



# **MERAUFONG CITY LOCAL MUNICIPALITY**

## **SUPPLY CHAIN MANAGEMENT POLICY**

**PREPARED FOR:**

**MERAUFONG CITY LOCAL MUNICIPALITY**

**FINANCIAL YEAR 2017/ 2018**

## SUPPLY CHAIN MANAGEMENT POLICY

<b>Policy:</b>	<b>Effective Date:01 JULY 2017</b>
<b>Approved:</b>	<b>Review Date: January 2018</b>

Notwithstanding the review date herein, this policy shall remain effective until such time approved otherwise by Council and may be reviewed on an earlier date if necessary.

### **PREAMBLE**

In order to ensure that the municipal expenditure is effective, efficient and legally compliant, as required by the ***Constitution of the Republic of South Africa, Municipal Systems Act No. 32 of 2000, Municipal Finance Management Act No. 56 of 2003, Preferential Procurement Policy Framework Act No.5 of 2000 and Broad Based Black Economic Empowerment Act 53 of 2003*** and other government regulations, the Merafong City Local Municipality hereby approves the Supply Chain Management Policy.

### **Objectives**

To provide a policy in which the municipality can institute and maintain a supply chain management system that:

- Is transparent, efficient, fair, equitable, competitive, and cost effective for the municipality,

- applies the highest ethical standards,
- promotes local economic development.
- assists in the delivery of quality service to the municipality's customers
- promotes interest and confidence in the municipality's procurement processes and other related processes

By adopting this policy the council undertakes to observe all applicable national legislation (including amendments and regulations) notably the:

- Preferential Procurement Policy Framework Act No. 5 of 2000;
- Broad Based Black Economic Empowerment Act No 53 of 2003
- Municipal Finance Management Act No. 56 of 2003
- The Competition Act 2000
- The Prevention and Combating of Corruption Activities Act 12 of 2004

This policy is designed to supplement legal prescriptions, and the main provisions are either annexed to this policy or available in the relevant Regulations and Framework.

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## 1. Definitions

In this policy, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, and –

**“Accounting officer”** means a person designated as the municipal manager in terms of section 60 of the Act;

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

**"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 Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(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);

**“Designated group”** means black designated groups, black people, women, youth, veterans, people with disabilities, small enterprises as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102, of 1996);

**“Delegation”** means the issuing of a written authorisation 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 Merafong City Local Municipality Supply Chain Management Policy perform or to assist in performing the duty, and

(i) **"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; thus regulation 8(1) (a).

- (ii) **“final award”** in relation to bids or quotations submitted for a contract, means the final decision on which bid or quote to accept;

**“Bid”** means a written offer submitted in a prescribed or stipulated form, in response to an invitation by the Municipality for a procurement or disposal, as part of the competitive bidding process of the Municipality;

**“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 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;

**“Contract”** means the written agreement that results from the acceptance of a bid, tender or quotation by the Municipality;

**“Contractor”** means any natural or legal person whose bid or quotation has been accepted by the Municipality for the execution of work for the Municipality;

**“Council”** means the Municipal Council of the Merafong City Local Municipality, its legal successors in title and its delegates;

**“Delegating authority”**, means the Council, Accounting officer, councillor or other employee to whom original powers were assigned in terms of



legislation, and in relation to a sub-delegation of a power, means that delegated body;

**“MFMA”** means the Municipal Finance Management Act 56 of 2003 and its relevant regulations;

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

**"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 the 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 the contract;

**"Functionality"** means the measurement according to predetermined norms, as set out in the tender documents, 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 tenderer;

**“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 ;

(d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);

(e) a member of the accounting authority of any national or provincial public entity; or

(f) an employee of Parliament or a provincial legislature;

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

**"Locally based accredited service provider(s) or supplier(s)"** means service provider(s) and supplier(s) who have operating offices or plant and conduct business within the jurisdiction of the Merafong City Local Municipality;

**"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 a Municipality must keep in terms of paragraph 14 of this policy;

**"Municipality"** means the Merafong City Local Municipality;

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

**"Other applicable legislation"** means any other legislation applicable to municipal supply chain management, including –

(a) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);

(b) the Construction Industry Development Board Act, 2000 (Act No.38 of 2000);

**"PPPF Act"** means the Preferential Procurement Policy Framework Act, 2000 (Act No.5 of 2000);

**"Person"** includes a juristic person;

**"Preferential Procurement Regulations"** means the regulations pertaining to the PPPF Act;

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

**"Regulation"** means the Local Government: Municipal Supply Chain Management Regulations;

**"Stipulated minimum threshold"** means that portion of local production and content as determined by the Department of Trade and Industry;

**"Senior manager"** means a manager directly accountable to the accounting officer;

**"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 the contract;

**"Tender"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive tendering processes or proposals; **"total revenue"** bears the same meaning assigned to this expression in 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 promulgated in the Government Gazette on 9 February 2007;

**"Treasury guidelines"** means any guidelines on supply chain management issued by the Minister in terms of section 168 of the Act;

**"The Act"** means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

**"Written quotations"** means quotations referred to in paragraph 12(1)(b) of this policy.

**CHAPTER 1**  
**ESTABLISHMENT AND IMPLEMENTATION OF SUPPLY CHAIN**  
**MANAGEMENT POLICY**

**2. Supply chain management policy**

- (1) The Municipality resolves in terms of section 111 of the Act to have and implement a supply chain management policy that –
- (a) gives effect to –
    - (i) Section 217 of the Constitution; and
    - (ii) Part 1 of Chapter 11 and other applicable provisions of the MFMA;
    - (iii) Preferential Procurement Regulations 32 of 2017 (Gazette 40553)
  - (b) is fair, equitable, transparent, competitive and cost effective;
  - (c) complies with –
    - (i) the regulatory framework prescribed in Chapter 2 of the Regulations; and
    - (ii) any minimum norms and standards that may be prescribed in terms of section 168 of the MFMA;
  - (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 doing business with the public sector.
- (2) The Municipality may not act otherwise than in accordance with this supply chain management policy when –
- (a) procuring goods or services;
  - (b) disposing of capital assets and goods no longer needed;
  - (c) selecting contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or

- (d) selecting 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.
- (3) Subparagraphs (1) and (2) of this paragraph do not apply in the circumstances described in section 110 (2) of the MFMA except where specifically provided otherwise in this policy.

### **3. Adoption and amendment of the supply chain management policy**

- (1) The accounting officer must –
  - (a) at least annually review the implementation of this policy; and
  - (b) when the accounting officer considers it necessary, submit proposals for the amendment of this policy to the Council.
- (2) If the accounting officer submits a draft policy to the Council that differs from the model policy in the Municipal Supply Chain Management Regulations as issued by the National Treasury in terms of the MFMA, the accounting officer must ensure that such draft policy complies with the regulation 2 in the Municipal Supply Chain Management Regulations as issued by the National Treasury. The accounting officer must report any deviation from the model policy to the National Treasury and the Gauteng provincial treasury.
- (3) When amending this supply chain management policy the need for uniformity in supply chain practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.
- (4) The accounting officer must in terms of section 62(1)(f)(iv) of the MFMA, take all reasonable steps to ensure that the Municipality has and implements this supply chain management policy as guided in regulation 2 of the Municipal Supply Chain Management Regulations as issued by the National Treasury.

#### **4. Delegation of supply chain management powers and duties**

- (1) The Council hereby delegates such additional powers and duties to the accounting officer so as to enable the accounting officer –
  - (a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
    - (i) Chapter 8 or 10 of the MFMA; and
    - (ii) this supply chain management policy;
  - (b) to maximise administrative and operational efficiency in the implementation of the supply chain management policy;
  - (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of the supply chain management policy; and
  - (d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the MFMA.
- (2) Sections 79 and 106 of the MFMA apply to the sub-delegation of powers and duties delegated to the accounting officer in terms of subparagraph (1) of this paragraph.
- (3) The Council or accounting officer may not delegate or 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 26 of this policy.

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

- (1) The accounting officer may in terms of section 79 or 106 of the MFMA sub-delegate any supply chain management powers and duties, including those delegated to the accounting officer in terms of this policy, 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 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; or
  - (c) not exceeding R2 million (VAT included) may be sub-delegated 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 which the power to make final awards has been sub-delegated in accordance with subparagraph (2) of this paragraph must within five days of the end of each month submit to the official referred to in subparagraph (4) of this paragraph a written report containing particulars of each final award made by such official or committee during that month, including–
- (a) the amount of the award;
  - (b) the name of the person/entity to whom the award was made;
  - (c) the BEE status of the successful company; and
  - (d) the reason why the award was made to that person/entity.
- (4) A written report referred to in subparagraph (3) of this paragraph 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 is a member; or

- (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) of this paragraph; or
  - (ii) a bid adjudication committee of which the chief financial officer or a senior manager is not a member.
- (5) Subparagraphs (3) and (4) of this paragraph 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 26 of this policy.
- (7) No supply chain management decision-making powers may be delegated to an advisor or consultant.
- (8) All delegations must be in writing to individual officials in top or senior management.

## **6. Oversight role of Council**

- (1) No councillor of the municipality may be a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contractors or other bids, nor attend any such meeting as an observer.
- (2) The Council must maintain oversight over the implementation of this supply chain management policy.
- (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 the supply chain management policy of the Municipality to the Council of the Municipality,
  - (b) whenever there are serious and material problems in the implementation of the supply chain management policy, immediately submit a report to the Council



- (4) The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the Executive Mayor.
- (5) The reports must be made public in accordance with section 21A of the Municipal Systems Act.

## **7. Supply chain management unit**

- (1) The accounting officer must establish a supply chain management unit to implement this supply chain management policy.
- (2) The supply chain management unit must, operate under the direct supervision of the chief financial officer or an official to whom this duty has been delegated in terms of section 82 of the MFMA.

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

The training of officials involved in implementing the supply chain management policy should be in accordance with any Treasury guidelines on supply chain management training.

# **CHAPTER 2 FRAMEWORK FOR SUPPLY CHAIN MANAGEMENT**

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

This supply chain management policy provides systems for –

- (i) demand management;
- (ii) acquisition management;
- (iii) logistics management;
- (iv) disposal management;
- (v) risk management; and
- (vi) performance management.

## ***Part 1: Demand management***

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

The accounting officer must establish, through operational procedures, an effective system of demand management in order to ensure that the resources required to support the strategic and operational commitments are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy the needs.

According to the Circular 62, the Procurement Plan must be developed by all relevant departments in line with the IDP and the Budget process the detailed planning document (business plan per project) that outlines what goods, works or services should be procured, the manner in which they should be procured and the timeline to execute the procurement functions.

