

MUNICIPALITY of BEAUFORT WEST

SUPPLY MANAGEMENT POLICY

1. INTRODUCTION

Statutory requirements

1.1

The Local Government: Municipal Finance Management Act, 2003¹, (the 'MFMA') requires the municipality to have and implement a supply chain management policy which gives effect to the provisions of Part 1 of Chapter 11 of the Act that deals with 'Supply chain management'.

1.2

The object of the MFMA is to secure sound and sustainable management of the fiscal and financial affairs of municipalities and municipal entities by establishing norms and standards and other requirements for inter alia 'supply chain management'.

1.3

The MFMA² requires further that the supply chain management policy of the municipality must be fair, equitable, transparent, competitive and cost-effective and comply with a prescribed regulatory framework for municipal supply chain management.

¹ Act of 2003

² s 112

Regulatory framework

1.4

The *regulatory framework* has been prescribed by the Minister³ in terms of Government Notice 868 of 2005⁴, titled: *Local Government: Municipal Finance Management Act, 2003 Municipal Supply Chain Management Regulations* (hereafter ‘the Regulations’)

1.5

The Regulations have been formulated in compliance with the following principles⁵-

- (a) the range of supply chain management processes that the municipality may use, including tenders, quotations, auctions and other types of competitive bidding;
- (b) when the municipality may or must use a particular type of process;
- (c) procedures and mechanisms for each type of process;
- (d) procedures and mechanisms for more flexible processes where the value of a contract is below a prescribed amount;
- (e) open and transparent pre-qualification processes for tenders or other bids;
- (f) competitive bidding processes in which only pre-qualified persons may participate;
- (g) bid documentation, advertising of and invitations for contracts;
- (h) procedures and mechanisms for-
 - (i) the opening, registering and recording of bids in the presence of interested persons;
 - (ii) the evaluation of bids to ensure best value for money;
 - (iii) negotiating the final terms of contracts; and
 - (iv) the approval of bids;
- (i) screening processes and security clearances for prospective contractors on tenders or other bids above a prescribed value;

³ “Minister” means the Cabinet member responsible for finance

⁴ Government Gazette No 27636 of 30 May 2005

⁵ prescribed by s 112 of the MFMA

- (j) 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;
- (k) participation in the supply chain management system of persons who are not officials of the municipality;
- (l) the barring of persons from participating in tendering or other bidding processes, including persons-
 - (i) who were convicted for fraud or corruption during the past five years;
 - (ii) who willfully neglected, reneged on or failed to comply with a government contract during the past five years; or
 - (iii) whose tax matters are not cleared by South African Revenue Service;
 - (iv) whose director has abused the supply chain management system of the municipality or municipality entity or has committed any improper conduct in relation to such system.
 - (v) has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corruption Activities Act (No 12 of 2004)
- (m) measures for-
 - (i) combating fraud, corruption, favouritism and unfair and irregular practices in municipal supply chain management; and
 - (ii) promoting ethics of officials and other role players involved in municipal supply chain management;
- (n) 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-
 - (i) councillors in contravention of item 5 or 6 of the Code of Conduct for Councillors set out in Schedule 1 of the Systems Act⁶; or
 - (ii) municipal officials in contravention of item 4 or 5 of the Code of Conduct for Municipal Staff Members set out in Schedule 2 of the Systems Act ;
- (o) the procurement of goods and services by the municipality through contracts procured by other organs of state;
- (p) contract management and dispute settling procedures; and

⁶ Local Government: Municipal Systems Act, No

- (q) the delegation of municipal supply chain management powers and duties, including to officials.

Aim of policy

1.6

This policy has been formulated in compliance with the provisions of the MFMA and the Regulations. The aim of this policy is to ensure sound, sustainable and accountable supply chain management within the municipality and furthermore -

- (a) to give effect to section 217 of the Constitution;
- (b) to ensure fairness, equity, transparency, competitiveness and cost-effectiveness;
- (c) to ensure compliance with any minimum norms and standards that the Minister may prescribe by regulation;
- (d) to ensure consistency with all other applicable legislation, including:
 - (i) Preferential Procurement Policy Framework Act, 2000⁷;
 - (ii) Broad-Based Black Economic Empowerment Act, 2003⁸; and
 - (iii) Construction Industry Development Board Act, 2000⁹.
- (e) not to undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
- (f) to ensure consistency with national economic policy concerning the promotion of investments and doing business with the public sector.

Policy is sole source

1.7

The Accounting Officer and authorised staff are not permitted to act otherwise than in accordance with this policy when -

- (a) procuring goods or services;

⁷ Act No. 5 of 2000

⁸ Act No. 53 of 2003

⁹ Act No. 38 of 2000

- (b) disposing of goods no longer needed;
- (c) selecting contractors to provide assistance in the provision of municipal services¹⁰; or
- (d) selecting external mechanisms¹¹ for the provision of municipal services.

Oversight role of council

1.8

Although the MFMA prohibits a councillor from being a member of a bid committee or any other committee evaluating or approving quotations, bids or tenders¹², the council has an oversight role to ensure that the accounting officer implements all supply chain management activities in accordance with this policy. For the purposes of such oversight the the Regulations require that the accounting officer must -

- (a) within 30 days of the end of each financial year, submit a report on the implementation of the policy to the council; and
- (b) whenever there are serious and material problems in the implementation of the policy, immediately submit a report to the council.

1.9

The accounting officer must, within 10 days of the end of each quarter¹³, submit a report on the implementation of the policy to the mayor and within 30 days of the end of each financial year, submit a report on the implementation of the policy to the council¹⁴.

¹⁰ Otherwise than in circumstances where Chapter 8 of the Systems Act applies.

¹¹ Referred to in s 80(1)(b) read with s. 83 of the Systems Act.

¹² s. 117 A councillor may not even attend any such meeting as an observer.

¹³ "quarter" means any of the following periods in a financial year:

- (a) 1 July to 30 September;
- (b) 1 October to 31 December;
- (c) 1 January to 31 March; or
- (d) 1 April to 30 June;

¹⁴ See reg 6

1.10

The accounting officer must make the above mentioned reports public¹⁵.

Implementation of policy

1.11

The accounting officer is responsible to implement the policy and 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.

1.12

The accounting officer must establish a supply chain management unit to implement the supply chain management policy.

1.13

A supply chain management unit must, where possible, operate under the direct supervision of the chief financial officer or an official to whom the chief financial officer has delegated this duty.

Interference

1.14

No person may-

- (a) interfere with the supply chain management system;
- (b) amend or tamper with any tenders, quotations, contracts or bids after their submission; or
- (c) impede the accounting officer in fulfilling this responsibility.

