to submit a verification certificate issued by either a verification agency approved by SANAS or a Registered Auditor approved by the Independent Regulatory Board of Auditors.

## 14. General preconditions for consideration of written quotations or bids

A written quotation or bid may not be considered unless the bidder who submitted the quotation or bid concerned -

- (1) has furnished his -
  - (a) full name or names including trading name;
  - (b) identification number or company or other registration number;
  - (c) tax reference number and VAT registration number, if any;
- (2) where an envisaged award is greater than R15000, the bidder has provided the municipality with either;
  - (a) an **original** valid tax clearance certificate from the South African Revenue Services stating that his tax matters are in order;
  - (b) a SARS tax reference number and PIN or TCC number (and has therefore authorised the municipality to obtain a tax clearance that the provider's tax matters are in order); or
  - (c) sufficient information so as to enable the municipality to confirm such bidder's tax status on the Central Supplier Database (CSD).
- (3) has, where applicable, provided the municipality with either;
  - (a) a copy of a registration certificate from the Construction Industry

Development Board to the effect that he holds a valid registration certificate issued by the Board; or

(b) sufficient information so as to enable the municipality to confirm such bidder's registration on the CIDB (Construction Industry Development Board) website.

- (4) where an envisaged award is greater than R30000, the bidder has provided the municipality with a "Certificate of Independent Bid Determination" on Form MBD 9 or a similar form;
- (5) Where an envisaged award is greater than R15000, the bidder has provided either;
  - (a) a certificate issued by the municipality or any other municipality to which he may be indebted to the effect that he and, in the event of the bidder being a company, also any of its directors, is not indebted to the municipality or to any other municipality or municipal entity for rates, taxes and/or municipal service charges which are in arrear for a period of more than three months and that no dispute exists between such bidder and municipality or municipal entity concerned in respect of any such arrear amounts; or
  - (b) a duly completed and signed Certificate for Municipal Services which contains the following information:
    - (i) Tender/quotation reference or description;
    - (ii) Name of bidder;
    - (iii) Names, physical addresses and municipal account numbers of all bidders and, where applicable, directors of bidders; and
    - (iv) a declaration to the effect that the bidder and, where applicable, director(s) of the bidder have no undisputed commitments for municipal services towards a municipality or municipal entity in respect of which payment is overdue for more than 30 days; or
- (6) where an envisaged award is greater than R30000, the bidder has submitted a Declaration of Interest form, MBD 4 or similar certifying -
  - (a) that he is not in the service of the state or has been in the service of the state in the previous twelve months;
  - (b) that, in the event of the bidder not being a natural person, none of its directors, managers, principal shareholders or stakeholders are in the service of the state nor have they been in the service of the state in the previous twelve months;
  - (c) that neither his spouse, child or parent nor a director, manager, shareholder or stakeholder referred to in subparagraph (b) is in the service of the state or has been in the service of the state in the previous twelve months;
  - (d) that he is not an advisor or consultant contracted by the municipality to advise it on the procurement under consideration;

This paragraph must be read in conjunction with paragraph 22 of this policy.

## **15. Lists of accredited prospective providers**

- (1) The accounting officer must -
  - (a) keep a list of accredited prospective providers of goods and services that must be used for procurements through written or verbal quotations and formal written price quotations; and
  - (b) at least once a year through newspapers commonly circulating locally, the municipal website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
  - (c) specify the listing criteria for accredited prospective providers; and
  - (d) disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.
- (2) The aforesaid list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.
- (3) The aforesaid list must also be compiled per commodity and per type of service.
- (4) The only listing criterion for accreditation per subparagraph (1)(c) is that, as per paragraph 2(6), prospective providers must be successfully registered on the CSD (Central Supplier Database).
- (5) Prospective service providers who are not registered on the CSD (Central Supplier Database) are not precluded from submitting bids. Contracts, however, may not be concluded with bidders who are not registered and verified on the central supplier database. The accounting officer **may** give any bidder seven (7) days written notice to produce proof of registration on the central supplier database. Failure to produce proof of such registration will result in the bid being made non-responsive.

## **16. Petty cash purchases**

- (1) Petty cash purchases up to R70 may be made in accordance with the Imprest Petty Cash policy of the municipality.
- (2) The accounting officer may delegate responsibility for the management of petty cash to an official directly or indirectly reporting to the chief financial officer.
- (3) No item that is an approved stores item may be purchased by means of a petty cash transaction.
- (4) No fixed asset regardless of value may be purchased through petty cash.
- (5) The council must, from time to time, determine the maximum amount of the permissible petty cash expenditure per month;
- (6) A monthly reconciliation report must be provided to the chief financial officer within 5 working days of the end of each month by the official authorized to make petty cash purchases and such report shall contain particulars of each final award made by such official during that month, including:
  - (a) the total amount of petty cash purchases for that month; and

- (b) receipts and supporting documents for each purchase.

## **17. Written or verbal price quotations**

The conditions for the procurement of goods or services through written or verbal quotations are as follows:

- (1) Quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the municipality, provided that if quotations are obtained from providers who are not so listed, such providers must meet the listing criteria determined by the accounting officer in terms of paragraph 15(1)(c) of this policy;
- (2) To the extent feasible, providers must be requested to submit such quotations in writing;
- (3) If it is not possible to obtain at least three quotations, the reasons for such inability as approved by the accounting officer under a deviation must be recorded on the invitation to submit quotations and reported monthly to the chief financial officer;
- (4) The designated officer must record the names of the potential providers requested to provide quotations with their quoted prices; and
- (5) If a quotation was submitted verbally, the order may be placed only against written confirmation of the price and conditions of supply from the selected provider within the period stipulated in the invitation to submit quotations.

## **18. Formal written price quotations**

The conditions for the procurement of goods or services through formal written price quotations, are as follows:

- (1) Quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the municipality;
- (2) In the event of it not being possible to obtain quotations from at least three different providers whose names appear on the list of accredited prospective providers of the municipality, quotations may be obtained from providers who are not so listed, provided that such providers meet the listing criteria determined by the accounting officer in terms of paragraph 15(1)(c) of this policy and, provided further, that the reasons for obtaining such quotations from the providers concerned as approved by the accounting officer under a deviation must be recorded and reported monthly to the chief financial officer.

## **19. Procedures for procuring goods or services through written or verbal quotations and formal written price quotations**

The procedure for the procurement of goods or services through written or verbal quotations or formal written price quotations is as follows:

- (1) When using the list of accredited prospective providers, the accounting officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;

- (2) All requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, be advertised for at least seven days on the website of and on the official notice board of the municipality;
- (3) Offers received must be evaluated on a comparative basis taking into account unconditional discounts;
- (4) Offers below R30 000 (all taxes included) must be awarded based on compliance with specifications, conditions of contract, ability, capacity and capability to deliver the required goods and/or services and lowest price; provided that the accounting officer may direct, in appropriate cases, that the applicable provisions of the Preferential Procurement Regulations be applied in respect of the calculation of preference points for price;
- (5) Offers above R30 000 (all applicable taxes included) must be awarded based on the applicable provisions of the Preferential Procurement Regulations;
- (6) Prior to the award of a contract with a price in excess of R200 000, the designated official must verify the status of recommended bidders (including their directors(s), owners(s) or trustee(s) by checking the Data Base of Restricted Suppliers maintained by National Treasury in order to ensure that no recommended bidder or any of its directors/owners/trustees are listed as companies or persons prohibited from doing business with the public sector;
- (7) A call for quotations in terms of the preceding paragraphs must be in writing and contain a specification for the goods and/or services to be procured and if applicable, details of the preference points system to be used in adjudicating quotations;
- (8) The designated official must, in writing, notify the chief financial officer within 3 days after the end of each month of all written, verbal and formal written price quotations accepted or approvals given in terms of this paragraph; and  
  
The chief financial officer must ensure that adequate systems are in place to meet the requirements to record such matters for proper record keeping;
- (9) Where the award is greater than R30000, the procurement award must be made to the bidder who scored the highest points in accordance with the stipulated preference points system.