## ***Part 2: Acquisition management***

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

- (1) The accounting officer must establish, though operational procedures, an effective system of acquisition management in order to ensure –
  - (a) that goods and services are procured by the Municipality in accordance with authorized processes only;
  - (b) that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the MFMA;
  - (c) that the threshold values for the different procurement processes are complied with;
  - (d) that bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and

- (e) that any Treasury guidelines on acquisition management are properly taken into account.
- (2) This supply chain management policy, except where provided otherwise in the policy, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the MFMA, including –
- (a) water from the Department of Water Affairs or a public entity, another Municipality or a municipal entity; and
  - (b) electricity from Eskom or another public entity, another Municipality or a municipal entity.
- (3) The following information must be made public wherever goods or services contemplated in section 110(2) of the MFMA are procured other than through the supply chain management system –
- (a) the kind of goods or services; and
  - (b) the name of the supplier.
- (4) All requests for the procurement of goods and services shall be submitted to the Procurement Manager within the Department: Finance be:
- (a) In writing, clearly specifying the nature and quantity/duration of the goods and services required. Preparation of specifications aimed at procuring goods or services of specific suppliers and brand names should be avoided.
  - (b) Certified by a senior official or person with delegated authority in their Department.
    - (i) There is sufficient provision in the relevant budget for the procurement;
    - (ii) The correct vote was used.
- (5) If the procurement is for a capital project, Section 19 of the MFMA regarding budgeting and costing of capital projects must also be complied with.
- (6) Where the procurement will impose financial obligations on the Municipality beyond the three years covered in the annual budget for

that financial year, Section 33 of the MFMA regarding contracts must be complied with.

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

(1) The procurement of goods and services through this policy is provided by way of –

- (a) petty cash purchases, up to a transaction value of R2000. (VAT included);
- (b) written or verbal quotations for procurements of a transaction value over R2 000 up to R10 000 (VAT included);
- (c) formal written price quotations for procurements of a transaction value over R10 000 up to R30 000 (VAT included)
- (d) formal written price quotations for procurements of a transaction value over R30 000 up to R200 000 (VAT included) {seven days advertising quotations}; and
- (e) a competitive bidding process for–
  - (i) procurement above a transaction value of R200 000 (VAT included); and
  - (ii) the procurement of long term contracts.

(2) The accounting officer may, in writing; - lower, but not increase, the different threshold values specified in subparagraph (1); or (b) direct that –

- (i) written quotations be obtained for any specific procurement of a transaction value lower than R 500;
- (ii) formal written price quotations be obtained for any specific procurement of a transaction value lower than R30 000; or
- (iii) an RFQ competitive bidding process be followed for any specific procurement of a transaction value of R30 000 to R200 000;

- (iii) a competitive bidding process be followed for any specific procurement of a transaction value higher than R200 000.
- (3) As provided in regulation 2 of the Municipal Supply Chain Management Regulations as issued by the National Treasury, locally based accredited prospective service providers will primarily be considered for any goods and services needed by the Municipality.
- (4) Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the policy. When determining transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.
- (5) Transferring of municipal funds to an organisation or body outside any sphere of government otherwise than in compliance with a commercial or other business transaction must comply with Sec.67 of the MFMA and be in accordance with Council's Community Support Policy. **In terms of Sec.67 (4) Council determines a prescribed limit of R25, 000-00**

### **13. General preconditions for consideration of written quotations or bids**

A written quotation or bid may not be considered unless the provider who submitted the quotation or bid –

- (a) has furnished that provider's –
  - (i) full name;
  - (ii) identification number or company or other registration number; and
  - (iii) tax reference number and VAT registration number, if any;
  - (iv) registered with the CSD (Central Supplier Database) and Municipal Database.

- (b) has authorized the Municipality to obtain a tax clearance from the South African Revenue Services that the provider's tax matters are in order; and
- (c) has indicated –
  - (i) whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
  - (ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
  - (iii) whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to in subparagraph
  - (iv) is in the service of the state, or has been in the service of the state in the previous twelve months.

#### **14. 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 the procurement requirements of the Municipality through written quotations and formal written price quotations and this list should be used effectively to promote the objectives of the Preferential Procurement Regulations, Broad Based Black Economic Empowerment Act, its Codes of Good Practice and the Local Economic Development Plans or Programmes (including sub-contracting of business to local SMME) as provided in regulation 2 of the Municipal Supply Chain Management Regulations as issued by the National Treasury; and
  - (b) at least once a year through newspapers commonly circulating locally, the 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.
  - (e) for sub-contracting business to local- the service providers must be verified that their residential and business address are address in Merafong jurisdictions and they must pay their municipal accounts.( a bidder must not be in arears for more than 90 days).
- (2) The 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 list must be compiled per commodity and per type of service.
- (4) The list should be used to promote participation of Black-owned Small, Medium and Micro Enterprises (SMMEs). The prescripts of the Preferential Procurement Policy Framework Act, Act No.5 of 2000 will be applied for procurement requirements above R30 000 and with a lesser value where appropriate.
- (5) Once a list has been compiled per commodity and per type of service, price quotations will be invited from the suppliers in a manner that promotes ongoing competition, including on a rotation basis, up to R 30,000 which is to be prepared by the Supply Chain Management: Manager and approved by the Chief Financial Officer on an annual basis.
- (6) The inclusion of any supplier in the database of suppliers does not exempt the supplier from the obligation to respond in the prescribed manner to notices of the municipality's supply chain management requirements.
- (7) Suppliers who wish to be included in the list of accredited suppliers without waiting for the next invitation may approach the Procurement

Section for inclusion, provided that they supply the necessary documentation and information for evaluation. Once these requirements have been satisfied, the Procurement Section will ensure that the prospective supplier is evaluated and will provide a response as to approval or not within 14 days. Prospective suppliers will not be eligible to provide quotations until they have been approved as an accredited supplier, except where the prospective supplier provides a type of commodity or service for which no supplier is available from the list of accredited suppliers.

(8) The Service Providers must at all times ensure that their Municipal Rates and Taxes are in good standing before they apply for delivery of goods and services.

(9) The suppliers must register with Treasury- Central Supplier Data-Base (CSD).

## **15. Petty cash purchases**

The accounting officer must establish the conditions for the procurement of goods by means of petty cash purchases referred to in paragraph 12 (1) (a) of this policy, which must include conditions –

- (a) determining the terms on which a manager may delegate responsibility for petty cash to an official reporting to the manager;
- (b) limiting the number of petty cash purchases or the maximum amounts per month for each manager;
- (c) excluding any types of expenditure from petty cash purchases, where this is considered necessary; and
- (d) requiring monthly reconciliation reports from each manager to the chief financial officer, including –
  - (i) the total amount of petty cash purchases for that month and;
  - (ii) receipts and appropriate documents for each purchase.



## **16. Written quotations**

The accounting officer must establish the conditions for the procurement of goods or services through written quotations, which must include conditions stating –

- (a) that 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 listed, such providers must meet the listing criteria in the supply chain management policy required by 14(1)(b) and (c) of this policy; (b) that, to the extent feasible, providers must be requested to submit such quotations in writing;
- (b) that if it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the accounting officer or another official designated by the accounting officer;
- (c) that the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices; and
- (d) that if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.

## **17. Formal written price quotations**

(1) The accounting officer must establish the conditions for the procurement of goods or services through formal written price quotations, which must include conditions stating –

- (a) that 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;

- (b) that quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria in the supply chain management policy required by paragraph 14(1)(b) and (c);
  - (c) that if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer, and
  - (d) that the accounting officer must record the names of the potential providers and their written quotations.
- (2) A designated official referred to in subparagraph (1)(c) must within ten days of the end of each month report to the chief financial officer on any approvals given during that month by that official in terms of that subparagraph.

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

The accounting officer must determine the operational procedure for the procurement of goods or services through written quotations or formal written price quotations, which must stipulate –

- (a) that 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 and an official notice board of the Municipality;
- (b) that when using the list of accredited prospective providers the accounting officer must promote ongoing competition amongst providers, including by inviting providers to submit quotations on a rotation basis;
- (c) that the accounting officer must take all reasonable steps to ensure that the procurement of goods and services through written quotations or formal written price quotations is not abused;

- (d) that the accounting officer or chief financial officer must on a monthly basis be notified in writing of all written quotations and formal written price quotations accepted by an official acting in terms of a sub-delegation, and;
- (e) requirements for proper record keeping.

## **19. Competitive bidding process**

- (1) Goods or services above a transaction value of R200 000 (VAT included) and long term contracts may only be procured through a competitive bidding process, subject to paragraph 11(2) of this policy; and
- (2) 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.

## **20. Process for competitive bidding**

Goods or services above a transaction value of R200 000.00 (VAT included) and long term contracts must be procured by the Municipality through a competitive bidding process.

The accounting officer must establish procedures for a competitive bidding process for each of the following stages:

- (a) the compilation of bidding documentation;
- (b) the public invitation of bids;
- (c) site meetings or briefing sessions, if applicable;
- (d) the handling of bids submitted in response to public invitation;
- (e) the evaluation of bids;
- (f) the award of contracts;
- (g) the Sub-contracting of tender before and after the award of the tender;
- (h) the administration of contracts; and

- (h) proper record keeping (Original/legal copies of written contract agreements should be kept in a secured place for reference purposes).

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

The accounting officer must establish the criteria to which bid documentation for a competitive bidding process must comply, which in addition to paragraph 13 of this policy, the bid documentation, where applicable must –

- (a) take into account –
  - (i) the special conditions of contract;
  - (ii) any Treasury guidelines on bid documentation; and
  - (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure and any other relevant regulatory authority;
- (b) include evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish–
  - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
    - (aa) for the past three years; or
    - (bb) since their establishment if established during the past three years;
  - (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a Municipality or other service provider

- in respect of which payment is overdue for more than 90 days;
- (iii) 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 contract;
  - (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the Municipality is expected to be transferred out of the Republic; and
  - (e) 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.

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

The accounting officer must determine the procedure for the invitation of competitive bids, which must stipulate that: (1)

- (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, nationally and the website of the Municipality or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin- e-portal system); and
- (b) the information contained in a public advertisement, must include –
  - (i) venue of any proposed site meetings or briefing sessions, time, 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,

- from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2) of this policy;
- (ii) a statement that bids may only be submitted on the bid documentation provided by the Municipality;
  - (iii) a statement that bids will be subject to reference checks any time from evaluation to awarding of a contract;
  - (iv) list the bidder with the National Treasury database of persons prohibited to do business with the public sector who is found to be in contravention of paragraph 39; and
  - (v) a statement that the bid award may include costs of preparing the contract.
  - (vi) Where possible the bid must indicate that a tender has an element of Sub-contracting.

- (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 any exceptional case where it is impractical or impossible to follow the official procurement process.
- (3) Bids submitted must be sealed.
- (4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.
- (5) The council will charge a non-refundable deposit for provision of bid documents. This is subject to annual review. Values of the deposits will be determined annually and included in the official lists of tariffs.