¹⁵

s 21A of the Systems Act requires-

- (a) displaying it at the municipality's head and satellite offices and libraries;
- (b) displaying it on the municipality's official website; and

Prohibition on persons to bid or be awarded a contract

1.15

Prohibitions to bid or to be awarded a contract with the municipality are placed on -

- (a) persons whose tax matters are not in order [1.15.1]; and
- (b) persons in the service of the state[1.15.2].

1.15.1 Prohibition on awards to persons whose tax matters are not in order¹⁶

1.15.1.1

No award above R15 000 may be made to a person whose tax matters have not been declared by the South African Revenue Service (SARS) to be in order.

1.15.1.2

The accounting officer must, before an award is made first check with SARS whether that person's tax matters are in order. If SARS do not respond within seven days such person's tax matters may for purposes of subregulation (1) be presumed to be in order.

1.15.2 Prohibition on awards to persons in the service of the state¹⁷

1.15.2.1

No award may be made to a person -

- (a) who is in the service of the state;

(c) by notifying the local community of the place, including the website address, where detailed particulars thereof can be obtained.

¹⁶ See reg 43

¹⁷ See reg 44

- (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) who is an advisor or consultant contracted with the municipality.

Ethical standards

1.16

The municipality developed the *Code of Ethical Standards*¹⁸ 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.

1.17

All supply chain management staff must adhere to this code as well as the Code of Conduct of Municipal Staff¹⁹

Inducements, rewards, gifts and favours to municipalities, municipal entities, officials and other role players²⁰

1.18

No person who is a provider or prospective provider of goods or services to the municipality or a recipient or prospective recipient of goods disposed or to be disposed of by a municipality, may either directly or through a representative or intermediary promise, offer or grant -

- (a) any inducement or reward to a councillor or an official of the municipality for or in connection with the award of a contract; or
- (b) any reward, gift, favour or hospitality to -
 - (i) any official of the municipality; or

¹⁸ annexed as Schedule 1

¹⁹ contained in Schedule 2 of the Systems Act and annexed as Schedule 2

²⁰ See reg 47

- (ii) any other role player involved in the implementation of the supply chain management policy of the municipality.

The accounting officer must promptly report any alleged contravention of paragraph (a) and (b) above 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.

Paragraphs (a) and (b) do not apply to gifts less than R350 in value.

Amendments to this policy

1.19

The accounting officer must at least annually review the implementation of the policy.

1.20

The accounting officer must when he or she considers it necessary, submit proposals for the amendment of the policy to the council

Municipal entities

1.21

A municipal entity established by the municipality must adopt and implement a supply chain management policy that is consistent with this policy²¹.

1.22

If a municipal entity's supply chain management policy is not consistent with this policy the municipality will take appropriate steps to ensure that consistency is achieved.

²¹ reg 2(2) of the Regulations

Supply chain management systems

1.23

This policy provides for the following supply chain management systems, details of which follows hereunder -

- (a) Demand management system
- (b) Acquisition management system
- (c) Logistics management system
- (d) Disposal management system
- (e) Risk management system
- (f) Performance management system

2. INTERPRETATION

Definitions

2.1

In this policy, unless the context indicates otherwise-

“acceptance of bid” means the award in writing of a contract to a bidder in response to his/her bid or price quotation, which award may be inclusive of any conditions;

“bid” means a written offer in response to an invitation to bid;

“bidder” means any person submitting a bid or a price quotation;

“closing time” means the time and day specified in the bid documents for the receipt of bids;

“Construction Industry Development Board Act” means the Construction Industry Development Board Act, Act No. 38 of 2000;

“contract” means the agreement which is concluded on acceptance of a bid;

“contractor” means the person whose bid has been accepted;

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

[Amended at a Special Council Meeting: 30 May 2012 : Item 1 (1.1)]

“MFMA” means the Local Government: Municipal Finance Management Act 56 of 2003;

“municipality” means the municipality of Beaufort West;

“person” includes a natural or juristic entity;

“policy” means this Supply Chain Management Policy as amended from time to time;

“quotation” or “quote” means a written or electronic offer in response to an invitation to submit a quotation;

“tender”/“tenderer” means bid/bidders in the context of construction works procurement; and

“unsolicited bid” means an offer submitted by any person at its own initiative without having been invited to do so.

2.2

All other terms used in this policy, unless the context otherwise requires, have the meaning assigned thereto in the Act and regulations

3. DEMAND MANAGEMENT SYSTEM

3.1

A demand management is an effective system to ensure that the resources required to support the strategic operational commitments of the municipality are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy the needs of the municipality.

3.2

Demand Management is an iterative process to determine the demand levels required to meet the municipality's objectives. These objectives are reflected in the municipality's Integrated Development Plan (the 'IDP'), a comprehensive strategy document setting out how the municipality intends to address the development challenges in a specific financial year.

3.3

Demand management consists of:

- (a) Planning demand
 - (i) The resources of the municipality will be allocated in accordance with the budget that is informed by the IDP.
 - (ii) The statistical forecasting, of expenditure as reflected in the service delivery and budget implementation plan will set the demand.
- (b) Communicating demand
 - (i) Internal consensus amongst departments on procurement needs, quantities, quality standards, funds etc.
 - (ii) External collaboration with customers and suppliers.

- (c) Influencing demand
 - (i) Inviting suppliers and service providers to be included on a panel of prospective suppliers/providers
 - (ii) Responding promptly, courteously and efficiently to enquiries, suggestions and complaints of suppliers and service providers .
 - (iii) Ensuring healthy competition amongst suppliers and service providers
- (d) Managing demand
 - (i) Introducing efficient and effective systems and practices to ensure delivery of the required quantity and quality of goods and services.
 - (ii) Establishing uniform policies, procedures, documents and contract options and the implementation of sound systems of control and accountability
 - (iii) Using sophisticated forecasting to produce accurate predictions of demand, supply and inventory.

4. ACQUISITION MANAGEMENT SYSTEM

4.0 INTRODUCTION

Objective

4.0.1

The purpose of the acquisition management system is to ensure that-

- (a) goods and services are procured in accordance with authorised processes only;
- (b) that expenditure on goods and services is incurred in terms of an approved budget;
- (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.

4.0.2

The acquisition management system applies to the procurement of all goods and services except goods and services contemplated in section 110(2) of the Act, 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.

Range of procurement processes

4.0.3

Goods and services must be procured by way of-

- (a) petty cash purchases [4.1];
- (b) written or verbal quotations [4.2];
- (c) formal written price quotations [4.3]; and
- (d) a competitive bidding process [4.4].

4.1 PETTY CASH PURCHASES

4.1.1

The Accounting Officer may procure goods and services by way of petty cash purchases, up to a transaction value of R2 000 (VAT included).

4.1.2

The accounting officer may-

- (a) lower the threshold value of R 2 000,00; or
- (b) direct that written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000,00.