## **20. Competitive bidding process**

- (1) Subject to paragraph 11(2) of this policy, goods, services or works above a transaction value of R200 000 (VAT included) and long term contracts may only be procured through a competitive bidding process.
- (2) Subject to subparagraph (3), no requirement for goods or services above an estimated transaction value of R200 000 (VAT included) may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.
- (3) The accounting officer may split large procurements into smaller contracts (units) to provide opportunities for emerging entrepreneurs. This procedure may only be followed when technically, logistically and financially feasible.
- (4) A senior manager responsible for a vote must submit the under-mentioned information

to the chief financial officer prior to the publication of any public invitation of bids in respect of procurements estimated to exceed R10m (all taxes included):

- (a) proof that budgetary provision exists for the procurement concerned;
  - (b) details of any ancillary budgetary implications related to the bid concerned;
  - (c) details of any multi-year budgetary implications associated with a project which will be undertaken over a period of more than one year as well as details of the anticipated expenditure per financial year.
- (5) A procurement referred to in subparagraph (4) may only be advertised for competitive bids after the chief financial officer has verified in writing that budgetary provision exists to enable the relevant project to commence.
- (6) Procurement requirements referred to in subparagraph (4) may not be deliberately split into parts or items of lesser value merely to avoid the information being submitted.

## **21. Process for competitive bidding**

The procedures for the following stages of a competitive bidding process are as follows:

- (1) Compilation of bidding documentation as detailed in paragraph 22;
- (2) Public invitation of bids as detailed in paragraph 23;
- (3) Site meetings or briefing sessions as detailed in paragraph 23;
- (4) Handling of bids submitted in response to public invitation as detailed in paragraph 24;
- (5) Evaluation of bids as detailed in paragraph 31;
- (6) Award of contracts as detailed in paragraph 32;
- (7) Administration of contracts - after the award of a bid, the accounting officer and the bidder must enter into a written agreement.
- (8) Proper record keeping;
- (9) Original/legal copies of written contractual agreements should be kept in a secure place for reference and audit purposes.

## **22. Bid documentation for competitive bids**

Bid documentation for a competitive bidding process must, in addition to compliance with the requirements listed in paragraph 14, comply with the following requirements:

- (1) Take into account -
  - (a) the general conditions of contract and any special conditions of contract, if specified;
  - (b) any Treasury guidelines on bid documentation;
  - (c) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction works;
  - (d) relevant B-BBEE verification and certification requirements;
  - (e) relevant local content or production requirements.

- (2) Include the preference points system to be used in adjudicating bids;
- (3) Compel bidders to declare, by means of an affidavit, any conflict of interest they may have in the transaction for which the bid is submitted;
- (4) If the value of the transaction is expected to exceed R5 million (VAT included), require bidders to furnish -
  - (a) if the bidder is required by law to prepare annual financial statements for auditing, his audited annual financial statements -
    - (i) for the past three years; or
    - (ii) since establishment, if established during the past three years;
  - (b) a certificate signed by the bidder certifying that he has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
  - (c) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contracts;
  - (d) a statement indicating whether or not any portion of the goods or services required by the municipality are expected to be sourced from outside the Republic, and, if so, what portion and also whether or not any portion of the payment to be made by the municipality is expected to be transferred out of the Republic; and
- (5) Stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation) or, when unsuccessful, in a South African court of law.

### **23. Public invitation for competitive bids**

- (1) The procedure for the invitation of competitive bids is as follows:
  - (a) any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the municipality, National Treasury eTender Publication Portal and in any other appropriate or legislatively required manner (which may include an advertisement in the Government Tender Bulletin); and
  - (b) the information contained in such public advertisement, must include -
    - (i) the name of the municipality, the bid number, the bid description;
    - (ii) the physical location where the goods, services or works specified in the bid are required;
    - (iii) the closing date and time of the bid;
    - (iv) the Municipality contact details including postal and physical address, telephone number and e-mail address;

- (v) the physical location where hard copies of the bid can be collected;
  - (vi) the physical location where bids should be delivered;
  - (vii) a listing of all required bid documents to be submitted together with the bids)
  - (viii) subject to subparagraph 2, the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included) or which are of a long term nature or 14 days in any other case, reckoned from the date on which the advertisement is first placed in the aforesaid newspapers;
  - (ix) a statement that bids may only be submitted on the bid documentation provided by the municipality; and
  - (x) the date, time and venue of any compulsory site meeting or briefing session;
  - (xi) a statement to the effect that a bid from a prospective bidder who did not attend a prescribed compulsory site meeting or briefing session referred to in subparagraph (iii) will not be considered.
- (2) The accounting officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or in any exceptional case where it is impractical or impossible to follow the official procurement process and such fact shall, for auditing purposes, be recorded in the authority to invite bids.

*Amendments before the closing date:* The municipality is entitled to amend any bid condition, validity period, specification or plan, or extend the closing date of such a bid or quotation before the closing, provided that such amendments or extensions are advertised and/or that all bidders whom bid documents have been issued, are advised in writing per e-mail or by fax of such amendments or of the extension clearly reflecting the new closing date and time. For this reason, officials and authorised service providers issuing bids shall keep a record of the names, addresses and contact numbers of the persons or enterprises to whom bid documents have been issued.

- (3) Bids submitted must be sealed and marked in a manner stipulated in the invitation to bid.
- (4) Where bids are requested in electronic format, such bids must be supplemented by hard copies in sealed envelopes which must be deposited in the "bid box" on by the closing time for the receipt of bids on the bid closing date as stipulated in the invitation to bid.
- (5) Where the municipality invites expressions of interest or bids for construction works with a value in excess of R200 000 it must publish such invitations on the website of the CIDB.
- (6) The municipality must also comply with the applicable provisions of the Standard for Uniformity in Construction Procurement contained in Board Notice No. 86 of 2010 issued by the Construction Industry Development Board insofar as such provisions relate to the invitation of bids which are invested in terms of the competitive bidding procurement processes.

## 24. Procedure for handling, opening and recording of bids

The procedures for the handling, opening and recording of bids, are as follows:

- (1) Bids -
  - (a) must be opened only in public;
  - (b) must be opened at the same time and as soon as possible after the published closing time or period for the submission of bids; and
  - (c) received after the published closing time or period should not be considered and be immediately returned to the bidder, unopened;
- (2) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids by the closing time or period be read out and, if practical, also each bidder's total bidding price;
- (3) No information, except the information referred to in subparagraph (2), relating to a bid should be disclosed to bidders or other persons until the successful bidder is notified of the award of the relevant bid; and
- (4) The designated official from the Corporate Service directorate opening received bids must -
  - (a) record in a register, all bids received by the closing time or period for the submission of same and such register shall contain as least the following information in addition to such information as may be prescribed in terms of section 75 of the Act:
    - (i) the reference number of the bid concerned;
    - (ii) the description of the relevant goods, services or works project to be procured;
    - (iii) the names of all bidders;
    - (iv) where practical, the total price submitted by all bidders that submitted bids in relation to the relevant bid invitation;
  - (b) make the aforesaid register available for public inspection during the normal office hours of the municipality; and
  - (c) publish the entries in the aforesaid register on the website of the municipality within ten (10) working days from the date referred to in subparagraph (1) and ensure that such entries remain on the website for a period of at least thirty (30) days from date of publication.

## 25. Negotiations with preferred bidders

- (1) The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation -
  - (a) does not allow any preferred bidder a second or unfair opportunity;

- (b) is not to the detriment of any other bidder;
  - (c) does not lead to a higher price than the bid as submitted; and
  - (d) will not be contrary to any legal requirement or amount to a prohibited practice.
- (2) Minutes of such negotiations must be kept for record and audit purposes.

## **26. Two-stage bidding process**

- (1) A two-stage bidding process is permissible for -
- (a) large complex projects;
  - (b) projects where it may be undesirable to prepare complete detailed technical specifications; or
  - (c) long term projects with a duration period exceeding three years.
- (2) In the first stage, technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.
- (3) In the second stage, final technical proposals and priced bids should be invited.

## **27. Committee system for competitive bids**

- (1) The accounting officer shall establish a procurement committee system for competitive bids consisting of at least the following committees:
- (a) a bid specification committee;
  - (b) a bid evaluation committee; and
  - (c) a bid adjudication committee;
- (2) The accounting officer shall, in writing, appoint the members of each committee in respect of each competitive bid invitation, taking into account the provisions of section 117 of the Act in terms of which no councillor may be a member of any such committee nor attend any of its meetings as an observer.
- (3) A neutral or independent observer other than an Ndlambe Councillor, appointed by the accounting officer, may attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.
- (4) The committee system must be consistent with -
- (a) paragraphs 28, 31 and 32 of this policy; and
  - (b) any other applicable legislation.
- (5) The accounting officer may, in appropriate cases and in his sole discretion, apply the committee system to formal written price quotations.