### **23. Procedure for handling, opening and recording of bids**

- (1) The accounting officer must determine the procedures for the handling, opening and recording of bids, which must stipulate that:
  - (a) Bids–
    - (i) must be opened only in public; and

- (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired;
  - (iii) bids received after the closing time should not be considered and they should be returned unopened immediately
- (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price; and
- (c) The accounting officer must –
  - (i) record in a register all bids received in time;
  - (ii) make the register available for public inspection; and
  - (iii) publish the entries in the register and the bid results on the website.
- (3) The Supply Chain Manager /Executive Director: Finance or delegated official will ensure that tender boxes are sealed until the time of their official opening, and ensure that they are properly secured.
- (4) At the advertised time, the tender box will be unlocked and opened by at least two officials – one from Supply Chain Management Section and one from the relevant Department for which the bid is being made ( and a Consultant if available). This will be done in public i.e. in the presence of the bidders or other interested parties. The tender box can be opened without any members of public being present provided that the appropriate procedure for advertising the time and venue has been followed. Late, unmarked or incorrectly marked tenders will not be opened.
- (5) Names and total bid amounts will be read out and recorded in the tender register, which will be available for public inspection on request. A copy of the record must be kept in the Procurement Manager's office and the original must be retained by Shared Services in Council's official filing system. In instances of bulk tender amounts that are too time-consuming to read out, only those requested by

bidders will be read, and a complete schedule provided as soon as is practical. Bid results will be published on the municipality's web site.

#### **24. 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; and
  - (c) does not lead to a higher price than the bid as submitted.
- (2) Minutes of such negotiations must be kept for record purposes.

#### **25 Two-stage bidding process**

- (1) A two-stage bidding process is allowed 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.

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

- (1) The accounting officer is required to –
  - (a) establish a committee system for competitive bids consisting of at least –
    - (i) a bid specification committee;
    - (ii) a bid evaluation committee; and



- (iii) a bid adjudication committee;
  - (b) appoint the members of each committee, taking into account section 117 of the MFMA; and
  - (c) provide for an attendance or oversight process by a neutral or independent observer, appointed by the accounting officer, when this is appropriate for ensuring fairness and promoting transparency.
- (2) The committee system must be consistent with –
- (a) paragraph 27, 28 and 29 of this policy; and
  - (b) any other applicable legislation.
- (3) The accounting officer may apply the committee system to formal written price quotations.

## **27. Bid specification committee**

- (1) The bid specification committee must compile the specifications for each of the procurement of goods or services by the Municipality.
- (2) Specifications –
- (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
  - (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;
  - (c) where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
  - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labeling of conformity certification;
  - (e) 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 words “equivalent”;

- (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the revised Preferential Procurement Regulations 2011 ; and
  - (g) must be approved by the accounting officer prior to publication of the invitation for bids in terms of paragraph 22 of this policy.
  
  - (h) where possible the value of the Sub-contract and the evaluation criteria of sub-contracting element must be included in the Bid Specification Committee minutes
  - (i) the value of sub-contraction of tender to local SMME must be based supply and delivery of material; construction and installation or labour excluding preliminary and general, CLO fees, guarantee (indemnity insurance), occupational health ,
  - (j) there will be sub-contract for service providers (SMME) on labour only and sub-contracts to emerging EME & QSE with certificates (completion certificate, CIDB , NHBRC etc.) who will take part in the construction and high value supply and delivery.
- (3) The bid specification committee must be composed of one or more officials of the Municipality, preferably the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.
- (4) 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.

## **28. Bid evaluation committee**

- (1) The bid evaluation committee must –
  - (a) evaluate bids in accordance with –

- (i) the specifications for a specific procurement; that is the functionality, Preference Points and price system as specified in the tender document, and
  - (ii) the points system set out in terms of paragraph 27(2)(f).
  - (b) evaluate each bidder's ability to execute the contract;
  - (c) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears for more than 90 days;
  - (d) if the bid is above R200 000, conduct reference checks; and submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
- (2) The bid evaluation committee must as far as possible be composed of –
- (a) officials from departments requiring the goods or services; and
  - (b) at least one supply chain management practitioner of the Municipality.

## **29. Bid adjudication committee**

- (1) The bid adjudication committee must –
- (a) consider the report and recommendations of the bid evaluation committee; and
  - (b) either –
    - (i) depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or
    - (ii) make another recommendation to the accounting officer how to proceed with the relevant procurement.
- (2) The 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, if such an expert exists.
- (3) The accounting officer must appoint the chairperson of the committee. 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.
- (4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.
- (5) (a) 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 –
- (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;
  - (ii) notify the accounting officer.
- (b) The accounting officer may –
- (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
  - (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (6) 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.

- (7) The accounting officer must comply with section 114 of the Act within 10 working days.

### **30. Procurement of banking services**

- (1) Banking services –
- (a) must be procured through competitive bids;
  - (b) must be consistent with section 7 or 85 of the MFMA 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 22(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

### **31. 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 disagrees with such comments, the comments and the reasons for rejecting or not

following such comments must be submitted to the Council, the National Treasury, the relevant provincial treasury and the Auditor General.

### **32. 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 have consented to such procurement in writing.
- (2) Subparagraph (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.

### **33. 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 wherever 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.

### **34. Proudly SA Campaign**

## Township Development strategy

The accounting officer must determine internal operating procedures supporting the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services.

### **Local Production and Content**

(1) A municipality must, in the case of designated sectors, where in the award of tenders local production and content is of critical importance, advertise such tenders with a specific tendering 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 National Treasury will issue instructions, circulars and guidelines to all organs of state, with specific reporting mechanisms to ensure compliance with sub-regulation (1).

(3) Where there is no designated sector, a municipality may include, as a specific tendering condition, that only locally produced services, works or goods 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 the National Treasury in consultation with the Department of Trade and Industry.

(4) Every tender issued in terms of regulation 9 must be measurable and audited.

(5) Where necessary, for tenders referred to in sub-regulations (1) and (3), a two- stage tendering process may be followed, where the first stage involves functionality and minimum threshold for local production and content and the second stage price and B-BBEE with the possibility of price negotiations only with the short listed tenderer/s.

(6) The thresholds of local contents are subjects to review by the Department of Trade and Industry and they shall be changed accordingly.

### **Industries/ Sectors/ Sub- Sectors' minimum threshold for local content**

Buses (Bus body)	80%
Clothing, textiles, footwear and leather	100%

Power Pylons	100%
Pharmaceutical (OSD)	70%( volumes)
Set top boxes	30%
Canned/ processed vegetables	80%
Rolling stock	65%
School furniture	100%
Office furniture	85%
Base and Mattress	90%
Solar Heater components	70%
Electrical cables and Telecommunication Cables	90%
Medium Voltage electric motor (185kW to 20 000kW and greater than 1000 Volts	70%
Steel materials	100%

### **35. 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.



### **36. 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 to 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 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;
  - (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 report them to the next meeting of the Council and include as a note to the annual financial statements.

(3) Subparagraph (2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this policy.

(4) The Municipality must also report the Deviation awards of contract above R200 000.00 to Gauteng Provincial Treasury within ten days after the award (the next month of reporting).

#### **36(a). Emergency dispensation**

- (1) The conditions warranting an emergency dispensation shall include the existence of one or more of the following:
- (a) The possibility of human injury or death;
  - (b) The prevalence of human suffering or deprivation of rights;
  - (b) The possibility of damage to property, or suffering and death of live stock or animals;
  - (d) The interruption of essential services, including transportation and communication facilities or all services critical to the effective functioning of the municipality as a whole;
  - (e) The possibility of serious damage occurring to the natural environment;
  - (f) The possibility that failure to take necessary action may result in the municipality not being able to render an essential community service.
  - (g) The prevailing situation or imminent danger should be of such a scale and nature that it could not readily be alleviated by interim measures in order to allow time for the formal procurement process. Emergency dispensation shall not be granted in respect of circumstances other than those contemplated above.
  - (h) Where possible, in an emergency situation, three quotes should be obtained and a report submitted to the accounting officer for approval. However, when time is of essence the emergency shall immediately be addressed and the process formalized by a report to the accounting officer as soon as possible thereafter.

### **36(b). Exceptional circumstances**

- (1) The following circumstances shall serve as a guideline to determine whether exceptional circumstances exist, as required in terms of section 43.
- (2) The accounting officer may vary, add or remove any of the grounds regarded as exceptional circumstances.
- (3) Exceptional circumstances shall include the following:
  - (a) any contract relating to the publication of notices and advertisements by or on behalf of the municipality;
  - (b) any purchase on behalf of the municipality at a public auction sale;
  - (c) ad hoc repairs to plant and equipment where it is not possible to ascertain the nature or extent of the work required in order to call for bids;
  - (d) expanded public works programme learnerships or emerging entrepreneurship programmes, which have been identified and registered as such.
  - (e) The appointment of learnerships or emerging entrepreneurs in terms of the expanded public works programme must be carried out in accordance with the expanded public works programme policy of the municipality.

### **37. Unsolicited bids**

- (1) In accordance with section 113 of the MFMA there is no obligation to consider unsolicited bids received outside a normal bidding process.
- (2) The accounting officer may decide in terms of section 113(2) of the MFMA to consider an unsolicited bid, only if –
  - (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept that will improve service delivery or add value to the municipality;

- (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; and
  - (d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
- (3) If the accounting officer decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the 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 within 30 days of the notice.
- (4) All written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, must be submitted to the National Treasury and the relevant provincial treasury for comment.
- (5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, depending on its delegations.
- (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (7) 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 Treasury or the relevant provincial treasury.
- (8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the accounting officer must submit to the Auditor General, the relevant provincial treasury and the National

Treasury the reasons for rejecting or not following those recommendations.

- (9) 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.

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

The accounting officer must establish measures for the combating of abuse of the supply chain management system, which must stipulate the following:

- (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 failure to comply with this supply chain management 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 Service;
  - (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) the 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 –
  - (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 section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).

- (2) The accounting officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) of this policy.

### ***Part 3: Logistics, Disposal, Risk and Performance Management***

#### **39. Logistics management**

The accounting officer must establish an effective system of logistics management in order to provide for the setting of inventory levels, placing of orders, receiving and distribution of goods, stores and warehouse management, expediting orders, transport management, vendor performance, maintenance and contract administration.

#### **40. Disposal management**

- (1) The accounting officer must establish an effective system of disposal management for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the MFMA which must stipulate the following:

- (2) The disposal of assets must–

- (a) be one of the following methods –
  - (i) transferring the asset to another organ of state in terms of a provision of the MFMA enabling the transfer of assets;
  - (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
  - (iii) selling the asset; or
  - (iv) destroying the asset;
- (b) provided that –
  - (i) immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise;

- (ii) movable assets may be sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
  - (iii) in the case of the free disposal of computer equipment, the provincial department of education must first be approached to indicate within 30 days whether any of the local schools are interested in the equipment; and
  - (iv) in the case of the disposal of firearms, the National Conventional Arms Control Committee has approved any sale or donation of firearms to any person or institution within or outside the Republic;
- (c) further more ensure that –
- (i) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise; and (ii) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed; and
- (d) ensure that where assets are traded in for other assets, the highest possible trade-in price is negotiated.