4.1.3

Only a manager designated by the accounting officer may keep, authorise and administer procurement of goods and services by way of petty cash purchases

4.1.4

A manager referred to above may delegate responsibility for petty cash to an official reporting to the manager on the following terms -;

- (a) the delegation must be in writing;
- (b) the delegatee must report monthly to the manager details of transactions and the type of goods/services purchased;
- (c) the delegatee must comply with the provisions of this policy; and
- (d) the delegation may be amended or withdrawn.

4.1.5

The following conditions apply when goods are procured by means of petty cash purchases -

- (a) a requisition for petty cash requirements must be authorised by the official designated by the accounting officer and personally handed to the manager;
- (b) the manager must confirm that sufficient funds exist in the appropriate vote before payment can be made;
- (c) the requestor must in writing acknowledge receipt of the petty cash received;
- (d) the requestor must return the receipt/ cash slip for purchases together with any change (if any) to the manager;
- (e) petty cash must be reconciled before it may be replenished;
- (f) the accounting officer must ensure that regular informal audits of petty cash transactions are carried out;
- (g) the relevant manager is responsible for the control and safekeeping of the allocated petty cash and relevant documentation;
- (h) the relevant manager is liable for any shortages or losses of allocated petty cash;
- (i) each manager may spend a maximum of R5 000, 00 per month on petty cash purchases;

- (j) advances on salaries may not be paid from petty cash;
- (k) each manager must submit monthly reconciliation reports to the chief financial officer, reflecting -
 - (i) the total amount of petty cash purchases for that month; and
 - (ii) receipts and appropriate documents for each purchase.
- (l) goods or services may not deliberately be split into parts or items of less than R 2 000,00 merely to avoid complying with the relevant requirements; and
- (m) 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.

4.2 WRITTEN OR VERBAL QUOTATIONS

4.2.1

Goods and services must be procured by way of written or verbal quotations for procurements of a transaction value over R2 000 up to R10 000 (VAT included).

4.2.2

The accounting officer may-

- (a) lower the threshold values of R2 000 up to R10 000 (VAT included); or
- (b) direct that formal written price quotations be obtained for any specific procurement of a transaction value lower than R10000;

4.2.3

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; and

4.2.4

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.

4.2.5

Goods or services may be procured through written or verbal quotations, on the following conditions²² -

- (a) 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 set out in this policy²³;
- (b) where feasible, providers must be requested to submit such quotations in writing;
- (c) 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;
- (d) the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices; and
- (e) if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.

4.2.6

In respect of goods or services procured through written quotations, the following additional conditions apply²⁴-

- (a) a potential provider must furnish the following information-
 - (i) full name;
 - (ii) identification number or company or other registration number; and
 - (iii) tax reference number and VAT registration number, if any; and
 - (iv) a tax clearance from the South African Revenue Services that the provider's tax matters are in order; and
- (b) a potential provider must indicate in writing-

²² See reg 16

²³ See Schedule 3

²⁴ reg 13

- (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 (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.

4.2.7

The following procedures must be followed when procuring goods or services through written or verbal quotations²⁵ -

- (a) 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;
- (b) the accounting officer must take all reasonable steps to ensure that the procurement of goods and services through written or verbal quotations is not abused;
- (c) the accounting officer (alt. chief financial officer) must on a monthly basis be notified in writing of all written or verbal quotations and formal written price quotations accepted by an official acting in terms of a subdelegation; and
- (d) the accounting officer must take all reasonable steps to ensure that proper records are kept.

4.3 FORMAL WRITTEN PRICE QUOTATIONS

4.3.1

Goods and services must be procured by way of formal written price quotations for procurements of a transaction value over R10 000,00 up to R200 000,00 (VAT included).

²⁵ See reg 18

4.3.2

The accounting officer may-

- (a) lower the threshold values of R10 000,00 up to R200 000,00 (VAT included); or
- (b) direct that a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000,00.

4.3.3

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; and

4.3.4

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.

4.3.5

Goods or services may be procured through formal written price quotations, on the following conditions²⁶-

- (a) 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) quotations may be obtained from providers who are not listed, provided that such providers must meet the listing criteria set out in this policy²⁷;
- (c) 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) the accounting officer must record the names of the potential providers and their written quotations;
- (e) the designated official referred to in subparagraph (c) must within three days of the end of each month report to the chief financial officer on any approvals given during that month by that official;

²⁶ See reg 17 in respect of par (a) – (e) and reg 13 in respect of par (f) and (g)
²⁷ See Schedule 3.

- (f) a potential provider must furnish the following information-
 - (i) full name;
 - (ii) identification number or company or other registration number; and
 - (iii) tax reference number and VAT registration number, if any; and
 - (iv) a tax clearance from the South African Revenue Services that the provider's tax matters are in order; and
- (g) a potential provider must indicate in writing-
 - (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 (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.

4.3.6

The following procedures must be followed when procuring goods or services through formal written price quotations²⁸ -

- (a) all requirements in excess of R30 000,00 (VAT included) that are to be procured by means of formal written price quotations must be advertised for at least seven days on the website and an official notice board of the municipality;
- (b) 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) the accounting officer must take all reasonable steps to ensure that the procurement of goods and services through formal written price quotations is not abused;
- (d) the accounting officer (alt. chief financial officer) must on a monthly basis be notified in writing of all formal written price quotations accepted by an official acting in terms of a subdelegation; and
- (e) the accounting officer must take all reasonable steps to ensure that proper records are kept.

4.3.7

The accounting officer may apply the committee system²⁹ to formal written price quotations.

4.4 COMPETITIVE BIDDING

4.4.1

Goods and services must be procured by way of a competitive bidding process for-

- (a) procurements above a transaction value of R200 000,00 (VAT included); and
- (b) the procurement of long term contracts.

4.4.2

No requirement for goods or services above an estimated transaction value of R200 000,00 (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.

4.4.3

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.

4.4.4 Two-stage bidding process

4.4.4.1

A two-stage bidding process is permitted for -

- (a) large complex projects;

²⁸ See reg 18

²⁹ See reg 27(3) as well as par 4.4.4.0.4.

- (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.

4.4.4.2

In the first stage technical proposals on conceptual design or performance specifications must be invited, subject to technical as well as commercial clarifications and adjustments.

4.4.4.3

In the second stage final technical proposals and priced bids must be invited.

Stages of a competitive bidding process

4.4.5

The procedures set out hereafter for each of the following stages of a competitive bidding process must be complied with:

- (a) compilation of specifications [4.4.5.1];
- (b) compilation of bidding documentation[4.4.5.2] ;
- (c) public invitation of bids [4.4.5.3];
- (d) site meetings or briefing sessions, if applicable [4.4.5.4];
- (e) handling of bids submitted in response to public invitation [4.4.5.5];
- (f) evaluation of bids [4.4.5.6];
- (g) award of contracts [4.4.5.7];
- (h) administration of contracts[4.4.5.8] ; and
- (i) proper record keeping . [4.4.5.9]

4.4.5.0 Committee system for competitive bids

4.4.5.0.1

A committee system for competitive bids consisting of the following committees is introduced-

- (a) a bid specification committee;
- (b) a bid evaluation committee; and

(c) a bid adjudication committee;

4.4.5.0.2

The accounting officer must appoint the members of each committee, taking into account section 117 of the MFMA³⁰; and

4.4.5.0.3

When it is appropriate, the Accounting Officer may appoint a neutral or independent observer in order to ensure fairness and transparency in the application of this acquisition management system.