## **28. Bid specification committees**

- (1) A bid specification committee must compile the specifications or, where applicable, the terms of reference for the procurement of goods, services or works by the municipality.

- (2) A bid specification committee must be composed of one or more officials of the municipality preferably the line manager responsible for the function concerned and may, when appropriate, include external specialist advisors.
- (3) No person, advisor or corporate entity involved with the bid specification committee or director of such a corporate entity may bid for any resulting contracts.
- (4) Where a bid specification or terms of reference are compiled with due regard to the findings and recommendations contained in a prior, associated feasibility study, the person, advisor or corporate entity who or which prepared the said feasibility study may be prohibited from bidding for the resulting contracts in circumstances where such person, advisor or corporate entity may or is likely to obtain an unfair advantage or where a conflict of interest may arise.
- (5) A specification or terms of reference referred to in this paragraph must be approved by the accounting officer in writing prior to publication of the invitation for bids in terms of paragraph 23.

## **29. Bid Specifications and related matters**

### **29.1 General Requirements**

Bid Specifications terms of reference, as the case may be -

- (1) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services to the municipality;
- (2) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organization or an authority accredited or recognized by the South African National Accreditation System with which the equipment or material or workmanship should comply;
- (3) must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
- (4) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification;
- (5) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word "equivalent";

### **29.2 Tenders to be evaluated on functionality**

- (1) The municipality must state in the tender documents if the tender will be evaluated on functionality.
- (2) The evaluation criteria for measuring functionality must be objective.
- (3) The tender documents must specify-
  - (a) the evaluation criteria for measuring functionality;
  - (b) the points for each criteria and, if any, each sub-criterion; and

- (c) the minimum qualifying score for functionality.
- (4) The minimum qualifying score for functionality for a tender to be considered further-
  - (a) must be determined separately for each tender; and
  - (b) may not be so-
    - (i) low that it may jeopardise the quality of the required goods or services; or
    - (ii) high that it is unreasonably restrictive.

(5) Points scored for functionality must be rounded off to the nearest two decimal places.

(6) A tender that fails to obtain the minimum qualifying score for functionality as indicated in the tender documents is not an acceptable tender.

(7) Each tender that obtained the minimum qualifying score for functionality must be evaluated further in terms of price and the preference point system and any objective criteria envisaged in subparagraph 29.3.

(8) Prior to publication or submission to the Bid Specification Committee all matters relating to functionality be signed off by the Supply Chain Manager.

### **29.3 Identification of preference point system, designated sector, pre-qualification criteria, objective criteria and subcontracting**

The municipality must-

- (1) determine and stipulate in the tender documents-
  - (a) the preference point system applicable to the tender as envisaged in subparagraphs 29.5 and 29.6; or
  - (b) if it is unclear which preference point system will be applicable, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system;
- (2) determine whether pre-qualification criteria are applicable to the tender as envisaged in subparagraph 29.3;
- (3) determine whether the goods or services for which a tender is to be invited, are in designated sector for local production and content as envisaged in subparagraph 29.7;
- (4) determine whether compulsory subcontracting is applicable to the tender as envisaged in subparagraph 29.9; and
- (5) determine whether objective criteria are applicable to the tender as envisaged in subparagraph 29.10.1.

### **29.4 Pre-qualification criteria for preferential procurement**

- (1) If the municipality decides to apply pre-qualifying criteria to advance certain designated groups, it must advertise the tender with a specific tendering condition that only one or more of the following tenderers may respond-
  - (a) a tenderer having a stipulated minimum B-BBEE status level of contributor;
  - (b) an EME or QSE;
  - (c) a tenderer subcontracting a minimum of 30% to-

- (i) an EME or QSE which is at least 51% owned by black people;
- (ii) an EME or QSE which is at least 51% owned by black people who are youth;
- (iii) an EME or QSE which is at least 51% owned by black people who are women;
- (iv) an EME or QSE which is at least 51% owned by black people with disabilities;
- (v) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
- (vi) a cooperative which is at least 51% owned by black people;
- (vii) an EME or QSE which is at least 51% owned by black people who are military veterans;
- (viii) an EME or QSE.

(2) A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender

**29.5 80/20 preference point system for acquisition of goods or services for Rand value equal to or above R30 000 and up to R50 million**

(1) The following formula must be used to calculate the points out of 80 for price in respect of a tender with a Rand value equal to or above R30 000 and up to a Rand value of R50 million, inclusive of all applicable taxes:

$$P_s = 80 \left( 1 - \frac{P_t - P_{min}}{P_{min}} \right)$$

Where:

- $P_s$  = Points scored for comparative price of bid or offer under consideration;
- $P_t$  = Comparative price of bid or offer under consideration; and
- $P_{min}$  = Comparative price of lowest acceptable bid or offer.

(2) The following table must be used to calculate the score out of 20 for B-BBEE:

B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

- (3) A tenderer must submit proof of its B-BBEE status level of contributor.
- (4) A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but-
- (a) may only score points out of 80 for price; and
  - (b) scores 0 points out of 20 for B-BBEE.
- (5) A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.
- (6) The points scored by a tenderer for B-BBEE in terms of subregulation (2) must be added to the points scored for price under subregulation (1).
- (7) The points scored must be rounded off to the nearest two decimal places.
- (8) Subject to subregulation (9) and regulation 11, the contract must be awarded to the tenderer scoring the highest points.
- (9)
- (a) If the price offered by a tenderer scoring the highest points is not market-related, the municipality may not award the contract to that tenderer.
  - (b) The municipality may-
    - (i) negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
    - (ii) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
    - (iii) if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.
  - (c) If a market-related price is not agreed as envisaged in subparagraph (b)(iii), the municipality must cancel the tender.

## 29.6 90/10 preference point system for acquisition of goods or services with Rand value above R50 million

- (1) The following formula must be used to calculate the points out of 90 for price in respect of a tender with a Rand value above R50 million, inclusive of all applicable taxes:

$$Ps = 90 \left( 1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where:

- Ps = Points scored for comparative price of bid or offer under consideration;
- Pt = Comparative price of bid or offer under consideration; and
- Pmin = Comparative price of lowest acceptable bid or offer.

(2) The following table must be used to calculate the points out of 10 for B-BBEE:

B-BBEE Status Level of Contributor	Number of Points
1	10
2	9
3	6
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

(3) A tenderer must submit proof of its B-BBEE status level of contributor.

(4) A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but-

- (a) may only score points out of 90 for price; and
- (b) scores 0 points out of 10 for B-BBEE.

(5) A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.

(6) The points scored by a tenderer for B-BBEE in terms of subregulation (2) must be added to the points scored for price under subregulation (1).

(7) The points scored must be rounded off to the nearest two decimal places.

(8) Subject to subregulation (9) and regulation 11, the contract must be awarded to the tenderer scoring the highest points.

(9) (a) If the price offered by a tenderer scoring the highest points is not market-related, the municipality may not award the contract to that tenderer.

(b) The municipality may-

- (i) negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
- (ii) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
- (iii) if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.

(c) If a market-related price is not agreed as envisaged in subparagraph (b)(iii), the municipality must cancel the tender.

## **29.7 Local production and content**

(1) Where, in the case of bids in designated sectors, local production and content is of critical importance, the invitation to tender and relevant bid documentation must clearly state, as a specific bid condition, that only locally produced goods,

services or works or locally manufactured goods, with a stipulated minimum threshold for local production and content, will be considered.