#### **41. Risk management**

- (1) The accounting officer must establish 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.

## **42. Performance management**

The accounting officer must establish an effective 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 desired objectives were achieved.

### **42(1). Contract management**

- (1) Once the Bid Adjudication Committee has awarded a contract, the responsibility for managing that contract rests with the Department who initiated the need for that contract. Each department will develop and review the necessary performance management systems including appropriate record keeping to ensure contracts are managed in an effective and efficient manner. The appropriate department will manage contracts that procure goods or services for more than one department.
- (2) The provision for cancellation of a contract for unsatisfactory performance and the appropriate mechanisms to undertake the cancellation will be included in the relevant bid documentation.
- (3) the SCM is delegated to do selection, rotation, monitoring and control of sub-contracting local SMME and the list be approved by the Accounting Officer.
- (4) The Accounting Officer will cancel a contract awarded to a person:
  - if that person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
  - an official or any other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person.

#### **42(1)(a). Contract Price Adjustment**

- (1) If a contract period will exceed one year, an appropriate contract price Adjustment formula must be specified in the bid documents.
- (2) If the contract period does not exceed one year, the bid shall be a fixed price bid and not subject to a contract price adjustment.
- (3) If, as a result of any extension of time granted, the duration of a fixed price contract exceeds one year, the contract will be subject to contract price adjustment for that period by which the extended contract period exceeds one year.

#### **42(1) (b). Samples**

- (1) Where samples are called for in bid documents, samples marked with the bid number and the bidders name and address shall be delivered separately to the addressee mentioned in the bid documents by no later than the closing time of the bid.
- (2) Bids must not be included in parcels containing samples.
- (3) If samples are not submitted as required in the bid documents, the bid concerned must be declared invalid.
- (4) Samples shall be supplied by the bidder at his/her own expense and risk. The municipality shall not be obliged to pay for such samples or compensate for the loss thereof, unless otherwise specified in the bid documents. The municipality shall in the bid documents reserve the right not to return such samples and to dispose of them at its own discretion.
- (5) If a bid is accepted for the supply of goods according to a sample submitted by the bidder, that sample will become the contract sample. All goods and material supplied shall comply in all respects to that contract sample.

#### **42(1) (c). Issuing of bid documents**

- (1) Bid documents and any subsequent notices may only be issued by offices designated by the *accounting officer* from time to time.
- (2) Details of all prospective bidders who have been issued with bid documents must be recorded by the issuing office.
- (3) Details of prospective bidders must, whenever possible, include the full name of the person drawing the documents, a contact person, a contact telephone and fax number and postal and e-mail address.
- (4) If site inspections are to be held, full details must be included in the bid notice.

#### **42(1) (d). Cancellation of bids**

- (1) If it becomes necessary to cancel or re-advertise bids, then a report setting out the reasons therefore shall be submitted to the *accounting officer by the supply chain manager*.
- (2) If bids have been cancelled, then all bidders must be notified thereof in writing.
- (3) If it becomes necessary to cancel or re-advertise bids, then a report setting out the reasons therefore shall be submitted to the *accounting officer by the supply chain manager*.
- (4) If it becomes necessary to cancel or re-advertise bids, then a report setting out the reasons therefore shall be submitted to the *accounting officer by the supply chain manager*.
- (5) No bid may be re-advertised before the expiry of the validity period of the original bid, or any extended validity periods. If however all bidders have indicated in writing there is no objection to the re-advertisement of the bid, it may be re-advertised forthwith.
- (6) *A bid must be cancelled when:*
  - a. *In the application of the 80/20 preference points system all bids received exceed the estimated rand value of R 50,000,000*
  - b. *In the application of the 90/10 preference points system all bids received are equal to or below the estimated rand value of R 50,000,000*

- (7) After cancellation of a bid in terms of this paragraph, the Municipality must re-invite bids stipulating the correct preference points system to be applied.

**42(1) (e). Annual bid**

- (1) It is permissible to invite bids for the supply of goods and services or construction work that is of an ad hoc or repetitive nature, for a predetermined period of time (a process that is referred as an annual bid).
- (2) The following procedure is applicable to such annual bids:
  - (a) The acquisition procedure for annual bids shall comply with the procedures of the acquisition management system for competitive bids;
  - (b) Bid documentation, if applicable, shall state that the acceptance of annual bids based on a schedule of rates will not necessarily guarantee the bidder any business with the municipality;
  - (c) The use of annual bids to circumvent normal bid processes is not permissible;
  - (d) Unsolicited items included in an annual bid, which are clearly not an alternative to any of the items specified, shall not be considered.
- (3) The evaluation and adjudication of annual bids shall be dealt with as follows:
  - (a) Such bids shall be considered in terms of the evaluation and adjudication processes contained in this policy.
  - (b) If the selected bidder in terms of the selection processes of this policy is unable to provide the required goods or services at the required time and confirm such inability in writing, then the bidder with the next highest adjudication points shall be selected to provide the goods or services.

**42(1) (f). Variation in bid amount after contract signed**

- (1) Any expansion or variation in the approved contract sum that may become necessary as a result of exceptional circumstances during the contract period, must be approved by the accounting officer prior to implementation, and will be subject to by not more than twenty (20%) for construction related goods, services and/or infrastructure projects and fifteen (15%) for all other goods/services of the original value of the contract or such Treasury guidelines that may exist at such time.
- (2) *The Accounting Officer has the right to variation of the original scope of work by extending or modifying such scope of work after the conclusion of the contract without re-tendering, if:*
  - (a) *Due to unforeseen circumstances, additional work becomes necessary in order to complete the project based on the original objective set out in the original bid document.*
  - (b) *The work is spread over a period that is more than one financial year. After the initial bidding during the first year, the renewal of the contract for subsequent years will ensure that the municipality expedites the implementation of projects without repeating the tendering process for a repetition of similar work forming part of a basic project for which an initial contract was awarded using the bidding process. The Municipality shall indicate in the initial bid document that further contracts may be awarded through negotiation with a service provider appointed for the initial contract.*
- (3) If, as a result of any extension of time granted, the duration of a fixed price contract exceeds one year, the contract will be subject to contract price adjustment for that period by which the extended contract period exceeds one year.

**42(1) (g). Procurement of construction related services.**

- (1) The Accounting Officer **must** for the purpose of promoting local Contractors and the promotion of Local Economic Development to the extent that, all things being equal, encourage that the construction related awards, awarded to service providers whose businesses reside outside the Municipal boundaries of Merafong City Local Municipality where feasible to Sub-Contract minimum 30% or more of the **determined value** for tenders above R30 million of the total award (inclusive of ten percent (10%) contingencies, CPI increase and fourteen percent (14%) Vat).
- (2) The Accounting Officer may select certain projects in the Procurement Plan and earmark them for promoting sub-contracting at the beginning of the financial year.
- (3) The Accounting Officer may for the purposes of identifying such accredited contractors provide a list on a rotational basis from the database of suppliers to the successful service provider to whom the award was made to enable such provider to enter into negotiations with one or more accredited prospective sub-contractors.
- (4) The Accounting Officer may wave subparagraph (1), (2) in the event of a Joint Venture with a local accredited prospective contractor.

#### **Part 4: Other matters**

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

The Municipality must not make any award above R15 000.00 to a person whose tax matters have not been declared by South African Revenue Service to be in order.

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

The accounting officer must ensure that irrespective of the procurement process followed, no award may be given to a person –

- (a) who is in the service of the state; or
- (b) 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
- (c) a person who is an advisor or consultant contracted with the Municipality.
- (d) The accounting officer is required to verify the identity numbers of the directors / trustees / shareholders of the preferred bidder(s) against the municipality's staff establishment in order to determine whether or not any of the directors trustees / shareholders are employees of the municipality. Furthermore, other specific information to be disclosed relating to any other official in the service of the state, must also be utilized during the evaluation process.
- (e) The review of all disclosures referred to in the previous paragraph must take place during the bid evaluation process. If a bidder / director / trustee shareholder declares that he / she is in the employ of the state, the municipality must not make any award to such bidder as this is prohibited in terms of the SCM regulations.
- (f) Should it come to light that a false declaration was made by the bidder after the municipality had awarded the bid, the contract must be immediately suspended and payments made, recovered. False declarations by bidders can be viewed as a criminal offence and charges must be laid by the municipality with the South African Police Services for further investigation. Details will be reported to Council at its next meeting and information contained in the Annual Report of the municipality.
- (g) In the event of possible false declarations and subsequent awards based on those declarations, the municipality must rectify this matter by instituting the necessary remedial measures, by investigating the

matter, recovering the funds spent, instituting disciplinary proceedings against those liable for such actions and possible criminal prosecution as may be appropriate. The accounting officer must also apply the remedial measures contained under “Termination for Default” in the General Conditions of Contract.

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

The notes to the annual financial statements must 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 –

- (a) the name of that person;
- (b) the capacity in which that person is in the service of the state; and
- (c) the amount of the award.

**46. Ethical standards**

(1) A code of ethical standards is hereby established, in accordance with subparagraph (2), for officials and other role players in the supply chain management system 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) An official or other role player involved in the implementation of the supply chain management policy –

- (a) must treat all providers and potential providers equitably;
- (b) may not use his or 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) notwithstanding subparagraph (2)(c), 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 of, 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 be scrupulous in his or her use of property belonging to the Municipality;
- (h) must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
- (i) must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –
  - (i) any alleged fraud, corruption, favouritism or unfair conduct;
  - (ii) any alleged contravention of paragraph 47(1) of this policy; or
  - (iii) any alleged breach of this code of ethical standards.

(3) Declarations in terms of subparagraphs (2)(d) and (e) –

- (a) must be recorded in a register which the accounting officer must keep for this purpose;
- (b) by the accounting officer must be made available

to the mayor of the Municipality who must ensure that such declarations are recorded in the register.

- (4) The National Treasury's code of conduct must also be taken into account by supply chain management practitioners and other role players involved in supply chain management.
- (5) Merafong City Local Municipality adopts the National Treasury's code of conduct for supply chain management practitioners and other role players involved in supply chain management. When adopted, such code of conduct becomes binding on all officials and other role players involved in the implementation of the supply chain management policy of the Municipality. A copy of the National Treasury code of conduct is available on the website [www.treasury.gov.za/mfma](http://www.treasury.gov.za/mfma) located under "legislation". Council must adopt this code of conduct.
- (6) A breach of the code of conduct adopted by the Municipality must be dealt with in accordance with schedule 2 of the Municipal Systems Act.

#### **47. Inducements, rewards, gifts and favours to Municipality's 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 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 implementation of the supply chain management policy.
- (2) The accounting officer must promptly report any alleged contravention of subparagraph (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.