4.4.5.0.4

The accounting officer may apply the committee system to formal written price quotations.

Bid specification committee

4.4.5.0.5

A bid specification committee must compile the specifications for each procurement of goods or services by the municipality.

4.4.5.0.6

A bid specification committee is appointed by the Accounting Officer and must be composed of one or more officials of the municipality, preferably the manager responsible for the function involved, and may, when regarded appropriate by the Accounting Officer, include external specialist advisors.

Bid evaluation committee

4.4.5.0.7

A bid evaluation committee is appointed by the Accounting Officer and must as far as possible be composed of-

³⁰

117. Councillors barred from serving on municipal tender committees.

- (a) officials from departments requiring the goods or services; and
- (b) at least one supply chain management practitioner of the municipality.

Bid adjudication committee

4.4.5.0.8

A bid adjudication committee must consist of at least four senior managers of the municipality which must include-

- (a) the chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer;
- (b) at least one senior supply chain management practitioner who is an official of the municipality; and
- (c) a technical expert in the relevant field who is an official of the municipality, if the municipality has such an expert.

4.4.5.0.9

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.

4.4.5.0.10

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.

*4.4.5.1 Compilation of specifications*³¹

4.4.5.1.1

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

³¹ See reg 27

A bid specification committee³² must compile the specifications for each procurement of goods or services and such specifications must be approved by the accounting officer prior to publication of the invitation for bids.

4.4.5.1.2

Specifications must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;

4.4.5.1.3

Specifications 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;

4.4.5.1.4

Specifications where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design.

4.4.5.1.5

Specifications may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification.

4.4.5.1.6

Specifications 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".

4.4.5.1.7

³²

For detail about the committee system for competitive bids see par 4.4.4.0.5

Specifications must indicate each specific goal for which points may be awarded in terms of the points system set out in the supply chain management policy.

4.4.5.2 Compilation of bidding documentation³³

4.4.5.2.0

The accounting officer must compile bid documentation required for the procurement of goods and services in accordance with this policy.

4.4.5.2.1

When compiling bid documents general conditions of contract and any Treasury guidelines must be taken into account.

4.4.5.2.2

When compiling bid documents relating to construction, upgrading or refurbishment of buildings or infrastructure the requirements of the Construction Industry Development Board must be taken into account.

4.4.5.2.3

Bid documentation must clearly indicate the terms and conditions of contract and specifications and include evaluation and adjudication criteria including any criteria required by other applicable legislation.

4.4.5.2.4

The municipality's Preferential Procurement Policy must be clearly set out in the bid documentation.

4.4.5.2.5

Bid documentation must compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted.

4.4.5.2.6

Bid documentation must require that the provider, who submitted a bid, must furnish the following information-

- (a) full name;
- (b) identification number or company or other registration number; and
- (c) tax reference number and VAT registration number, if any; and
- (d) a tax clearance from the South African Revenue Services that the provider's tax matters are in order

4.4.5.2.7

Bid documentation must require that the provider, who submitted a bid, must indicate-

- (a) 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;
- (b) 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
- (c) whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to in subparagraph (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.

4.4.5.2.8

If the value of the transaction is expected to exceed R10 million (VAT built-in), the bid documentation must require bidders to furnish-

- (a) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements
 - (i) for the past three years; or

- (ii) since their establishment if established during the past three years
- (b) 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 30 days;
- (c) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
- (d) 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.

4.4.5.2.9

Bid documentation must stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, where unsuccessful, in a South African court of law.

4.4.5.2.10

Bid documentation must provide for the termination of the contract in the case of non- or under-performance.

4.4.5.2.11

Bid documentation must indicate the period for which bids are to remain valid and binding.

4.4.5.2.12

This period of validity may be extended by mutual consent in writing between the municipality and the bidders, provided that the original validity period has not expired, and that all bidders are given an opportunity to extend such period.

4.4.5.2.13

An appropriate contract price adjustment formula must be specified in the bid documents for all contract periods equal to or exceeding one year; if not, the bid must be a fixed price bid and not subject to contract price adjustment.

4.4.5.2.14

If as a result of any extension of time granted, the duration of a fixed price contract exceeds one year, the contract will automatically be subject to contract price adjustment for the additional contract period. An appropriate contract price adjustment formula must be specified in the bid documents.

4.4.5.2.15

Bid documentation must indicate that the municipality is not be obliged to accept the lowest or any bid and that in respect of goods and services it may accept the whole bid or part of a bid or any item or part of an item or accept more than one bid, in the event of a number of items being offered.

4.4.5.3 Public invitation of bids

4.4.5.3.0

The Accounting officer must invite prospective providers to submit bids.

4.4.5.3.1

An invitation to prospective providers to submit bids must be by means of a public advertisement-

- (a) in Afrikaans or English in a newspaper commonly circulating locally, or

[Amended at a Special Council Meeting: 30 May 2012: Item 1 (1.2)]

- (b) on the website of the municipality.

4.4.5.3.2

The invitation must, as soon as possible after the publication contemplated above, be posted on a notice board at municipal offices designated by the accounting officer.

4.4.5.3.3

A public advertisement must contain the following information -

- (a) the title of the proposed contract and the bid and/or contract reference number;
- (b) the closing 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, provided that 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;
- (c) the date, time and location of any site inspection, if applicable;
- (d) the place where the bid documentation is available for collection and the times between which bid documentation may be collected;
- (e) the place where bids must be submitted and when and where the bids will be opened.
- (f) a statement that all bids for the contract must be submitted in a sealed envelope on which it is clearly stated that such envelope contains a bid and the contract title for which the bid is being submitted
- (g) a statement that bids may only be submitted on the bid documentation provided by the municipality.
- (h) a statement that bids requested in electronic format must be supplemented by sealed hard copies.

4.4.5.3.4

The invitation may require payment of a non-refundable charge by bidders wanting to collect bid documents.

4.4.5.3.5

The following procedures/rules apply to the issuing of bid documents-

- (a) bid documents and any subsequent notices may only be issued by an official designated by the accounting officer.
- (b) the designated official must record details of all prospective bidders who have been issued with bid documents.
- (c) details of prospective bidders must, wherever possible, include the full name of the person drawing documents, a contact person, a contact telephone and fax number and a postal and email address.
- (e) details recorded must remain confidential for the duration of the bid period.