- (2) The relevant bid documentation must also stipulate:
- (a) that the exchange rate to be used for the calculation of local content or local production will be the exchange rate published by the South African Reserve Bank at 12:00 on the date of advertisement of the bid;
  - (b) that only the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:201x will be used to calculate local content in accordance with the following formula:

$$LC = 1 - \frac{x}{y} \times 100$$

Where

- x imported content
- y bid price excluding value added tax (VAT)

and that the prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by the South African Reserve Bank at 12:00 on the date, one week (7 calendar days) prior to the closing date of the bid;

- (c) that Form MBD 6.2 (Declaration Certificate for Local Content) issued by National Treasury, duly completed and signed, must form part of the bid documentation;
  - (d) that the municipality reserves the right to verify the accuracy of the rates of exchange quoted by the bidder in paragraph 4.1 of the aforesaid Certificate.
- (3) The accounting officer may decide to include in any bid documentation a specific bidding condition that only locally produced goods, services or works or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered on condition that such prescript and threshold(s) are in accordance with the specific directives issued for this purpose by National Treasury in consultation with the Department of Trade and Industry and, in such event, the requirements stipulated in subparagraph (2) shall be inserted in the relevant bid documentation.
- (4) Where necessary, bid documentation for bids referred to in subparagraph (1) may state that a two-stage bidding process will be followed, where the first stage will involve functionality and minimum threshold for local production and content and the second stage price and B-BBEE status with the possibility of price negotiations only with the short listed bidders with a view to effecting cost savings in circumstances where the tendered prices are obviously inflated or to ensure the award of the bid concerned within budgetary constraints provided that, where such negotiations take place, the principles contained in paragraph 25.1 of this policy shall be applied.
- (5) Any bid documentation issued in terms of this subparagraph must be capable of being measured and audited.

- (6) A tender that fails to meet the minimum stipulated threshold for local production and content is an unacceptable tender.

## **29.8 B-BBEE status level certificates and scorecards**

Bid documentation must provide that:

- (1) Those bidders who qualify as Exempted Micro Enterprises (EME's) in terms of the Broad-Based Black Economic Empowerment Act, must submit, together with their bid, either;
- (a) an original or certified copy of a certificate to this effect issued by either;
    - (i) a registered auditor, accounting officer (as contemplated in section 60(4) of the Close Corporations Act, 1984 (Act No. 69 of 1984)); or
    - (ii) an accredited verification agency;

provided that a certificate issued by an Accounting Officer of a closed corporation must be on his letterhead which should also contain his practice number and contact number clearly specified on the face of such certificate;

(b) an original or certified copy of a sworn affidavit confirming Annual Total Revenue of R10 million or less and Level of Black ownership; or

(c) an original or certified copy of a certificate issued by Companies and Intellectual Property Commission (CIPC) on an annual basis, confirming Annual Total Revenue of R10 million or less and Level of Black ownership.

*Any misrepresentation in terms of this subparagraph constitutes a criminal offence as set out in the B-BBEE Act as amended.*

- (2) Bidders other than Exempted Micro-Enterprises (EME's) must submit, with their bid, their original and valid B-BBEE Status Level Verification Certificate complying at least with the provisions of subparagraphs (5) and (6) below, or a certified copy thereof, in support of their B-BBEE rating.
- (3) A trust, consortium or joint venture will qualify for points for its B-BBEE status level as a legal entity, provided it submits its B-BBEE Status Level Verification Certificate with its bid.
- (4) A trust, consortium or joint venture will qualify for points for its B-BBEE status level as an unincorporated entity, provided that it submits its consolidated B-BBEE scorecard as if were a group structure and, provided further, that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- (5) As a minimum requirement, all valid B-BBEE Status Level Verification Certificates should have the following information detailed on the face of the certificate:
- The name and physical location of the measured entity;
  - The registration number and, where applicable, the VAT number of the measured entity;
  - The date of issue and date of expiry;
  - The certificate number for identification and reference purposes;

- The scorecard that was used (for example EME, QSE or Generic);
  - The name and / or logo of the Verification Agency;
  - The SANAS logo;
  - The signature of the authorized person from the Verification Agency concerned; and
  - The B-BBEE Status Level of Contribution obtained by the measured entity.
- (6) The format and content of B-BBEE Status Level Verification Certificates issued by registered auditors approved by the Independent Regulatory Board of Auditors (IRBA) must -
- Clearly identify the B-BBEE approved registered auditor by the auditor's individual registration number with IRBA and the auditor's logo;
  - Clearly record an approved B-BBEE Verification Certificate identification reference in the format required by SANAS;
  - Reflect relevant information regarding the identity and location of the measured entity;
  - Identify the Codes of Good Practice or relevant Sector Codes applied in the determination of the scores;
  - Record the weighting points (scores) attained by the measured entity for each scorecard element, where applicable, and the measured entity's overall B-BBEE Status Level of Contribution;
  - Reflect that the B-BBEE Verification Certificate and accompanying assurance report issued to the measured entity is valid for 12 months from the date of issuance;
  - Reflect both the issuance and expiry date of the Verification Certificate.

## **29.9 Subcontracting as condition of tender**

- (1) A bidder will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an exempted micro enterprise that has the capability and ability to execute the sub-contract.
- (2) If feasible to subcontract for a contract above R30 million, the municipality must apply subcontracting to advance designated groups.
- (3) If the municipality applies subcontracting as contemplated in subparagraph (2), the municipality must advertise the tender with a specific tendering condition that the successful tenderer must subcontract a minimum of 30% of the value of the contract to either-
- (a) an EME or QSE;
  - (b) an EME or QSE which is at least 51% owned by black people;
  - (c) an EME or QSE which is at least 51% owned by black people who are youth;
  - (d) an EME or QSE which is at least 51% owned by black people who are women;
  - (e) an EME or QSE which is at least 51% owned by black people with disabilities;

- (f) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
  - (g) a cooperative which is at least 51% owned by black people;
  - (h) an EME or QSE which is at least 51% owned by black people who are military veterans; or
  - (i) more than one of the categories referred to in paragraphs (a) to (h).
- (4) The municipality must make available the list of all suppliers registered on a database approved by the National Treasury to provide the required goods or services in respect of the applicable designated groups mentioned in subparagraph (3) from which the tenderer must select a supplier.

## **29.10 Miscellaneous Special Conditions of Contract**

Bid documentation must, inter alia, include the following conditions as Special Conditions of Contract:

### **29.10.1 General**

- (1) Only a bidder who has completed and signed the declaration part of a bid may be considered;
- (2) When comparative prices must be calculated, any discounts which have been offered unconditionally will be taken into account;
- (3) A discount which has been offered conditionally will, despite not being taken into account for evaluation purposes, be implemented when payment to a bidder in respect of an accepted bid is effected;
- (4) Points scored in any applicable scoring system will be rounded off to the nearest 2 decimal places.
- (5) Criteria for breaking deadlock in scoring-
  - (a) In the event that two or more bids score equal total points, the successful bid will be the one scoring the highest number of preference points for B-BBEE;
  - (b) However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid will be the one scoring the highest score for functionality.
  - (c) Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.
- (6)
  - (a) A contract may be awarded to a tenderer that did not score the highest points only in accordance with section 2(1)(f) of the Preferential Procurement Policy Framework Act, 2000.
  - (b) If the municipality intends to apply objective criteria in terms of section 2(1)(f) of the Preferential Procurement Policy Framework Act, 2000, the municipality must stipulate the objective criteria in the tender documents.

### **29.10.2 Subcontracting after award of tender**

- (1) A person awarded a contract may only enter into a subcontracting arrangement with

the approval of the municipality.

- (2) A person awarded a contract in relation to a designated sector, may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- (3) A person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

### **29.10.3 Cancellation of a bid invitation**

- (1) The municipality may, before the award of a tender, cancel a tender invitation if-
  - (a) due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;
  - (b) funds are no longer available to cover the total envisaged expenditure;
  - (c) no acceptable tender is received; or
  - (d) there is a material irregularity in the tender process.
- (2) The decision to cancel a tender invitation in terms of subparagraph (1) must be published in the same manner in which the original tender invitation was advertised.
- (3) The municipality may only with the prior approval of the relevant treasury cancel a tender invitation for the second time.

### **29.10.4 Declarations**

A bidder must -

- (1) declare that the information provided in any bid document is true and correct;
- (2) declare that the signatory to a bid document is duly authorised; and
- (3) undertake to submit documentary proof regarding any bidding issue when required to the satisfaction of the municipality.

### **29.10.5 Remedies**

In addition to the action contemplated in paragraph 40 of this policy which shall be read in conjunction with this subparagraph:

- (1) Upon detecting that a tenderer submitted false information regarding its B-BBEE status level of contributor, local production and content, or any other matter required in terms of these Regulations which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any subcontracting arrangements, the municipality must-
  - (a) inform the tenderer accordingly;
  - (b) give the tenderer an opportunity to make representations within 14 days as to why-
    - (i) the tender submitted should not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or

- in part;
- (ii) if the successful tenderer subcontracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and
- (iii) the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state; and

(c) if it concludes, after considering the representations referred to in subparagraph (1)(b), that-

- (i) such false information was submitted by the tenderer-
  - (aa) disqualify the tenderer or terminate the contract in whole or in part; and
  - (bb) if applicable, claim damages from the tenderer; or
- (ii) the successful tenderer subcontracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.