#### **48. Sponsorships**

The accounting officer must promptly disclose to the National Treasury and the relevant provincial treasury any sponsorship promised, offered or granted, whether directly or through a representative or intermediary, by any person who is –

- (a) a provider or prospective provider of goods or services;
- or
- (b) a recipient or prospective recipient of goods disposed or to be disposed.

#### **49. Objections and complaints**

Persons aggrieved by decisions or actions taken in the implementation of this 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.

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

(1) The accounting officer must appoint an independent and impartial person, 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 relevant provincial treasury if –
  - (a) the dispute, objection, complaint or query is not resolved within 60 days; or
  - (c) no response is forthcoming within 60 days.
- (5) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query 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 court at any time.

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

If a service provider acts on behalf of a Municipality to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for the service or the amount collected, the

contract between the service provider and the Municipality must stipulate

- (a) a cap on the compensation payable to the service provider; and
- (b) that such compensation must be performance based.

## **52. Restriction of suppliers**

*Notwithstanding the imposition of any penalties that may be applied under this policy, if a supplier is found guilty of misrepresenting any facts in respect of either ownership or empowerment indicators in order to effect the outcome of a bid/quote, either before or after the award, that supplier will be restricted on the supplier database for a period of 12 months. The effect of such restriction is to that no work may be awarded to that supplier for the duration of the restriction*

## **53. Increasing employment opportunities**

- (1) It should be noted that one of the municipality's key socio-economic objectives is to facilitate the creation of employment for the people of the Merafong City Local Municipality.
- (2) Increasing employment opportunities through procurement may be achieved by specifying labour friendly technologies and/or labour intensive methods of construction in the tender documents.
- (3) The options available in this regard should be investigated to evaluate the positive versus negative impact of any proposals, and to specify labour friendly technologies and/or methods where appropriate.

## **54. Sureties for Due performance**

Obtaining sureties (guarantees) from financial institutions is one of the major obstacles preventing emerging businesses from participating in Local Government Procurement. The value of the sureties required by the

Merafong City Local Municipality has therefore been reduced, or waived altogether, in accordance with the class (value) of the contract.

The sureties required for each class of contract are as follows:

- Micro waived (that is, no surety is required)
- Minor (under R 1 500 000) 2.5% of the tender sum
- Major (over R 1 500 000) 5% of the tender sum

Sureties in respect of the procurement of goods and services will not generally be called for, but where required, will be in accordance with the limits described above.

## **55. Retention**

(1) Having a large percentage of the value of work carried out withheld as retention, presents most contractors with serious cash flow problems, especially in the case of the higher value Major contracts. In order therefore, to lessen the impact of retention monies withheld and to assist less established contractors in the execution of a contract, retention, on Major contracts only, could be limited to 5% of the tender sum. In order however, to protect the Merafong City Local Municipality's interests on Minor contracts, where the value of the surety required has been reduced, or even waived, the usual 10% retention shall apply. The value of retention deducted could therefore be as follows:

- Micro and Minor: 10% of the value of work carried out with no limit, reducing to 5% for the duration of the maintenance period.
- Major: 10 % of the value of the work carried out, up to a limit of 5% of the tender sum, with no reduction for the duration of the maintenance period.

(2) Retention in respect of the procurement of goods and services will not generally be called for, but where required, could be in accordance with the limits described above.

(3) Financial guarantees may be submitted in lieu of retention.

## **56. Payment Terms**

Payments to SMMEs/HDIs will be made within 14 days of invoice or statement. Other payments will be made within 30 days in terms of the MFMA.

(In order to qualify for more frequent or earlier payments, a contractor must be classified as a SMME or EME business).

## **57. Evaluation of tenders.**

- (1) A municipality must indicate in the invitation to submit a tender if that tender will be evaluated on functionality.
- (2) The evaluation criteria for measuring functionality must be objective. When evaluating tenders on functionality, the-
  - (a) evaluation criteria for measuring functionality;
  - (b) weight of each criterion;
  - (c) applicable values; and
  - (d) Minimum qualifying score for functionality must be clearly specified in the invitation to submit a tender.
- (4) No tender must be regarded as an acceptable tender if it fails to achieve the minimum qualifying score for functionality as indicated in the tender invitation.
- (5) Tenders that have achieved the minimum qualification score for functionality must be evaluated further in terms of the preference point systems prescribed in regulations 5 and 6 of the Preferential Procurement Regulations.

### **The 80/20 preference point system for acquisition of services, works or goods up to a Rand value of **R50 million****

- (1) (a) The following formula must be used to calculate the points for price in respect of tenders (including price quotations) with a Rand

value equal to, or above R30 000 and up to a Rand value of R50 000 000 (all applicable taxes included):

$$Ps = 80 \times \left(1 - \frac{Pt - Pmin}{Pmin}\right)$$

Where

Ps = Points scored for comparative price of tender or offer under consideration;

Pt = Comparative price of tender or offer under consideration;  
and

Pmin = Comparative price of lowest acceptable tender or offer.

(b) The municipality may apply the formula in paragraph (a) for price quotations with a value less than R 30 000, if and when appropriate:

- (2) Subject to sub-regulation (3), points must be awarded to a tenderer for attaining the B-BBEE status level of contributor in accordance with the table below.

B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

- (3) A maximum of 20 points may be allocated in accordance with sub-regulation (2) of the Preferential Procurement Regulations.

- (4) The points scored by a tenderer in respect of B-BBEE contribution contemplated in sub-regulation (2) must be added to the points scored for price as calculated in accordance with sub-regulation (1) of the Preferential Procurement Regulations.



- (5) Subject to regulation 7 of the Preferential Procurement Regulations, the contract must be awarded to the tenderer who scores the highest total number of points.

**The 90/10 preference point system for acquisition of services, works or goods with a Rand value above R50 million**

- (1) The following formula must be used to calculate the points for price in respect of tenders with a Rand value above R50 000 000. (all applicable taxes included):

$$P_s = \frac{90 \times (1 - \frac{P_t - P_{min}}{P_{min}})}{\quad} \quad \text{Where:}$$

$P_s$  = Points scored for comparative price of tender or offer under consideration;

$P_t$  = Comparative price of tender or offer under consideration; and

$P_{min}$  = Comparative price of lowest acceptable tender or offer.

- (2) Subject to sub-regulation (3), points must be awarded to a tenderer for attaining their B-BBEE status level of contributor in accordance with the table below:

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

- (3) A maximum of 10 points may be allocated in accordance with sub-regulation (2) of the Preferential Procurement Regulations.
- (4) The points scored by a tenderer in respect of the level of BBEE contribution contemplated in sub-regulation (2) must be added to

the points scored for price as calculated in accordance with sub-regulation (1) of the Preferential Procurement Regulations.

- (5) Subject to regulation 7, the contract must be awarded to the tenderer who scores the highest total number of points.
- (6) the bidder will lose the BBBEE points if the company intent to sub-contract 25% or more of the value of the tender to a Company whose BBBEE level is higher than his.

### **Award of contracts to tenderers not scoring the highest number of points**

- (1) A contract may be awarded to a tenderer that did not score the highest total number of points, only in accordance with section 2 (1) (f) of the PPPF Act.

### **Cancellation and re-invitation of tenders**

- (1) (a) In the event that, in the application of the 80/20 preference point system as stipulated in the tender documents, all tenders received exceed the estimated Rand value of R50 000 000, the tender invitation must be cancelled.  
(b) If one or more of the acceptable tenders received are within the prescribed threshold of R50 000 000, all tenders received must be evaluated on the 80/20 preference point system.
- (2) (a) In the event that, in the application of the 90/10 preference point system as stipulated in the tender documents, all tenders received are equal to, or below R50 000 000, the tender must be cancelled.  
(b) If one or more of the acceptable tenders received are above the prescribed threshold of R50 000 000, all tenders received must be evaluated on the 90/10 preference point system.
- (3) The municipality which has cancelled a tender invitation as contemplated in sub-regulations (1)(a) and (2)(a) must re-invite tenders and must, in the tender documents, stipulate the correct preference point system to be applied.
- (4) The municipality may, prior to the award of a tender, cancel a tender if-

- (a) due to changed circumstances, there is no longer a need for the services, works or goods requested; or
  - (b) funds are no longer available to cover the total envisaged expenditure;
- or
- (c) no acceptable tenders are received.
- (5) The decision to cancel a tender in terms of sub-regulation (4) must be published in the Government Tender Bulletin or the media in which the original tender invitation was advertised.

### **58. Broad-Based Black Economic Empowerment Status Level Certificates**

(1) Tenderers with annual total revenue of R10 million or less qualify as Exempted Micro Enterprises (EMEs) in terms of the Broad-Based Black Economic Empowerment Act, and must submit an Affidavit certificate signed by the Commissioner of Oath to score full points of BBBEE during the evaluation process.

(2) Tenderers with total revenue from R10 million to R50 million (QSE) and above must submit their certified copy or original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating and or by a registered auditor, accounting officer (as contemplated in section 60(4) of the Close Corporation Act, 1984 (Act No. 69 of 1984)) or an accredited verification agency.

(3) The submission of such certificates must comply with the requirements of instructions and guidelines issued by the National Treasury and be in accordance with notices published by the Department of Trade and Industry in the Government Gazette.

(4) The B-BBEE status level attained by the tenderer must be used to determine the number of points contemplated in regulations 5 (2) and 6 (2).

#### **Pre-Qualification criteria for Preferential Procurement**

If an organ of state decides to apply pre-qualifying criteria to advance certain designated groups, that organ must advertise the tender with a specific

tendering condition that only one or more of the following tenderers may respond-

- a) A tender having a stipulated minimum B-BBEE status level of contributor;
  - b) An EME or QSE;
  - c) A tender 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 owned by black people living in rural or underdeveloped areas or townships;
    - (vi) a corporative which is 51% owned by black people
    - (vii) an EME or QSE which is at 51 % owned by black people who are military veterans;
    - (viii) an EME or QSE
2. a tender that fails to meet the pre- qualifying criteria stipulated in the tender documents is an unacceptable tender

#### **Sub-contracting after award of tender.**

- (1) A person awarded a contract may only enter into a subcontracting arrangement with the approval of the Municipality or organ of state.
- (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 capacity and ability to execute the subcontract.

#### **Conditions**

- (1) Only a tenderer who has completed and signed the declaration part of the tender documentation may be considered.
- (2) A municipality must, when calculating comparative prices, take into account any discounts which have been offered unconditionally.

(3) A discount which has been offered conditionally must, despite not being taken into account for evaluation purposes, be implemented when payment is effected.

(4) Points scored must be rounded off to the nearest 2 decimal places.

(5) (a) In the event that two or more tenders have scored equal total points, the successful tender must 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 tenders have scored equal points including equal preference points for B-BBEE, the successful tender must be the one scoring the highest score for functionality.

(c) Should two or more tenders be equal in all respects, the award shall be decided by the drawing of lots.

(6) A trust, consortium or joint venture will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.

(7) A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate tender.