4.4.5.3.6

A bid closes on the date and at the time stipulated in the bid notice; provided that the accounting officer may extend the bid closing date if circumstances justify this action; provided further that the closing date may not be extended unless a notice is published in the press, at least one week prior to the original bid closing date. This notice must also be posted on the notice boards at designated municipal offices, and a notice to all bidders to this effect must be issued.

4.4.5.4 Site meetings, briefing sessions, and communications with bidders

4.4.5.4.1

Site inspections, where applicable, is not be compulsory unless expressly stated otherwise in the bid notice.

4.4.5.4.2

If site inspections are to be held, full details must be included in the bid notice.

4.4.5.4.3

The accounting officer may, if necessary, allow communication with bidders prior to bids closing but only to supply additional information or to clarify vague points in the bid documents.

4.4.5.5 Handling of bids submitted in response to public invitation

4.4.5.5.1

The following procedure for the handling, opening and recording of bids must be followed-

- (a) At the specified closing time on the closing date the bid box must be opened in public by an official designated by the accounting officer;
- (b) Immediately after the opening of the bid box, the designated official must open all bids in public and check all bids for compliance;
- (c) The designated official must read out the names of the bidders who submitted bids in time and, if practical, also each bidder's total bidding price; and
- (d) After a bid has been opened-
 - (i) the designated official must stamp each bid with an official stamp and endorsed it with his/her signature;
 - (ii) the designated official must record the name of each bidder, and where possible, the bid sum in a register kept for that purpose, and
 - (iii) the designated official must make the register available for public inspection; and
- (e) The accounting officer must publish the entries in the register and the bid results on the website of the municipality.

4.4.5.5.2

No bid received after the specified closing time on the closing date may be admitted for consideration and where feasible the official designated by the accounting officer must return it unopened to the bidder.

4.4.5.6 Evaluation of bids

4.4.5.6.1

A bid evaluation committee³⁴ must evaluate bids in accordance with -

- (a) the specifications for a specific procurement; and
- (b) the points system as must be set out in this policy and as prescribed in terms of the Preferential Procurement Policy Framework Act.

4.4.5.6.2

The Head of the Department (responsible for the bid) must carry out a preliminary evaluation of all valid bids received and submit a draft bid evaluation report to the bid evaluation committee for consideration. The Head of the Department must in the report reflect as to whether in his or her knowledge-

4.4.5.6.2.1

any municipal rates and taxes or municipal service charges owed by a bidder or any of its directors to the municipality or municipal entity, or to any other municipality or municipal entity, are in arrears for more than three months;

4.4.5.6.2.2

a bidder has during the last five years failed to perform satisfactorily on a previous contract with the municipality or municipal entity or any other organ of state;

4.4.5.6.2.3

a bidder or any of its directors -

- (a) has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;
- (b) has been convicted for fraud or corruption during the past five years;
- (c) has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
- (d) 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).

³⁴

For detail about the committee system for competitive bids see par 4.4.5.0

4.4.5.6.3

The bid evaluation committee must, if it finds that any of the above circumstances apply to a bidder, recommend to the accounting officer, via the adjudicating committee, that any bid from such a bidder be rejected³⁵.

4.4.5.6.4

A bid evaluation committee must evaluate each bidder's ability to execute the contract.

4.4.5.6.5

The bid evaluation committee must check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears.

4.4.5.6.6

The bid evaluation committee must, if it finds that any municipal rates and taxes or municipal service charges owed by a bidder or any of its directors to the municipality or municipal entity, or to any other municipality or municipal entity, are in arrears for more than three months, recommend to the accounting officer, via the adjudicating committee, to reject any bid from such a bidder

4.4.5.6.7

The bid evaluation committee may call for additional information or clarification of bids.

4.4.5.6.8

If a bidder requests in writing, after the closing of bids, that his/her bid be withdrawn, then the bid evaluation committee must consider such request and report thereon in the bid evaluation report.

4.4.5.6.9

If two or more bids are equal in all respects, the Bid Evaluation Committee shall draw lots to decide on the recommendation for award, or may, in the case of goods and services, recommend splitting the award proportionately, where applicable.

4.4.5.6.10

The bid evaluation committee must submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.

4.4.5.7 Award of contracts**4.4.5.7.1**

The bid adjudication committee³⁶ must consider the report and recommendations of the bid evaluation committee³⁷; and either -

- (a) make a final award/ make a recommendation to the accounting officer to make the final award³⁸; or
- (b) make another recommendation to the accounting officer how to proceed with the relevant procurement.

4.4.5.7.2

If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid-

- (a) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears; and
- (b) notify the accounting officer,

³⁵ See reg 38(1)(d) and (g); see also par 4.4.4.7.7 and 4.4.4.7.8

³⁶ For detail about the committee system for competitive bids see par 4.4.5.0

³⁷ See par 4.4.5.6.7

³⁸ depending on the relevant delegations

4.4.5.7.3

The accounting officer may -

- (a) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph 4.4.5.7.2; and
- (b) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.

4.4.5.7.4

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.

Approval of bid not recommended

4.4.5.7.5

If a bid other than the one recommended in the normal course of implementing the supply chain management policy is approved, the accounting officer must, in writing, notify the Auditor-General, the Provincial Treasury and the National Treasury of the reasons for deviating from such recommendation³⁹.

4.4.5.7.6

The requirement of paragraph 4.4.4.7.5 does not apply if a different bid was approved in order to rectify an irregularity.

Rejection of bids

4.4.5.7.7

³⁹ Seem s 114 of the MFMA

The accounting officer may reject⁴⁰ any bid from a bidder-

- (a) 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, are in arrears for more than three months; or
- (b) 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;

4.4.5.7.8

The accounting officer may reject⁴¹ the bid of any bidder if that bidder or any of its directors -

- (a) has abused the supply chain management system or has committed any improper conduct in relation to such system;
- (b) has been convicted for fraud or corruption during the past five years;
- (c) has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
- (d) 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).

4.4.5.7.9

The accounting officer must reject a bid if-

- (a) the bid does not comply with the specifications;
- (b) the bid does not comply with any minimum goals stipulated in terms of the municipality's preferential procurement policy;
- (c) in the case of construction works, the bidder of the bid bid does not comply with the requirements of the Construction Industry Development Board Act regarding registration of contractors; and
- (d) the bidder thereof has failed to submit a valid tax clearance certificate form from the South African Revenue Services certifying that the taxes of the bidder are in order or that suitable arrangements have been made with SARS.

⁴⁰ See reg 38(1)(d)

⁴¹ See reg 38(1)(g)

Notification of decision and award of contract

4.4.5.7.10

When it has been resolved to accept a bid, the accounting officer must notify the successful and unsuccessful bidders in writing of the decision, and of their right to appeal such decision in terms of the Systems Act⁴².