(2) (a) the municipality must-

- (i) inform the National Treasury, in writing, of any actions taken in terms of subregulation (1);
- (ii) provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and
- (iii) submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.

(b) The National Treasury may request the municipality to submit further information pertaining to subregulation (1) within a specified period.

### **30. Procurement from tertiary institutions**

- (1) Where the municipality is in need of a service provided by only tertiary institutions, such services must be procured through a bidding process with the identified tertiary institutions.
- (2) Tertiary institutions referred to in subparagraph (a) will be required to submit their B-BBEE status in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- (3) Should the municipality require a service that can be provided by one or more tertiary institutions or public entities and enterprises from the private sector, the appointment of a contractor will be done by means of a bidding process.
- (4) Public entities must be required to submit their B-BBEE status in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- (5) For purposes of this paragraph, a bidding process includes a written offer in a prescribed or stipulated form in response to an invitation by the municipality for the provision of services, through price quotations, advertised competitive bidding processes or proposals.

### **31. Bid evaluation committees**

- (1) A bid evaluation committee must, as far as possible, be composed of-

- (a) officials from departments requiring the goods, services or works; and
  - (b) at least one supply chain management practitioner of the municipality.
- (2) A bid evaluation committee must -
- (a) evaluate bids in accordance with the relevant bid specification or terms of reference, as the case may be, inclusive of unconditional discounts, sub-contracting and this policy; and
  - (b) evaluate each bidder's ability to execute the contract provided that, where bids are invited on the basis of functionality as a criterion, they must be evaluated in the following two stages:
    - (i) First stage - evaluation of functionality**
      - (aa) bids must be evaluated in terms of the evaluation criteria embodied in the bid specification or terms of reference, as the case may be. The amendment of evaluation criteria, weights, applicable values and/or the minimum qualifying score for functionality after the closure of bids is not allowed as this may jeopardize the fairness of the process;
      - (bb) a bid will be considered further if it achieves the prescribed minimum qualifying score for functionality;
      - (cc) bids that fail to achieve the minimum qualifying score for functionality must be disqualified;
      - (dd) score sheets should be prepared and provided to panel members to evaluate the bids;
      - (ee) a score sheet should contain all the criteria and the weight for each criterion as well as the values to be applied for evaluation as indicated in the bid specification or terms of reference concerned;
      - (ff) each panel member should, after thorough evaluation, independently award his own value to each individual criterion;
      - (gg) score sheets should be signed by panel members and if necessary, a written motivation may be requested from panel members where vast discrepancies in the values awarded for each criterion exist -  
provided that if the minimum qualifying score for functionality is indicated as a percentage in the bid specification or terms of reference, as the case may be, the percentage scored for functionality may be calculated as follows:
        - (hh) the value awarded for each criterion should be multiplied by the weight for the relevant criterion to obtain the score for the various criteria;
      - (ii) the scores for each criterion should be added to obtain the total score; and

- (jj) the following formula should be used to convert the total score to percentage for functionality:

$$P_s = \frac{S_o}{M_s} \times 100$$

Where:

$P_s$  = percentage scored for functionality by bid under consideration

$S_o$  = total score of bid under consideration  
 $M_s$  = maximum possible score

- (k) the percentage of each panel member should be added and divided by the number of panel members to establish the average percentage obtained by each bidder for functionality.

**(ii) Second stage - Evaluation in terms of the 80/20 or 90/10 preference point systems**

Only bids that achieve the minimum qualifying score / percentage for functionality must be evaluated further in accordance with the bid specification or terms of reference for the bid concerned, as the case may be;

- (c) evaluate bids based on a stipulated minimum threshold for local production and content as required in the relevant bid specification in the following two stages:

**(i) First stage - Evaluation in terms of the stipulated minimum threshold for local production and content**

- (a) bids must be evaluated in terms of the evaluation criteria stipulated in the bid specification. The amendment of the stipulated minimum threshold for local production and content after the closure of bids is not allowed as this may jeopardize the fairness of the process;

- (b) a bid must be disqualified if:

- the bidder fails to achieve the stipulated minimum threshold for local production and content; and
- the Declaration Certificate for Local Content (Form MBD 6.2) is not submitted as part of the bid;

- (c) calculate the local content (LC) as a percentage of the bid price in accordance with the SABS approved technical specification number SATS 1286: 201x;

- (d) verify the accuracy of the rates of exchange quoted by the bidder in paragraph 4.1 of the Declaration Certificate for Local Content (Form MBD 6.2);

(ii) **Second stage - Evaluation in terms of the 80/20 or 90/10 preference point systems**

- (e) only bids that achieve the minimum stipulated threshold for local production and content must be evaluated further in accordance with the relevant preference point system referred to in the bid specification;
  - (f) where appropriate, prices may be negotiated only with short listed or preferred bidders. Such negotiations must, however, not prejudice any other bidders;
- (d) check in respect of the recommended bidder whether or not such bidder's municipal rates and taxes and municipal service charges are not in arrears;
- (e) verify the status of recommended bidders (including their directors(s), owners(s) or trustee(s)) by checking the Data Base of Restricted Suppliers maintained by National Treasury in order to ensure that no recommended bidder or any of its directors/owners/trustees are listed as companies or persons prohibited from doing business with the public sector;
- (f) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter provided that:
- (i) a contract must be awarded to the bidder who scored the highest total number of points in terms of the preference points systems referred to in paragraphs 29.5 and 29.6 as may be applicable; and
  - (ii) in exceptional circumstances and as provided in paragraph 29.10 of this policy, a contract may be awarded to a bidder that did not score the highest number of points provided that the reasons for such a recommendation must be recorded for audit purposes and be defensible in a court of law.

## **32. Bid adjudication committees**

- (1) A bid adjudication committee must consist of at least four senior managers of the municipality which must include –
- (a) the chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer; and
  - (b) at least one senior supply chain management practitioner who is an official of the municipality; and
  - (c) a technical expert in the relevant field who is an official of the municipality if the municipality has such an expert.
- (2) The accounting officer must appoint the chairperson of the committee who shall preferably be the chief financial officer. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting and such election must be recorded in the minutes of the meeting concerned.
- (3) Only with the consent of the accounting officer and upon request by the bid adjudication committee, a member of a bid specification, bid evaluation committee

and/or an advisor or person assisting these committees may attend a meeting of a bid adjudication committee only for the purpose of providing clarity and an explanation of difficult technical aspects relating to the bid being adjudicated and without having any right to vote on the said bid being adjudicated.

- (4) A bid adjudication committee must consider the report and recommendations of the bid evaluation committee submitted in terms of paragraph 31; and either –
  - (a) depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or
  - (b) make another recommendation to the accounting officer on how to proceed with the relevant procurement.
- (5) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must, prior to awarding the bid –
  - (a) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears; and
  - (b) notify the accounting officer.
- (6) The accounting officer may –
  - (a) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in subparagraph 5; and
  - (b) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (7) The accounting officer may, at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (8) If a bid other than the one recommended in the normal course of implementing this policy is approved, the accounting officer must, in writing and within 10 working days, notify the Auditor-General and the National and Provincial Treasuries of the reasons for deviating from such recommendation.
- (9) Subparagraph 8 does not apply if a different bid was approved in order to rectify an irregularity.
- (10) Notwithstanding any provision to the contrary in this paragraph or any other provision in this policy:
  - (a) contracts above a value of R10m (all applicable taxes included) may only be awarded to the preferred bidder after the chief financial officer has verified in writing that budgetary provision exists for the procurement concerned and that it is consistent with the Integrated Development Plan of the municipality.
  - (b) during a competitive bidding and adjudication process or before the award of a contract, the accounting officer may, at his/her discretion, specifically request the internal audit function of the municipality or, when so required, an independent external audit service provider (including an organ of state) to carry out audit procedures and provide an opinion on compliance of the bidding

process with supply chain management legislation applicable to the municipality.