(8) A person must not be awarded points for B-BBEE status level if it is indicated in the tender documents that such a tenderer 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 tenderer qualifies for, unless the intended sub-contractor is an exempted micro enterprise that has the capability and ability to execute the sub-contracting.

(9) A person awarded a contract **must subcontract certain percentage of the value of the contract (if the tender is ear-marked for sub-contracting) in the Procurement Plan to any local enterprise(s) who registered in the local database and CSD, and meet the requirement of locality.**

(10) A person awarded a contract in relation to a designated sector, may not sub-contract 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.

(11) When a municipality is in need of a service provided by only tertiary institutions, such services must be procured through a tendering process from the identified tertiary institutions.

(12) Tertiary institutions referred to in sub-regulation (11) will be required to submit their B-BBEE status in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

(13) (a) Should a 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 must be done by means of a tendering process;

(b) Public entities will be required to submit their B-BBEE status in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

### **Declarations**

A tender must, in the manner stipulated in the tender document, declare that-

- (a) the information provided is true and correct;
- (b) the signatory to the tender document is duly authorized; and
- (c) documentary proof regarding any tendering issue will, when required, be submitted to the satisfaction of the relevant municipality.

### **Remedies**

(1) A municipality must, upon detecting that-

- (a) the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis;
- (b) or any of the conditions of the contract have not been fulfilled, act against the tenderer or person awarded the contract.

(2) A municipality may, in addition to any other remedy it may have against the person contemplated in sub-regulations (1)-

- (a) disqualify the person from the tendering process;
- (b) recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct;

(c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;

(d) restrict the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any municipality for a period not exceeding 10 years, after the audialterampartem (hear the other side) rule has been applied; and

(e) forward the matter for criminal prosecution.

### **59. Commencement**

This policy takes effect on the date on which the Council adopts it.

### **60. Authority**

<b>Ownership &amp; Maintenance Manager:</b>	<b>Manager: Supply Chain Management</b>
<b>Formulation Policy:</b>	<b>Chief Financial Officer</b>
<b>Authorisation Policy:</b>	<b>Council</b>
<b>DATE OF TABLING THE POLICY:</b>	<b>JANUARY 2018</b>

## **ANNEXURE “A”**

### **SECTION 1: PREFERENTIAL PROCUREMENT POLICY FRAMEWORK** **ACT NO 5.0F 2000**

The municipality must determine a preferential procurement policy.

This policy must be implemented within a framework, which follows the following preference point system:

- for contracts with a rand value above a prescribed amount, a maximum of 10 points is allocated for specific goals as contemplated below, provided that the lowest acceptable tender scores 90 points for price;
- for contracts with a rand value equal to or below a prescribed amount, a maximum of 20 points is allocated for specific goals as contemplated below, provided that the lowest acceptable tender scores 80 points for price.

Other acceptable tenders that are higher in price must score fewer points, on a pro-rata basis, calculated on their tender prices in relation to the lowest acceptable tender, in accordance with the prescribed formula.

The specific goals set by the municipality for preferential procurement must include contracting with persons, or categories of persons, who have been historically disadvantaged by unfair discrimination on the basis of race, gender or disability.



The specific goals of the policy must further include the implementation of programmes of the reconstruction and development programme, as published in Government Gazette no. 16085 dated 23 November 1994.

Any specific goals for which a point is awarded must be clearly specified in the invitation to submit tenders. The municipality must award its contract to the tenderer who scores the higher points and if not be able to produce objective criteria in addition to those contemplated above to justify the award to another tenderer. The specific goals determined by the municipality for its preferential procurement policy must be measurable, quantifiable and monitored for compliance.

## **SECTION 2: BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT NO. 53 OF 2003**

The Minister of trade and Industry may by notice in the gazette issue codes of good practice on black economic empowerment that may include (inter alia) the following:

- further interpretation and definition of broad based black economic empowerment and the interpretation and definition of different categories of black empowerment entities;
- qualification criteria for preferential purposes for procurement and other economic activities;
- indicators to measure broad based black economic empowerment; and
- the weighting to be attached to broad based black economic empowerment indicators as referred to above.

Every organ of state and public entity must take into account, and as far as it may be reasonably possible, apply any relevant code of good practice issued in terms of the present Act in:

- determining qualification criteria for the issuing of licences, concessions or other authorizations in terms of any laws;
- developing and implementing a preferential procurement policy;
- determining qualification criteria for the sale of state-owned enterprises; and

- developing criteria for entering into partnerships with the private sector.
- The Minister must also issue a strategy for broad based black economic empowerment. This strategy must:
- provide for an integrated, co-ordinated and uniform approach to broad based black economic empowerment by all organs of state, public entities,
  - the private sector, non-governmental organisations, local communities and other stakeholders,
  - develop a plan for financing broad based black economic empowerment; and
  - provide a system for organs of state, public entities and other enterprises to prepare broad based black economic empowerment plans and to report on compliance with those plans.

### **SECTION 3: LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT (ACT NO. 56) 2003**

#### ***SECTION 14: DISPOSAL OF CAPITAL ASSETS***

- 1) A 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 a capital asset other than one contemplated in subsection 1), but only after the municipal council, in 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 service; 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) A decision by a municipal council that a specific capital asset is not needed to provide the minimum level of basic municipal services, may not be reversed by the municipality after that asset has been sold, transferred or otherwise disposed of.

- 4) A municipal council may delegate to the accounting officer of the municipality its power to make the determinations referred to in subsection 2) a) and b) in respect of moveable capital assets below a value determined by the council.
- 5) Any transfer of ownership of a capital asset in terms of subsection 2) or 4) must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of section 111.

### **SECTION 19: CAPITAL PROJECTS**

- 1) A municipality may spend money on a capital project only if-
  - a) The money for the project, excluding the cost of feasibility studies conducted by and behalf of the municipality, has been appropriated in the capital budget referred to in section 17 (2);
  - b) The project, including the total cost, has been approved by council
  - c) Section 33 has been complied with, to the extent that section may be applicable to the project; and
  - d) The sources of funding have been considered, are available and have not been committed for other purposes.
- 2) Before approving a capital project in terms of subsection 1) b), the council of a municipality must consider-
  - a) The projected cost covering all financial years until the project is operational; and
  - b) The future operational costs and revenue on the project, including municipal tax and tariff implications.

A municipal council may in terms of subsection 1) b) approve capital projects below a prescribed value either individually or as part of a consolidated capital programme.

### **SECTION 33: CONTRACTS HAVING FUTURE BUDGETARY IMPLICATIONS**

- 1) A municipality may enter into a contract which will impose financial obligations on the municipality beyond a financial year, but if the contract will impose financial obligations on the municipality beyond the three years covered in the annual budget for that financial year, it may do so only if-
  - a) The accounting officer, at least 60 days before the meeting of the municipal council at which the contract is to be approved-
    - i) Has in accordance with section 21A of the Municipal Systems Act –
      - (a) Made public the draft contract and an information statement summarising the municipality’s obligations in terms of the proposed contract; and
      - (b) Invited the local community and other interested persons to submit to the municipality comments or representations in respect of the proposed contract; and
    - ii) Has solicited the views and recommendations of-
      - (a) The National Treasury and the relevant provincial treasury
      - (b) The national department responsible for local government; and
      - (c) The contract involves the provision of water, sanitation, electricity, or any other service as may be prescribed, the responsible national department
  - b) The municipal council has taken into account-
    - i) The municipality’s projected financial obligations in terms of the proposed contract for each financial year covered by the contract;
    - ii) The impact of those financial obligations on the municipality’s future municipal tariffs and revenue;
    - iii) Any comments or representations on the proposed contracts received from the local community and other interested persons
    - iv) Any written views and recommendations on the proposed contract by National Treasury, the relevant provincial treasury, the national department responsible for local government and any national department referred to in paragraph (a) (ii) (c); and
  - c) The municipal council has adopted a resolution in which-

- i) It determines that the municipality will secure a significant capital investment or will derive a significant financial economic of financial benefit from the contract;
  - ii) It approves the entire contract exactly as it is to be executed; and it authorises the accounting officer to sign the contract on behalf of the municipality.
- 2) The process set out in subsection (1) does not apply to-
  - a) Contracts for long-term debt regulated in terms of section 46 (3);
  - b) Employment contracts; or
  - c) Contracts-
    - i) For categories of goods as may be prescribed; or
    - ii) In terms of which the financial obligation on the municipality is below-
      - (a) A prescribed value; or
      - (b) A prescribed percentage of the municipality's approved budget for the year in which the contract is concluded
- 3) (a) All contracts referred to in subsection (1) and all other contracts that impose a financial obligation on the municipality-
  - i) must be made available in their entirety to the municipal council: and
  - ii) may not be withheld from public scrutiny except as provided for in terms of the Promotion of Access of Information Act 2000 (Act No. 2 of 2000).
  - b) Paragraph a) (1) does not apply to contracts in respect of which the financial obligation on the municipality is below a prescribed value.
- 4) This section may not be read as exempting the municipality from the provisions of Chapter 11 to the extent that those provisions are applicable in a particular case.

### ***SECTION 110: APPLICATION OF THIS PART***

Chapter 11 Part 1, which deal with supply chain management, applies:

- to the procurement, by a municipality or municipal entity of goods and services;

- the disposal by a municipality or municipal entity of goods no longer needed;
- The selection of contractors to provide assistance in the provision of municipal services otherwise than in the circumstances envisaged in Chapter 8 of the Municipal Systems Act; and
- the selection of external mechanisms as referred in Section 80 of the Municipal Systems Act for the provision of municipal services in the Circumstances contemplated.

Except where specified, this part of the Act does not apply if a municipality contracts with another municipality for:

- the provision of goods and services to the municipality
- the provision of a municipal service or assistance in the provision of a Municipal service; and
- the procurement of goods and services under a contract secured by such other organ of state, provided that the relevant supplier has agreed to such procurement.

### ***SECTION 111: SUPPLY CHAIN MANAGEMENT POLICY***

Each municipality and municipal entity must have and implement a supply chain management policy, which gives effect to the provisions of this part of the present Act.