4.4.5.7.10

The consideration of appeals must be dealt with in terms of the municipality's appeals process.

4.4.5.7.11

If, after the expiry of the prescribed 21 day appeal period there are no appeals, the Accounting Officer must issue a letter of acceptance/award to the successful bidder.

4.4.4.7.12

Every notification of acceptance of a bid or award of a contract must be in writing and must be delivered by hand on the day that it was signed and dated; or be faxed and posted to the address chosen by the bidder on the day that it was signed and dated, with a copy of the transmission verification report kept for record purposes.

4.4.4.8 Cancellation of Bids

4.4.5.8.1

The accounting officer may if it is deemed necessary cancel and/or re-advertise a bid.

4.4.5.8.2

If a bid has been cancelled, all bidders must be notified in writing of such cancellation.

4.4.5.8.3

A bid may not be re-advertised before the expiry of the validity period of the original bid, or any extended validity periods.

4.4.5.8.4

When no valid bids are received a bid may be re-advertised forthwith.

4.4.5.9 Negotiations with preferred bidders

4.4.5.9.1

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.

4.4.5.9.2

Minutes of such negotiations must be kept for record purposes.

5. LOGISTICS MANAGEMENT SYSTEM

5.0

Logistics management system⁴³ is an effective system to provide for -

- (a) the setting of inventory levels [5.1];
- (b) placing of orders [5.2];
- (c) receiving and distribution of goods [5.3];
- (d) stores and warehouse management [5.4];
- (e) expediting orders [5.5];
- (f) transport management [5.6];
- (g) vendor performance[5.7]; and
- (h) maintenance and contract administration [5.8].

⁴³ See reg 39

5.1 Setting of inventory levels

5.1.1

Stock items must be systematically replenished using the re-order point planning strategy in conjunction with minimum and maximum levels.

5.2 Placing of orders

5.2.1

Purchase orders must be created in response to requisitions where the supply source is contract or quotations.

5.2.2

All import orders must require the vendor to take out a foreign exchange contract in order to fix the Rand based price in the purchase order.

5.2.3

All purchase orders must be captured exclusive of VAT.

5.2.4

Purchase order approvals must be systems based and must involve the procurement department.

5.2.5

The assets section (for asset creation) and the insurance section (for claims) must be informed of purchases.

5.3 Receiving and distribution of goods.

5.3.1

Goods must be received by the procurement department or requestor.

5.3.2

No over receipt of stock may be allowed.

5.3.3

Goods may be issued for consumption against internal orders, cost centres, projects and assets under construction.

5.4 Stores and warehouse management.

5.4.1

The stores and warehousing function may not be decentralised and must operate under the jurisdiction of the Chief Financial Officer.

5.4.2

The Chief Financial Officer must ensure proper financial and budgetary control; uphold the principals of effective administration, proper stock holding and control, product standardisation, quality of products and a high standard of service levels.

5.5 Expediting orders.

5.5.1

The Chief Financial Officer must monitor and expedite outstanding purchase orders.

5.6 Transport management.

5.6.1

All municipal vehicles must be maintained and kept in a good running order.

5.6.2

The fleet management policy must be adhered to at all times.

5.6.3

Transport requisition forms and vehicle log books must be kept up to date at all times.

5.7 Vendor performance.

5.7.1

The Chief Financial Officer must evaluate a vendor's performance against pre-determined criteria.

5.7.2

The evaluation information must be available for contract negotiations and regular feedback to vendors.

5.8 Maintenance and contract administration

Contract administration is the last stage of the bidding and contract cycle, and includes all administrative duties associated with a contract after it is executed, including contract review

5.8.1

The effectiveness of contract administration is influenced by key early stages, which include:

- (a) defining the output, i.e, writing specifications which identify what the aims and outputs of a contract will be;
- (b) assessing risk;
- (c) researching the market place (including conducting pre-tender briefings);
- (d) formulating appropriate terms and conditions of contract;
- (e) identifying appropriate performance measures and benchmarks so that all parties know in advance what is expected, and how it will be tested;
- (f) actively creating competition, so the best possible suppliers bid for contracts; and
- (g) evaluating bids competently, to select the best contractor, with a strong customer focus and good prospects of building a sound relationship

5.8.2

There are three levels of contract administration:

- (a) Standard contracts for goods and services.
Day to day contract administration which includes monitoring, record keeping and payment authorisation.
- (b) More complex contracts for services.
A more active role for the contract manager in developing the relationship between the municipality and the contractor is required.
- (c) Strategic contracts involving complex partnerships and outsourcing arrangements.
A more active management of the business relationships between the supplier and the users is required, e.g. to manage outputs and not the process. Sufficient resources need to be dedicated by all parties to successfully manage these contractor relationships and, where

feasible, to achieve partnership. A partnership is the result of mutual commitment to a continuing co-operative relationship, rather than parties working on a competitive and adversarial basis.

5.8.3

The Head of a Department in charge of a project must appoint an official of the municipality, who has the necessary competencies, as contract manager prior to the execution of the contract.

5.8.4

The Head of a Department Departments must ensure that a contract manager is been granted appropriate responsibility and accountability;

5.8.5

Where practically possible, the contract manager must be involved at the earliest stage of procurement, which is the time of writing the specification. Contract administration arrangements should be identified and planned including who, how, delegations, reporting requirements and relationships and specific task responsibilities.

5.8.6

A contract manager must-

- (a) prepare a contract administration plan;
- (b) monitor the performance of the contractor.
- (c) act with due care and diligence and observe all accounting and legal requirements.
- (d) ensure that the contractor fulfils its obligations and accepts its liabilities under the contract and must also ensure the contractors are treated fairly and honestly.

- (e) retain contract documents and ensure the safe-keeping thereof
- (f) maintain proper records regarding all aspects of the contract
- (g) liaise with internal managers and users, and contractor
- (h) provide accurate and timely reporting to the senior management in charge of a project, highlighting significant performance issues or problems;
- (i) ensure insurance policy(s) terms and conditions provide adequate protection for the municipality and are maintained throughout the contract period;
- (j) ensure that all products provided are certified as meeting the specifications before the supplier is paid
- (k) resolve disputes as they arise;
- (l) pursue remedies in the event of contract breach.

6. DISPOSAL MANAGEMENT SYSTEM

6.1

Disposal management provides for an effective system for the disposal or letting of assets no longer needed, including unserviceable, redundant or obsolete assets.

6.2

Assets may only be disposed of in accordance with section 14 of the MFMA.

6.3

Assets may be disposed of in the following ways-

- (a) transferring the asset to another organ of state in accordance with the provisions of the MFMA;

- (b) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
- (c) selling the asset; or
- (d) destroying the asset.

6.4

Immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise.

6.5

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 to the municipality.