- (11) The accounting officer shall cause details of all bids awarded through a competitive bidding process to be advertised on the website of the municipality, National eTender Publication Portal and such notification shall include at least the following information:
- (a) Contract numbers and description of goods, service or works projects procured;
  - (b) Names of the successful bidder(s) and the preference points and B-BBEE level of contribution claimed;
  - (c) The contract prices(s);
  - (d) Brand names and dates for completion of contracts.
  - (e) The contract period;
  - (f) Names of Directors; and
  - (g) Date of completion/award
  - (h) the names of the unsuccessful bidder(s) together with their contact details)

### **33. Procurement of banking services**

- (1) A contract for banking services -
- (a) must be procured through competitive bidding;
  - (b) must be consistent with section 7 or 85 of the Act; and
  - (c) may not be for a period of more than five years at a time.
- (2) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.
- (3) The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of paragraph 23 (1).
- (4) Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

### **34. Procurement of IT related goods or services**

- (1) The accounting officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.
- (2) Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.
- (3) The accounting officer must notify SITA together with a motivation of the IT needs if -
- (a) the transaction value of IT related goods or services required in any financial year will exceed R50 million (VAT included); or
  - (b) the transaction value of a contract to be procured, whether for one or more

years, exceeds R50 million (VAT included).

- (4) If SITA comments on the submission and the municipality does not agree with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National and Provincial Treasuries and the Auditor-General.

### **35. Procurement of goods and services under contracts secured by other organs of state**

- (1) The accounting officer may procure goods or services under a contract secured by another organ of state, but only if -
  - (a) the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
  - (b) there is no reason to believe that such contract was not validly procured;
  - (c) there are demonstrable discounts or benefits to do so; and
  - (d) that other organ of state and the provider concerned have consented to such procurement in writing.
- (2) Subparagraphs (1) (c) and (d) do not apply if -
  - (a) a municipal entity procures goods or services through a contract secured by its parent municipality; or
  - (b) a municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.

### **36. Procurement of goods necessitating special safety arrangements**

- (1) The acquisition and storage of goods in bulk (other than water), which necessitate special safety arrangements, including gasses and fuel, should be avoided where ever possible.
- (2) Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership, cost advantages and environmental impact and must be approved by the accounting officer.

### **37. Appointment of consultants**

- (1) The accounting officer may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.
- (2) Consultancy services must be procured through competitive bids if -
  - (a) the value of the contract exceeds R200 000 (VAT included); or
  - (b) the duration period of the contract exceeds one year.
- (3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of -

- (a) all consultancy services provided to an organ of state in the last five years; and
  - (b) any similar consultancy services provided to an organ of state in the last five years.
- (4) The accounting officer must ensure that copyright in any document produced and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised by a consultant in the course of the consultancy service is vested in the municipality.

### **38. Deviation from, and ratification of minor breaches of, procurement processes**

- (1) The accounting officer may -
- (a) dispense with the official procurement processes established by this policy and procure any required goods or services through any convenient process, which may include direct negotiations, but only -
    - (i) in an emergency;
    - (ii) if such goods or services are produced or available from a single or sole provider only.
    - (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
    - (iv) acquisition of animals for zoos and/or nature and game reserves; or
    - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
  - (b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.
- (2) The accounting officer must record the reasons for any deviations in terms of subparagraphs (1) (a) and (b) of this policy and must;
- (a) report them to the next meeting of the council and also include such reasons as a note to the annual financial statements of the municipality;
  - (b) place a notice of the award made with reasons on the eTender Publication Portal within seven (7) working days after the award was made.

### **39. Unsolicited bids**

- (1) An unsolicited bid is a bid that is submitted by a prospective supplier to the municipality without any procurement requirement first having been identified and advertised. This situation arises when a supplier identifies an opportunity to render services or supply products not ordinarily required by the municipality.
- (2) In accordance with section 113 of the Act, there is no obligation upon the municipality to consider unsolicited bids received outside a normal bidding process.

- (3) The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid but only if –
    - (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
    - (b) the product or service will be exceptionally beneficial to the municipality or have exceptional cost advantages;
    - (c) the person who made the bid is the sole provider of the product or service concerned; and
    - (d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
  - (4) If the accounting officer decides to consider an unsolicited bid that complies with sub-paragraph (3), his decision must be made public in accordance with section 21A of the Municipal Systems Act, together with -
    - (a) reasons as to why the bid should not be open to other competitors;
    - (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
    - (c) an invitation to the public or other potential suppliers to submit their comments on the proposal within 30 days of the publication of the relevant notice.
  - (5) The accounting officer must submit all written comments received pursuant to subparagraph (4), including any responses from the unsolicited bidder, to the National and Provincial Treasuries for comment.
  - (6) Subject to subparagraphs (7) and (8) below, the adjudication committee must consider the unsolicited bid and may, depending on its delegations, award the bid or make a recommendation to the accounting officer.
  - (7) A meeting of the adjudication committee to consider an unsolicited bid may be open to the public.
  - (8) When considering the matter, the adjudication committee must take into account -
    - (a) any comments submitted by the public; and
    - (b) any written comments and recommendations of the National and Provincial Treasuries.
  - (9) If any recommendations of the National and Provincial Treasuries are rejected or not followed, the accounting officer must submit to the Auditor-General and the National and Provincial Treasuries the reasons for rejecting or not following those recommendations.
  - (10) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality to the bid may be entered into or signed within 30 days of the submission.
  - (11) The processes to be followed by the municipality with regard to the acceptance
-

or rejection of an unsolicited bid shall clearly be made known to the bidder who submits the unsolicited bid concerned if requested by the bidder.

- (12) The council shall exercise caution when interviewing a potential supplier or a person who may wish to offer services to the municipality in circumstance which may be tantamount to the submission of or negotiation with regard to an unsolicited bid and shall not do anything or cause anything to be done which may be contrary to this policy.

#### **40. Combating of abuse of supply chain management system**

(1) The accounting officer must-

(a) take all reasonable steps to prevent abuse of the supply chain management system;

(b) investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or a failure to comply with this policy, and when justified –

- (i) take appropriate steps against such official or other role player; or
- (ii) report any alleged criminal conduct to the South African Police Services;

(c) check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder or any of its directors, is listed as a person prohibited from doing business with the public sector;

(d) reject any bid from a bidder –

- (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality or to any other municipality or municipal entity, are in arrears for more than three months; or
- (ii) who, during the last five years, has failed to perform satisfactorily on a previous contract with the municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;

(e) reject a recommendation for the award of a contract if the recommended bidder or any of its directors has committed a corrupt or fraudulent act in competing for the particular contract;

(f) cancel a contract awarded to a person if –

- (i) such person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
- (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and

(g) Reject the bid of any bidder if that bidder or any of its directors has to the Knowledge of the Municipality –

- (i) has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;
  - (ii) has been convicted for fraud or corruption during the past five years;
  - (iii) has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - (iv) has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No. 12 of 2004).
- (2) The accounting officer must inform the National and Provincial Treasuries in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) above.
  - (3) If the accounting officer, on reasonable grounds, believes that a bidder or a contractor has engaged in bid rigging, he shall refer the matter to the Competition Tribunal for investigation and the taking of action against the bidder or contractor concerned in a manner contemplated in the Competition Act No. 89 of 1998.

#### **41. Logistics management**

The accounting officer must establish and implement an effective system of logistics management, which must include -

- (1) the monitoring of spending patterns on types or classes of goods and services incorporating, where practical, the coding of items to ensure that each item has a unique number;
- (2) the setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;
- (3) the placing of manual or electronic orders for all acquisitions other than those from petty cash;
- (4) before payment is approved, certification by the responsible officer that the goods and services are received or rendered on time and is in accordance with the order, the general conditions of contract and specifications where applicable and that the price charged is as quoted in terms of a contract;
- (5) appropriate standards of internal control and warehouse management to ensure that goods placed in stores are secure and only used for the purpose for which they were purchased;
- (6) monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for particular goods or services.