### **SECTION 112: SUPPLY CHAIN MANAGEMENT POLICY TO COMPLY WITH PRESCRIBED FRAMEWORK**

The supply chain management policy of a municipality or municipal entity must be fair, equitable, transparent, competitive and cost effective, and comply with a prescribed regulatory framework for municipal supply chain management. The policy must cover at least the following:

- the range of supply chain management processes that municipalities and municipal entities may use, including tenders, quotations, auctions and other types or competitive bidding;

- When a municipality or municipal entity may or must use a particular type of process;
- the procedures and mechanisms applicable to each type of process;
- the procedures and mechanisms for more flexible processes where the value of a contract is below a prescribed amount;
- open and transparent pro-qualification processes for tenders or other bids;
- competitive bidding processes in which only pre-qualified persons may participate,
- bid documentation, advertising of and invitation for contracts;
- procedures and mechanisms for:
  - o the opening, registering and recording of bids in the presence of interested persons;
  - o the evaluation of bids to ensure best value for money;
  - o negotiating the final terms of contracts; and
  - o the approval of bids;
- screening processes and security clearances for prospective contractors on tenders or other bids above a prescribed value;
- compulsory disclosure of any conflicts of interests prospective contractors may have in specific tenders, and the exclusion of such prospective contractors from those tenders or bids;
- participation in the supply chain management system of persons who are not officials of the municipality or municipal entity;
- the barring of persons from participating in tendering or other bidding processes, including persons:
  - o who were convicted for fraud or corruption during the past 5 years;
  - o who wilfully neglected, reneged or failed to comply with a government contract during the past 5 years; or
  - o whose tax matters are not clearer by the South African Revenue Services;
- measures for:
  - o combating fraud, corruption, favouritism and unfair and irregular practices in municipal supply chain management; and

- o promoting the ethics of officials and other role players involved in municipal supply chain management;
- o the invalidation of recommendations or decisions that were unlawfully or improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by:
  - Councillors in contravention of item 5 or 6 of the code of conduct for councillors;
  - Municipal officials in contravention of item 4 or 5 of the code of conduct for municipal staff members;
- the procurement of goods and services by municipalities or municipal entities through contracts procured by other organs of state,
- contract management and dispute settling procedures: and
- the delegation of municipal supply chain management powers and duties including to officials.

### ***SECTION 113: UNSOLICITED BIDS***

A municipality or municipal entity is not obliged to consider an unsolicited bid received outside its normal bidding process.

If a municipality or municipal entity does decide to consider an unsolicited bid it may do so only in accordance with the prescribed framework.

### **SECTION 114: APPROVAL OF TENDERS NOT RECOMMENDED**

If a tender other than the one recommended in the normal course of implementing the supply chain management policy is approved, the accounting officer of the municipality or municipal entity must, in writing, notify the Auditor-General, the provincial treasury and the national treasury, and in the case of a municipal entity, also the parent municipality, of the reasons for deviating from such recommendation.

The above requirements do not apply if a different tender is approved purely to rectify an irregularity.



## **SECTION 115: IMPLEMENTATION OF SYSTEM.**

The accounting officer of a municipality or municipal entity must implement the supply chain management policy, and must take all reasonable steps to ensure that proper mechanisms and separation of duties in the supply chain management system are in place to minimise the likelihood of fraud, corruption, favouritism and unfair and irregular practices. No person may impede the accounting officer in fulfilling this responsibility.

## ***SECTION 116: CONTRACTS AND CONTRACT MANAGEMENT***

A contract or agreement procured through the supply chain management system must be in writing, and must stipulate the terms and conditions of the contract or agreement, which must include provisions which allow for:

- the termination of the contract or agreement in the case of non or under performance;
- dispute resolution mechanisms to settle disputes between the parties; and
- a periodic review of the contract or agreement once every 3 years in the case of a contract or agreement for longer than 3 years.

The accounting officer must:

- take all reasonable steps to ensure that a contract or agreement procured through the supply chain management supply is properly enforced;
- monitor on a monthly basis the performance of the contractor under the contract or agreement;
- establish capacity in the administration to assist the accounting officer in carrying out the foregoing responsibilities. and in overseeing the day-to-day management of contractors and agreements; and
- regularly report to the council or the board of directors, as the use may be, on the management of the contract or agreement and the performance of the contractor.

A contract or agreement procured through the supply chain management policy may be amended by the parties, but only after:

- the reasons for the proposed amendment have been tabled in the council of the municipality, or, in the case of the municipal entity, in the council of its parent municipality; and
- the local community has been given reasonable notice of the intention to amend the contract or agreement, and has been invited to submit representations to the municipality or municipal entity.

**SECTION 117: COUNCILLORS BARRED FROM SERVING ON MUNICIPAL TENDER COMMITTEES**

No councillor of any municipality may be a member of a municipal bid committee or any other committee evaluating or approving tenders. Quotations, contractors or other bids, nor attend any such meeting as an observer.

***SECTION 118: INTERFERENCE***

No person may interfere with the supply chain management system of the municipality or municipal entity, or amend or tamper with any tenders, quotations, contractors or bids after their submission.

**SECTION 119: COMPETENCY LEVELS OF OFFICIALS INVOLVED IN MUNICIPAL SUPPLY CHAIN MANAGEMENT**

The accounting officer and all other officials of the municipality or municipal entity involved in the implementation of the supply chain management policy must meet the prescribed competency levels. The municipality or municipal entity must provide resources or opportunities for the relevant training of the officials referred to in order to ensure that the prescribed competency levels are met.

## ANNEXURE “B”

### THE NATIONAL TREASURY



### MUNICIPALITY / MUNICIPAL ENTITY

#### CODE OF CONDUCT FOR SUPPLY CHAIN MANAGEMENT PRACTITIONERS AND OTHER ROLE PLAYERS

In accordance with regulation 46(4) and 46(5) of the Local Government Municipal Finance Management Act, 2003: Municipal Supply Chain Management Regulations, the supply chain management policy of a municipality or municipal entity is required take into account the National Treasury's code of conduct for supply chain management practitioners and other role players. Alternatively a municipality or municipal entity may adopt the National Treasury code of conduct. When adopted, such code of conduct becomes binding on all officials and other role players involved in the implementation of the supply chain management policy of the municipality or municipal entity.

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*

- 1.1 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, implying 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 gratuities from any person, or provider/contractor for themselves, their family or their friends.

- 1.2 Officials and other role players involved in SCM should ensure that they perform their duties efficiently, effectively and with integrity, in accordance with the relevant legislation, policies and guidelines. They should ensure that public resources are administered responsibly.
- 1.3 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. They should not abuse the power and authority vested in them.

## 2 *Conflict of interest*

2.1 An official or other role player involved with supply chain management –

- (a) must treat all providers and potential providers equitably;
- (b) may not use his or 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 raise 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 them in the performance of their official duties; and
- (i) Should not take improper advantage of their previous office after leaving their official position.

## 3 *Accountability*

- 3.1 Practitioners are accountable for their decisions and actions to the public.
- 3.2 Practitioners should use public property scrupulously.
- 3.3 Only accounting officers or their delegates have the authority to commit the to any transaction for the procurement of goods and / or services.
- 3.4 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 into such a system for any reason whatsoever.
- 3.5 Practitioners must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system.

3.6 Practitioners must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including

- (i) Any alleged fraud, corruption, favouritism 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.

3.7 Any declarations 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*

4.1 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 information only if it is in the public interest to do so.

#### 5 *Confidentiality*

5.1 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 on the relevant bidder's / contractors personal rights.

5.2 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 separation from service.

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

6.1 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.

6.2. 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.

6.3 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.

6.4 No person should-

6.4.1 interfere with the supply chain management system of the municipality; or

6.4.2 Amend or tamper with any price quotation / bid after its submission.

## 7 *Combative Practices*

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

- (i) Suggestions to fictitious lower quotations;
- (ii) Reference to non-existent competition;
- (iii) Exploiting errors in price quotations / bids;
- (iv) Soliciting price quotations / bids from bidders / contractors whose names appear on the Register for Tender Defaulters.

## ANNEXURE “C”

# GUIDELINES FOR MUNICIPAL BID ADJUDICATION COMMITTEES

## MUNICIPAL SUPPLY CHAIN MANAGEMENT

### 1 Introduction

These guidelines explain the mandate, role, function, composition, duties, meeting procedures and conduct of Municipal Supply Chain Management (SCM) Bid Adjudication Committees. These guidelines are supplementary to the Code of Conduct required by section 69 of the Municipal Systems Act as well as the Code of Conduct for Supply Chain Management Practitioners and other role players, required by regulation 46 of the Municipal Supply Chain Management Regulations and issued on 25 August 2005 as part of MFMA Circular number 22.

It is also important to read this guide in conjunction with the “*Supply Chain Management: A Guide for Accounting Officers of Municipalities and Municipal Entities – October 2005*” available on the National Treasury website [www.treasury.gov.za/mfma/guidelines](http://www.treasury.gov.za/mfma/guidelines)

### 2 Mandate, role and function of the Bid Adjudication Committee

Sections 79 and 106 of the MFMA empower accounting officers to delegate powers or duties to an official to assist the accounting officer in ensuring the achievement of the aims of a specific provision of the MFMA.

Chapter 11 of the MFMA prescribes that municipalities/ municipal entities must have and maintain a supply chain management (SCM) system that is fair, equitable, transparent, competitive and cost-effective.

Regulation 26 of the Municipal SCM Regulations stipulates that a municipality's/municipal entity's SCM system must provide for a committee system for competitive bids consisting of at least a bid specification, bid evaluation and bid adjudication committee.

Regulation 29 further stipulates that the Bid Adjudication Committee must consider the recommendations/reports of the Bid Evaluation Committee and, depending on the delegated powers, make:

- a final award; or
- a recommendation to the accounting officer to make a final award; or
- another recommendation to the accounting officer on how to proceed with the relevant procurement.

The Bid Adjudication Committee must ensure that:

- all necessary bid documents have been submitted;
- disqualifications are justified and that valid and accountable reasons / motivations were furnished for passing over of bids;
- scoring has been fair, consistent and correctly calculated and applied; and
- declarations of interest have been taken cognizance of.

If a bid other than the one recommended by the Bid Evaluation Committee is approved by the Bid Adjudication Committee, the accounting officer, or a senior official delegated by the accounting officer, must first be notified. The accounting officer or the delegated official may, after consideration of the reasons for the deviation, ratify or reject the decision of the Bid Adjudication Committee. If the decision of the Bid Adjudication Committee to approve a bid other than the one recommended by the Bid Evaluation Committee is ratified, the Auditor-General, the relevant provincial treasury and the National Treasury and, in the case of a municipal entity, the parent municipality must be notified of the reasons for deviating from such recommendation.

The accounting officer or his/her delegate may at any stage refer any recommendation made by the Bid Evaluation Committee or the Bid Adjudication Committee back to the respective committee for reconsideration.

The Bid Adjudication Committee must also consider and rule on all recommendations/reports regarding the amendment, variation, extension, cancellation or transfer of contracts awarded.

The Bid Adjudication Committee may also, if and when required to do so, consider for approval the recommendations of the Bid Specification Committee in order to ensure that:

- the need forms part of the strategic goals and objectives contained in the municipality's Integrated Development Plan (IDP)
- a proper and unbiased specification is compiled for the specific requirement;
- proper Terms of Reference are drawn up for the service required clearly indicating the scope of the requirement, the ratio between price and functionality, the evaluation criteria as well as their weights and values;
- strategic sourcing principles were applied and that the market was properly researched and analyzed (refer to pages 22, 25 and 26 in the *Supply Chain*

*Management: A Guide for Accounting Officers of Municipalities and Municipal Entities - October 2005*);

- the necessary funds are available in the approved budget;
- if and when applicable, in addition to the General Conditions of Contract, appropriate Special Requirements and Conditions of Contract are specified;
- the preference point system and appropriate goals are identified and points allocated for these goals, consistent with the requirements of the Preferential Procurement Regulations; and
- where appropriate, ranges have been set (indicating breakdown of the points / percentages as provided for in the relevant sliding scales for the selected specified goals).