6.6

When computer equipment is to be disposed of for free, 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.

6.7

When fire arms are to be disposed, the National Conventional Arms Control Committee must approve any sale or donation of firearms to any person or institution within or outside the Republic.

6.8

Immovable property may only be let at market related rates except when the public interest or the plight of the poor demands otherwise; and provided that all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed.

6.9

The accounting officer must ensure that where assets are traded in for other assets, the highest possible trade-in price is negotiated.

7. RISK MANAGEMENT SYSTEM

7.1

Risk management provides for an effective system for the identification, consideration and avoidance of potential risks in the supply chain management system.

7.2

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.

7.2.1

The accounting officer must introduce a systematic approach to identify risks including potential conflicts of interest, to analyse their possible likelihood, impacts and consequences and to manage those risks as a project proceeds through the phases of pre-tender, post-tender and contract management.

7.2.2

The accounting officer must ensure that appropriate conditions are incorporated in contracts to avoid or minimise risk including warranties and penalties where appropriate.

8. PERFORMANCE MANAGEMENT SYSTEM

8.1

Performance management provides for an effective internal monitoring system in order to determine, on the basis of retrospective analysis, whether the authorised supply chain management processes are being followed and whether the desired objectives are being achieved.

8.2

In order to ensure that this Policy achieves its objectives, a performance management system shall be developed to monitor whether the supply chain management processes are being followed and whether the objectives of black economic empowerment are being achieved.

9.SPECIALISED FORMS OF PROCUREMENT

9.1 Procurement of banking services⁴⁴

9.1.0

The Accounting Officer must procure banking services through a competitive bidding process

9.1.1

A contract for the provision of banking services:

- (a) must be procured through a competitive bidding process;
- (b) shall be consistent with Section 8 or 85 of the MFMA; and
- (c) may not be for a period longer than five years.

⁴⁴ See reg 30

9.1.2

The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.

9.1.3

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.

9.1.4

Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

*9.2 Procurement of IT related goods or services⁴⁵***9.2.0**

The Accounting Officer may procure IT related goods or services through a competitive bidding process through a competitive bidding process.

9.2.1

The accounting officer may request the State Information Technology Agency (SITA) to assist the municipality with the acquisition of IT related goods or services through a competitive bidding process, in which event the parties must enter into a written agreement to regulate the services provided by, and the payments to be made to, the SITA.

9.2.2

If the transaction value of IT related goods or services exceeds R 50 million in any financial year, or if the transaction value of a single contract (whether for one or more years) exceeds R50 million, the accounting officer must notify the SITA together with a motivation of the IT needs of the municipality.

9.2.3

If SITA comments on the submission and the municipality disagrees with such comment, the comments and the reasons for rejecting or not following such comments must be submitted to the provincial and National Treasury, and the Auditor General prior to awarding the bid.

9.3 Procurement of goods and services under contracts secured by other organs of state⁴⁶

9.3.1

The accounting officer may procure goods or services for the municipality 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) the municipality has no reason to believe that such contract was not validly procured;
- (c) there are demonstrable discounts or benefits for the municipality to do so; and
- (d) that other organ of state and the provider have consented to such procurement in writing.

9.4 Acquisition of Goods Necessitating Special Safety Arrangements⁴⁷

9.4.1

Goods which necessitate special safety arrangements (e.g. flammable products, poisons) may not be acquired in excess of immediate requirements, unless the Accounting Officer is of the opinion that there is sound financial justification therefor.

9.4.2

⁴⁵ See reg 31

⁴⁶ See reg 32

⁴⁷ See reg 33

Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership and cost advantages for the municipality.

9.5 Appointment of consultants⁴⁸

9.5.1

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.

9.5.2

A contract for the provision of consultancy services to a municipality 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.

9.5.3

In addition to any requirements for competitive bids, bidders must furnish the municipality with 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.

9.5.4

The accounting officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or

⁴⁸ See reg 35

process designed or devised, by a consultant in the course of the consultancy service is vested in the municipality.

10.GENERAL

10.1 Contracts Having Budgetary Implications beyond Three Financial Years

10.1.1

No contract, that will impose financial obligations beyond the three years covered in the annual budget for that financial year, may be entered into unless the requirements of Section 33 of the Municipal Finance Management Act have been fully complied with.

10.2 Combating of abuse of supply chain management system⁴⁹

10.2.1

⁴⁹ See reg 38

The accounting officer must-

- (a) take all reasonable steps to prevent abuse of the 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 the 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 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;
- (e) 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.

10.2.2

The accounting officer must inform the National Treasury and Provincial Treasury in writing of any actions taken in terms of subparagraph (1)(b)(ii), (d) or (e).

10.3 Deviation from, and ratification of minor breaches of, procurement processes

10.3.1

The accounting officer may dispense with the official procurement processes established by this policy and may procure any required goods or services

through any convenient process, which may include direct negotiations, but only -

- (a) in an emergency⁵⁰;
- (b) if such goods or services are produced or available from a single provider only;
- (c) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
- (d) in any other exceptional case where it is impractical or impossible to follow the official procurement processes, including-
 - (i) any contract relating to the publication of notices and advertisements by the municipality,
 - (ii) any purchase at a public auction sale,
 - (iii) any contract with an organ of state, a local authority or a public utility corporation or company,
 - (iv) any contract for the supply of goods or services to the municipality by a contractor of an organ of state at the price and on the terms and conditions applicable to the state, provided that that contract has been secured by means of a competitive bidding process, and that both the other organ of state and the provider have consented thereto in writing, and there are demonstrable benefits for the municipality to do so.
 - (v) the appointment of any person to provide professional advice or services, where the value of such appointment is less than R200 000 or any such greater amount as may be legislated from time to time,
 - (vi) 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,
 - (vii) Expanded Public Works Programme (EPWP) learnership projects which have been identified and registered as such.

10.3.2

The accounting officer may ratify 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.

10.3.3

The accounting officer must record the reasons for any deviations in terms of paragraphs 10.3.1 and 10.3.2 and report them to the next meeting of the council and include as a note to the annual financial statements; but it is not required in respect of-

- (a) contracts with another organ of state for-
 - (i) the provision of goods or services to the municipality;
 - (ii) the provision of a municipal service or assistance in the provision of a municipal service; or
 - (iii) the procurement of goods and services under a contract secured by that other organ of state, provided that the relevant supplier has agreed to such procurement
- (b) the procurement of-
 - (i) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
 - (ii) electricity from Eskom or another public entity, another municipality or a municipal entity.

10.3.4

Where possible, in an emergency situation, three quotes in accordance with general acquisition management principles should be obtained and a report submitted to the accounting officer for approval. However, where time is of the essence, the emergency must be immediately addressed, and the process formalised in a report to the accounting officer as soon as possible thereafter.