#### **42. Disposal management**

- (1) In terms of section 14 of the Act, the municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.
- (2) A municipality may transfer ownership or otherwise dispose of capital asset other than

one contemplated in subsection (1), but only after the council, in a meeting open to the public-

- (a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and
  - (b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.
- (3) An asset may be disposed of by -
- (a) transferring the asset concerned to another organ of state in terms of a provision of the Act enabling the transfer of assets;
  - (b) transferring the asset concerned to another organ of state at market related value or, when appropriate, free of charge;
  - (c) selling the asset concerned; or
  - (d) destroying such asset.
- (4) The accounting officer must ensure that -
- (a) when immovable property is sold by means of a competitive bidding process, the highest price offered shall be accepted, provided such price is equal to or higher than the market related price for the relevant immovable property;
  - (b) in other cases, only at a market related price except when the public interest or the plight of the poor demands otherwise in which event the sale price shall be determined in accordance with the applicable land disposal or indigent policy adopted by the council;
  - (c) movable assets are sold either by way of written price quotations, a competitive bidding process or by public auction at the highest offered price, provided such price is market related;
  - (d) firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;
  - (e) immovable property is let at market related rentals except when the public interest or the plight of the poor demands otherwise in which event the rental shall be determined in accordance with the applicable land disposal or indigent support policy adopted by the council;
  - (f) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;
  - (g) where assets are traded in for other assets, the highest possible trade-in price is negotiated; and
  - (h) in the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate, within 30 days, whether or not any of the local schools are interested in such equipment.
- (5) This paragraph must be read with and applied in conjunction with the Municipal Asset Transfer Regulations contained in Government Notice R. 878 of 22 August 2008 and

the associated policies adopted by the council. In the event of conflict, the provisions of the aforesaid Regulations shall be applied.

### **43. Risk management**

- (1) The accounting officer must establish and implement an effective system of risk management for the identification, consideration and avoidance of potential risks in the supply chain management system.
- (2) Risk management must include -
  - (a) the identification of risks on a case-by-case basis;
  - (b) the allocation of risks to the party best suited to manage such risks;
  - (c) acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
  - (d) the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
  - (e) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

### **44. Performance management**

The accounting officer must establish and implement an internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes were followed and whether the objectives of this policy were achieved.

### **45. Prohibition on awards to persons whose tax matters are not in order**

- (1) No award above R15 000 may be made in terms of this policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (2) Before making an award to a person, the accounting officer must first check with SARS whether that person's tax matters are in order. The tax status as indicated on the CSD (Central Supplier Database) or SARS e-Filing report shall serve as sufficient evidence in this regard.
- (3) Where an otherwise successful bidder is not tax compliant at the time of considering an award, such bidder shall be notified of its non-compliant status and be requested to submit to the municipality, within 7 working days, written proof from SARS of their tax compliance status or written proof from SARS that they have made an arrangement to meet their outstanding tax obligations. The proof of tax compliance status submitted by the bidder to the municipality must be verified via the CSD or e-Filing. The accounting officer must reject a bid submitted by the bidder if such bidder fails to provide such written proof of tax compliance status within the aforementioned 7 working day period.

### **46. Prohibition on awards to persons in the service of the state**

Irrespective of the procurement process followed, no award may be made to a person in terms of this policy -

- (1) who is in the service of the state;
- (2) if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
- (3) who is an advisor or consultant contracted with the municipality.

#### **47. Awards to close family members of persons in the service of the state**

The accounting officer must ensure that the notes to the annual financial statements disclose particulars of any award of more than R2000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including -

- (1) the name of that person;
- (2) the capacity in which that person is in the service of the state; and
- (3) the amount of the award.

#### **48. Ethical standards**

- (1) The code of ethical standards annexed to this policy as **Annexure A** shall apply to all officials and other role players in the supply chain management system of the municipality in order to promote -
  - (a) mutual trust and respect; and
  - (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
- (2) A breach of the aforesaid code of ethics must be dealt with as follows -
  - (a) in the case of an employee, in terms of the disciplinary procedures of the municipality envisaged in section 67(1)(h) of the Municipal Systems Act;
  - (b) in the case of a role player who is not an employee, through other appropriate means with due regard to the severity of the breach; and
  - (c) in all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act and for applicable regulations pertaining to financial misconduct by officials.

#### **49. Inducements, rewards, gifts and favours to municipalities, officials and other role players**

- (1) No person who is a provider or prospective provider of goods or services or a recipient or prospective recipient of goods disposed of or to be disposed of may either directly or through a representative or intermediary promise, offer or grant -
  - (a) any inducement or reward to the municipality for or in connection with the

award of a contract; or

- (b) any reward, gift, favour or hospitality to -
  - (i) any official; or
  - (ii) any other role player involved in the end implementation of the supply chain management policy of the municipality
- (2) The accounting officer must promptly report any alleged contravention of sub- paragraph 1 to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
- (3) Subparagraph (1) does not apply to gifts less than R350 in value.

## **50. Sponsorships**

The accounting officer must promptly disclose to the National and respective Provincial Treasuries any sponsorship promised, offered or granted, whether directly or through a representative or intermediary by any person who is -

- (1) a provider or prospective provider of goods or services to the municipality; or
- (2) a recipient or prospective recipient of goods disposed of or to be disposed of by the municipality.

## **51. Objections and complaints**

Persons aggrieved by decisions or actions taken in the implementation of the supply chain management system, may lodge with the accounting officer, within 14 days of the decision or action, a written objection or complaint against the decision or action concerned.

## **52. Resolution of disputes, objections, complaints and queries**

- (1) The accounting officer must appoint an independent and impartial person who is not directly involved in the supply chain management processes -
  - (a) to assist in the resolution of disputes between the municipality and other persons regarding -
    - (i) any decisions or actions taken in the implementation of the supply chain management system; or
    - (ii) any matter arising from a contract awarded in the course of the supply chain management system; or
  - (b) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.
- (2) The accounting officer or another official designated by the accounting officer is responsible for assisting the appointed person to perform his or her functions effectively.
- (3) The person appointed must -

- (a) strive to resolve promptly all disputes, objections, complaints or queries received; and
  - (b) submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.
- (4) A dispute, objection, complaint or query may be referred to the Provincial Treasury if -
- (a) if it is not resolved within 60 days of lodgment; or
  - (b) no response is forthcoming within 60 days of lodgment.
- (5) If the Provincial Treasury does not or cannot resolve the matter, the dispute, objection, complaint or query concerned may be referred to the National Treasury for resolution.
- (6) This paragraph must not be read as affecting a person's rights to approach a competent court, at any time, for such order as may be just and necessary in the circumstances.

### **53. Contracts providing for compensation based on turnover**

If a service provider acts on behalf of the municipality to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to him is fixed as an agreed percentage of turnover for the service concerned or the amount collected, the contract between such service provider and the municipality must stipulate -

- (1) a cap on the compensation payable to him; and
- (2) that such compensation must be performance based.

### **54. Contract Management – issue of expansion and variation orders**

(1) The accounting officer or nominee may, subject to the provisions of this subparagraph and subparagraphs (2) to (4) authorise the issue of expansion or variation orders (herein referred to as "variations orders") in respect of contract specifications or conditions of contract in order to accommodate costs for additional work either unforeseen when contracts were awarded for infrastructure projects, essential or necessary additional work or in instances where factors beyond the control of an appointed contractor has led to or will lead to a delay in a contract completion date provided that:

- (a) No expansion or variation order may be authorized for an amount exceeding 20% of the initial contract price for works related goods, services and/or infrastructure projects; or
- (b) 15% for all other goods and/or services; and, provided further that;
- (c) any expansion or variation order issued in excess of the aforesaid thresholds shall be dealt with in a manner provided in section 116 (3) of the Act.

(2) A variation order may only be issued after -

- (a) the need for such order has been fully motivated by the responsible project manager and supported by the head of department concerned; and
- (b) the chief financial officer has certified that funds are available to cover the cost the

required additional work.