In order to meet their obligations, committee members must be familiar with and adhere to all relevant SCM legislation, policy, guides and circulars.

The integrity of supply chain practitioners must never be compromised and the highest level of professional competence must be maintained. Furthermore, courteous conduct is expected of all committee members.

Each member as well as all officials rendering administrative support must sign an *Attendance Register and Undertaking of Confidentiality and Impartiality* declaration form at each Bid Adjudication Committee meeting (see Appendix 1). Members are to declare that they will:

- accept the confidentiality of the meeting;
- not make known anything regarding the meeting, unless officially authorized; and
- not purposefully favour or prejudice anybody.

### **3 Composition of the Bid Adjudication Committee and the appointment of members**

Bid Adjudication Committees are appointed in writing by the accounting officer and the accounting officer will determine the term of office for members. Such a committee must consist of at least four senior managers constituted as follows:

**Chairperson:** where possible, the chairperson should be the Chief Financial Officer.

**Vice chairperson:** the vice-chairperson should be a senior manager (as referred by section 56 of the Municipal Systems Act) or an official who reports directly to a senior manager.

**Other Members:** the committee should be composed of cross-functional teams comprising senior officials of whom at least one must be a supply chain practitioner. Where considered necessary, additional officials or advisors may be co-opted on account of their specialized knowledge. Such co-opted officials or advisors may not form part of the final decision-making process.

**Secretariat:** an official from the municipality's / municipal entity's bid administration section should be made available to act as secretary, as required.



Quorum: the Bid Adjudication Committee cannot undertake business without a quorum present, consisting of half plus one of its total memberships with voting power (rounded to the nearest whole number). For example, if there are four members in total, the quorum required is three members.

Seconded: for the purpose of continuity and not to delay meetings, the accounting officer may also appoint seconded to temporarily replace members that are absent from meetings due to illness, leave, etc. The accounting officer will also decide whether or not such seconded will have the same powers as members.

## **4 Duties and powers of the various committee members**

### **4.1 Chairperson**

The chairperson:

- has a casting vote as well as a deliberate vote;
- retains all his/her rights as a member;
- may adjourn a meeting;
- may rule on points of order which will be final;
- may withdraw any proposal or other matters under discussion before it is put to the vote; and
- convene extraordinary committee meetings on request.

The chairperson shall:

- maintain order during a meeting and ensure that business is conducted in an orderly manner;
- before opening a meeting, ensure that a quorum is present;
- protect the rights of every member;
- vacate his / her seat to the vice chairperson, should he/she wish to partake in a discussion in a partial manner;
- ensure all members have opportunity to speak on any matter before the committee;
- deal with items in sequence of the agenda;
- ensure that members know exactly what they are required to vote on;
- ensure that only one member holds the floor at any one time;
- provide guidance by directing the meeting, but shall not dominate;
- conduct meetings in a formal manner; and
- formulate clearly the decisions to be minuted and sign and approve the minutes after they have been verified by the committee as a true and correct record of the meeting.

### **4.2 Vice-chairperson**

The vice-chairperson has the same powers and duties as those of members and in addition, where necessary, shall –

- in the absence of the chairperson, preside as chairperson; and
- take the seat of and act as chairperson, should the chairperson have a conflict of interest in any matter being considered.

In the event that both the chairperson and vice-chairperson are absent from a meeting, the members present may elect one of their members to preside at such meeting.

#### 4.3 Secretary

The secretary shall –

- in conjunction with the chairperson/ vice chairperson compile an agenda and determine dates of meetings;
- give notice of proposed meetings to committee members;
- process and distribute all submissions/reports together with the agenda to committee members at least three working days before the actual meeting takes place;
- minute all decisions taken at meetings;
- adhere strictly to the stipulations of the National Archives of South Africa Act, No. 43 of 1996 and accompanying directives;
- ensure that the proceedings at meetings are recorded appropriately (e.g. tape);
- give written feedback of all decisions taken by the committee; and
- be responsible for all the administrative tasks of the committee.

#### 4.4 Members

Members of the Committee shall –

- be fully conversant with the powers and limitations of the committee as well as all directives pertaining to supply chain management, including the relevant sections of the Constitution, Municipal Finance Management Act and accompanying Regulations, Preferential Procurement Policy Framework Act and accompanying Regulations, Broad Based Black Economic Empowerment Act and its related strategy, all directives issued by the National Treasury / relevant provincial treasury as well as the delegated powers issued by the accounting officer and at all times act in accordance with above-mentioned legislation, regulations and procedures;
- apply their minds to matters at hand in order to take meaningful and accountable decisions and in the event of doubt or uncertainty, to propose that matters be referred back for clarification;
- in advance, furnish a written apology when unable to attend a meeting;
- strive to be punctual for meetings and to stay for the duration of a meeting;
- prepare properly for each meeting by studying the agenda and submissions/reports;
- be familiar with meeting procedures in order to make a contribution in the correct manner; and
- refrain from repetition and duplication of contributions by other members.

Members have the right to –

- have advance knowledge of the agenda;
- submit proposals and participate in proceedings;
- vote; and
- have a dissenting voice and have the reasons thereof recorded.

#### 4.5 Co-opted members/advisors

Co-opted members/advisors have the same powers and duties as members, excluding the right to vote on any matter under discussion.

Members of the Bid Evaluation Committee may present their recommendations / reports to the Bid Adjudication Committee and clarify any issues but shall not have any voting powers.

#### 4.6 Observers

The chairperson may, on request, allow officials to attend a meeting as observers. Observers have no participation in the proceedings, except to advise the representative (member) or the committee if permitted by the chairperson. Observers should be cautioned to maintain the confidentiality of the discussions.

### **5. Meeting procedures**

#### 5.1 Notice of meetings

The agenda of a meeting serves as the programme of the meeting and unless the committee decides otherwise, the items and sequence may not be changed during the meeting.

In order to afford members the opportunity to prepare for the meeting, the agenda shall be made available to members at least three working days before the actual meeting.

#### 5.2 Submissions/reports to the Committee

All submissions/reports to the Committee must be in writing, substantiated and channelled through the Bid Specification Committee or Bid Evaluation Committee.

#### 5.3 Minutes

The minutes will be the written record reflecting in a brief, clear and impartial manner the decisions of the committee. The signed minutes will serve as proof of the decisions of the committee.

Should a member wish to have a specific matter other than a decision recorded, it must be specifically requested. A member's reasons for a dissenting voice must also be recorded.

Proceedings are also recorded (e.g. tape) to enable the secretary to prepare verbatim reports when required by a court of law. Further details on requirements for the recording of meetings can be found in the National Archives of South Africa Act, No. 43 of 1996 and accompanying directives.

#### 5.4 Attendance register and undertaking of confidentiality and impartiality

Members will be required to sign a combined *Attendance Register and Undertaking of Confidentiality and Impartiality* declaration at each meeting (see Appendix 1). This must be retained and form part of the committee minutes.

#### 5.5 Conflict of interest

Where a member of a Bid Adjudication Committee has a conflict of interest with any item to be considered by the committee, it is imperative that this be recorded in the minutes and the member vacates the meeting room prior to any discussion. An example minute could read as follows:

“[member’s name] declared an interest in the following item and vacated the meeting room at [insert exact time]

*Insert minutes of item under discussion showing resolution/decision of the committee accordingly*

At the conclusion of the discussion [member’s name] was invited to return to the meeting room at [insert exact time]”

#### 5.6 Gift register

The SCM Regulations stipulate that no official or other role player involved in SCM may accept any gift, reward, favour, hospitality or other benefit promised directly or indirectly, including to any close family member, partner or associate. Furthermore any official or other role player must declare any gift, reward, favour, hospitality or other benefit promised, offered or granted to that member or to a close family member, partner or associate of that member from suppliers or potential suppliers, irrespective of the value of such a gift.

Each declaration from a member of the committee should be recorded in the minutes of the committee and must be reported to the accounting officer for entry into the register which the accounting officer must keep for this purpose.

Further information on conflict of interest, gifts and the register is provided in regulation 46 of the Municipal Supply Chain Management Regulations.

#### 5.7 Chairperson

Each meeting will be presided over by the chairperson. In the absence of the chairperson, the vice-chairperson will preside as chairperson, in which case he/she will occupy the chair for the duration of the meeting, even if the chairperson should arrive during the course of the meeting.

Every member attending the meeting owes respect to the chairperson and may be removed if that person does not respect the authority of the chair.

## 5.8 Point of order

A member may speak on a point of order only if he/she is of the opinion that there has been a departure from the rules of order, e.g. an objection against improper language used, that a speaker has transgressed, etc.

## 6. Conduct of Committee Members

### 6.1 Rights and responsibilities of committee members

A member's conduct at the meeting must not infringe on the rights of others. The rules of conduct are based on mutual respect for the rights of each other and respect for the purpose of the meeting.

Members must accept that –

- the chairperson must be respected;
- the chairperson has the right to interrupt and ask a member to stop speaking if the address is repetitive or irrelevant to the matter under discussion;
- a member must stop speaking if ruled out of order by the chairperson;
- decisions are taken by general consensus or by a majority show of hands when a matter is decided upon by voting;
- once a decision has been taken it is final and not open for discussion unless additional information which was not available at the time of decision making can be produced;
- information and documentation are confidential;
- a member (including the chairperson or vice-chairperson) shall beforehand declare his/her interest regarding any matter serving before the Committee and the member will then excuse her/himself and vacate the meeting room during the discussion of that matter. No discussion by the member concerned will be allowed prior to the serving of that submission/report and such a member may not retain that specific submission/report. Any personal interest that may infringe, or might reasonably be deemed to infringe on a member's impartiality in any matter relevant to their duties must be recorded;
- outvoted members must abide by the majority decision of the Committee; and
- no communication should be made with a bidder/contractor by any member prior to or after any meeting.

**BID ADJUDICATION COMMITTEE  
Merafong City Local Municipality**

**ATTENDANCE REGISTER AND UNDERTAKING OF CONFIDENTIALITY AND IMPARTIALITY**

**MEETING NUMBER:**

**DATE:**

**I, the undersigned, hereby declare:**

- that all information, documentation and decisions regarding any matter before the committee are confidential and undertake not to make known anything in this regard**
- that I will treat all providers and potential providers equitably and will not purposefully favour or prejudice anybody**
- that I will make known details of any private or business interest which I, or any close family member, partner or associate may have in any proposed procurement or disposal process of, or in any award or contract and that I will immediately withdraw from participating in any manner whatsoever**

<b>NAME</b>	<b>DEPARTMENT / SECTION MUNICIPALITY</b>	<b>SIGNATURE</b>