- (3) A request for the issue of a variation order in an amount exceeding R200 000 shall first be referred to the Bid Adjudication Committee which considered the initial bid for approval provided that the accounting officer may constitute a new Bid Adjudication Committee for this purpose.
- (4) No request for a variation order may be approved for an amount exceeding 5% of the initial award. New bids shall be invited for the work concerned should the value of the additional work be in excess of 5% of the initial award.
- (5) The line manager responsible for the implementation of a project undertaken either departmentally or through an appointed contractor must keep a proper record of all variation orders issued in respect of a project.
- (6) The original copy of an issued variation order must be filed with the original bid and contract documents.
- (7) The responsible line manager must, upon completion of additional work or the expiry of any extended contract period authorised by a variation order, certify that the terms and conditions of such variation order have been complied with.
- (8) notice of all awards through variations, extensions and expansions must be published on the eTender Publication Portal within seven (7) working days of the award been made)

## **55. Fronting**

- (1) For purposes of this paragraph, “fronting” shall include the undermentioned acts on the part of a bidder or any person or party associated with a bidder:
  - (a) Window-dressing: This includes cases in which HDI are appointed or introduced to an enterprise on the basis of tokenism and may subsequently be discouraged or inhibited from substantially participating in the core activities of the enterprise concerned and/or be discouraged or inhibited from substantially participating in the declared areas and/or levels of their participation;
  - (b) Benefit Diversion: This includes initiatives where the economic benefits received by an organization for having B-BBEE Status do not flow to HDI in the ratio specified by law;
  - (c) Opportunistic Intermediaries: This includes enterprises that have concluded agreements with other enterprises in order to leverage the opportunistic intermediary's favourable B-BBEE status in circumstances where the agreement involves:
    - (i) Significant limitations or restrictions on the identity of the opportunistic intermediary's suppliers, service providers, clients or customers;
    - (ii) The maintenance of their business operations in a context reasonably considered improbable having regard to resources; and
    - (iii) Terms and conditions that are not negotiated at arms-length on a fair and reasonable basis.

- (2) Where the accounting officer detects fronting, he must act against the bidder concerned in terms of paragraph 29.10.5 and, in addition, report such fronting to the Department of Trade and Industry.

## **56. Commencement**

This policy takes effect on the date of its adoption by the council.

DRAFT

# **ANNEXURE A - CODE OF CONDUCT FOR SUPPLY CHAIN MANAGEMENT PRACTITIONERS AND OTHER ROLE PLAYERS**

The purpose of this Code of Conduct is to promote mutual trust and respect and an environment where business can be conducted with integrity and in a fair and reasonable manner.

## **1. General Principles**

The municipality commits itself to a policy of fair dealing and integrity in the conducting of its business. Officials and other role players involved in supply chain management (SCM) are in a position of trust which implies a duty to act in the public interest. Officials and other role players should not perform their duties to unlawfully gain any form of compensation, payment or gratuity from any person or provider / contractor either for themselves, their family, their friends and business associates.

Officials and other role players involved in SCM should ensure that they perform their duties efficiently, effectively, with integrity and in accordance with applicable legislation, policies and guidelines. They should ensure that public resources are administered responsibly.

Officials and other role players involved in SCM should be fair and impartial in the performance of their functions. They should, at no time, afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual and they should also not abuse the power and authority vested in them.

## **2. Conflict of interest**

An official or other role player involved with supply chain management -

- (a) must treat all providers and potential providers equitably and fairly;
- (b) may not use his/her position for private gain or to improperly benefit another person;
- (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
- (d) must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
- (e) must declare to the accounting officer details of any private or business interest which that person or any close family member, partner or associate, may have in any proposed procurement or disposal process or in any award of a contract by the municipality;
- (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person or any close family member, partner or associate has any private or business interest;
- (g) must declare any business, commercial and financial interests or activities undertaken for financial gain that may give rise to a possible conflict of interest;
- (h) should not place him/herself under any financial or other obligation to outside individuals or organizations that might seek to influence him/her in the performance of

his/her official duties; and

- (i) should not take improper advantage of his/her previous office after leaving his/her official position.

### **3. Accountability**

- (a) Practitioners are accountable to the public for their decisions and actions.
- (b) Practitioners should use public property scrupulously.
- (c) Only accounting officers or their delegates have the authority to commit the municipality to any transaction for the procurement of goods, services or works.
- (d) All transactions conducted by a practitioner should be recorded and accounted for in an appropriate accounting system. Practitioners should not make any false or misleading entries in such a system for any reason whatsoever.
- (e) Practitioners must assist the accounting officer in combating fraud, corruption, favoritism, unfair and irregular practices in the supply chain management system.
- (f) Practitioners must report to the accounting officer any alleged irregular conduct in the supply chain management system which they may become aware of, including but not limited to -
  - (i) any alleged fraud, corruption, favoritism or unfair conduct;
  - (ii) any alleged contravention of the policy on inducements, rewards, gifts and favours to municipalities or municipal entities, officials or other role players; and
  - (iii) any alleged breach of this code of conduct.
- (g) Declarations in terms of subparagraph 2(d)(e) made must be recorded in a register which the accounting officer must keep for this purpose. Any declarations made by the accounting officer must be made to the mayor who must ensure that such declaration is recorded in the register.

### **4. Openness**

Practitioners should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict the supply of information only if it is in the public interest to do so.

### **5. Confidentiality**

- (a) Any information that is the property of the municipality or its providers should be protected at all times. No information regarding any bid/contract/bidder/contractor may be revealed if such an action will infringe the relevant bidder's/contractors personal rights.
- (b) Matters of confidential nature in the possession of officials and other role players involved in SCM should be kept confidential unless legislation, the performance of duty or the provisions of law requires otherwise. Such restrictions also apply to officials and other role players involved in SCM after they have left the service of the municipality.

## **6. Bid Specification / Evaluation / Adjudication Committees**

- (a) Bid specification, evaluation and adjudication committees should implement supply chain management on behalf of the municipality in an honest, fair, impartial, transparent, cost-effective and accountable manner.
- (b) Bid evaluation / adjudication committees should be familiar with and adhere to the prescribed legislation, directives and procedures in respect of supply chain management in order to perform effectively and efficiently.
- (c) All members of bid adjudication committees should be cleared by the accounting officer at the level of "CONFIDENTIAL" and should be required to declare their financial interest annually.
- (d) No person should-
  - (i) interfere with the supply chain management system of the municipality; or
  - (ii) amend or tamper with any price quotation / bid after its submission.

## **7. Combative Practices**

Combative practices are unethical and illegal and should be avoided at all cost. They include but are not limited to:

- (a) suggestions to fictitious lower quotations;
- (b) reference to non-existent competition;
- (c) exploiting errors in price quotations / bids; and
- (d) soliciting price quotations / bids from bidders / contractors whose names appear on the Register for Tender Defaulters.

## ANNEXURE B - Schedule to Small Businesses Act No. 102 of 1996

Column 1	Column 2	Column 3	Column 4	Column 5
Sector or sub-sector in accordance with the Standard Industrial Classification	Size of class	The total full-time equivalent of paid employees	Total turnover	Total gross asset value (fixed property excluded)
Agriculture	Small	50	R 3 m	R 3 m
	Very small	10	R 0.50 m	R 0.50 m
	Micro	5	R 0.20 m	R 0.10 m
Mining and Quarrying	Small	50	R 10 m	R 6 m
	Very small	20	R 4 m	R 2 m
	Micro	5	R 0.20 m	R 0.10 m
Manufacturing	Small	50	R 13 m	R 5 m
	Very small	20	R 5 m	R 2 m
	Micro	5	R 0.20 m	R 0.10 m
Electricity, Gas and Water	Small	50	R 13 m	R 5 m
	Very small	20	R 5.10 m	R 1.90 m
	Micro	5	R 0.20 m	R 0.10 m
Construction	Small	50	R 6 m	R 1 m
	Very small	20	R 3 m	R 0.50 m
	Micro	5	R 0.20 m	R 0.10 m
Retail and Motor Trade and Repair Services	Small	50	R 19 m	R 3 m
	Very small	20	R 4 m	R 0.60 m
	Micro	5	R 0.20 m	R 0.10 m
Wholesale Trade, Commercial Agents and Allied Services	Small	50	R 32 m	R 5 m
	Very small	20	R 6 m	R 0.60 m
	Micro	5	R 0.20 m	R 0.10 m
Catering, Accommodation and other Trade	Small	50	R 6 m	R 1 m
	Very small	20	R 5.10 m	R 1.90 m
	Micro	5	R 0.20 m	R 0.10 m
Transport, Storage and Communications	Small	50	R 13 m	R 3 m
	Very small	20	R 3 m	R 0.60 m
	Micro	5	R 0.20 m	R 0.10 m
Finance and Business Services	Small	50	R 13 m	R 3 m
	Very small	20	R 3 m	R 0.50 m
	Micro	5	R 0.20 m	R 0.10 m
Community, Social and Personal Services	Small	50		
	Very small	20		
	Micro	5		