10.4 Unsolicited Bids

10.4.1

The Accounting Officer is not obliged to consider any unsolicited bids received outside of the normal bidding process⁵¹.

10.4.2

⁵⁰ See schedule 4 for circumstances that warrant emergency dispensation
⁵¹ See reg 37; see also s 113 of the MFMA

An unsolicited bid may only be accepted if the following have been complied with:

- (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
- (b) the product or service offered will be exceptionally beneficial to, or have exceptional cost advantages for, the municipality;
- (c) the person that 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. In this regard a report must be submitted to the accounting officer seeking approval to take the unsolicited bid process further.

10.4.3

If the accounting officer decides to consider an unsolicited bid, the decision to consider such a bid must be made public in accordance with Section 21A of the 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 for the municipality were it to accept the unsolicited bid, and
- (c) an invitation to the public and other potential suppliers to submit their written comments within 30 (thirty) days of the notice being published.

10.4.4

Details of the unsolicited bid, together with any written comments received from the public and other potential suppliers as well as any responses from the bidder, must be submitted to the Provincial and National Treasury for comment.

10.4.5

The unsolicited bid must then be submitted to the Bid Adjudication Committee, together with any written comments submitted by the public and any written comments or recommendations of the Provincial or National Treasury, for consideration.

10.4.6

The Bid Adjudication Committee may award the bid (if so delegated), or may make a recommendation to the accounting officer⁵².

10.4.7

A meeting of the Bid Adjudication Committee to consider an unsolicited bid must be open to the public.

10.4.8

If any recommendations of the Provincial or National Treasury are rejected or not followed, the accounting officer must submit to the Auditor General, the Provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations. Such submission must be made within 7 (seven) days of the decision to award the unsolicited bid. No contract committing the municipality to the bid may be entered into within 30 (thirty) days of the submission.

10.5 Proudly South African Campaign

10.5.1

The municipality supports the *Proudly South African Campaign* as given effect to by the municipality's Preferential Procurement Policy.

⁵² depending on the delegations

10.6 Sponsorships⁵³

10.6.1

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

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

10.7 Objections and complaints⁵⁴

10.7.1

Any person aggrieved by decisions or actions taken by the municipality in the implementation of its supply chain management system, may lodge within 14 days of the decision or action a written objection or complaint to the municipality against the decision or action.

Resolution of disputes, objections, complaints and queries⁵⁵

10.7.2

The accounting officer may appoint an independent and impartial person not directly involved in the supply chain management processes of the municipality -

- (a) to assist in the resolution of disputes between the municipality and other persons regarding-
 - (i) any decisions or actions taken by the municipality in the implementation of its supply chain management system; or

⁵³ See reg 48

⁵⁴ See reg 49

⁵⁵ See reg 50

- (ii) any matter arising from a contract awarded in the course of its 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.

10.7.3

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.

10.7.4

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.

10.7.5

The accounting officer may refer a dispute, objection, complaint or query to the provincial treasury if -

- (a) the dispute, objection, complaint or query is not resolved within 60 days; or
- (b) no response is received from the municipality within 60 days.

10.7.6

If the provincial treasury does not or cannot resolve the matter, the dispute, objection or query the accounting officer may refer it to the National Treasury for resolution.

10.7.7

This mechanism to resolve disputes does not affect the grieved person's rights to approach a court at any time.

10.8 *Contracts providing for compensation based on turnover*⁵⁶

10.8.1

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.

SCHEDULE 1

ETHICAL STANDARDS

Whereas, in accordance with regulation 46 of the regulations, the council must establish a code of ethical conduct for officials and other role players involved in the implementation of the supply chain management policy⁵⁷ in order to promote –

- (a) mutual trust; and
- (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.

Now therefore the council establishes the following-

CODE OF CONDUCT FOR

SUPPLY CHAIN MANAGEMENT PRACTITIONERS

⁵⁶

See reg 51

⁵⁷

Hereafter 'supply chain management practitioner' or 'practitioner'

General Principles

1. The municipality commits itself to a policy of fair dealing and integrity in the conducting of its business. The position of a supply chain management practitioner is, therefore a position of trust, implying a duty to act in the public interest.
2. Practitioners must not perform their duties to unlawfully gain any form of compensation, payment or gratuities from any person/contractor for themselves, their family or their friends.
3. A practitioner must perform his/her duties efficiently, effectively and with integrity, in accordance with the relevant legislation. A practitioner must furthermore ensure that municipal resources are administered responsibly.
4. A practitioner must be fair and impartial in the performance of his/her functions.
5. A practitioner must comply with the Code of Conduct for Employees.

Conflict of interest

6. A practitioner must declare to the accounting officer any business, commercial and financial interest or activities undertaken for financial gain that may raise a possible conflict of interest.
7. A practitioner must declare to the accounting officer details of any private or business interest which he/she, 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.
8. A practitioner may not place himself/herself under any financial or other obligation to outside individuals or organisations that might seek to influence him/her in the performance of his/her official duties.

9. A practitioner may not take improper advantage of his/her previous office after leaving his/her official position.

Accountability

10. A practitioner is accountable for his/her decision and actions to the public.
11. A practitioner must use municipal property scrupulously.
12. Only the accounting officer, chief financial officer or their delegates have authority to commit the municipality to any transaction for the procurement of goods or services.
13. All transactions conducted by a practitioner must be recorded and accounted for in an appropriate accounting system. Practitioners may not make any false or misleading entries into such a system for any reason whatsoever.

Fairness

14. A practitioner must treat all providers and potential providers equitably.
15. A practitioner may not use his/her position for private gain or to improperly benefit another person.

Impartiality

16. A practitioner may at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual.
17. A practitioner may not abuse the power and authority vested in him/her.
18. A practitioner 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;

Openness

19. A practitioner must be as open as possible about all decisions and actions that he/she takes. A practitioner must give reasons for his/her

decision and restrict information only if it is in the public interest to do so.

Rewards, gifts and favours

20. A practitioner 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 R350,00.
21. A practitioner must, notwithstanding item 20, 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.
22. All declarations in terms of item 21 must be recorded in a register which the accounting officer must keep for this purpose.
23. All declarations by the accounting officer in terms of paragraph 21 must be made to the mayor who must ensure that such declarations are recorded in the register.

Confidentiality

24. Any information that is the property of the municipality or its suppliers must be protected at all times. No information regarding any bid/contract/bidder/contactor.
25. Matters of confidential nature in the possession of a practitioner must be kept confidential unless legislation, the performance of a duty or the provisions of law requires otherwise. Such restrictions must also apply after separation from service.

Duty re irregularities

26. A practitioner must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system.
27. A practitioner must report to the accounting officer any alleged irregular conduct in the supply chain management system which he/she may become aware of, including-

- (a) any alleged fraud, corruption, favouritism or unfair conduct;
- (b) any alleged contravention of this policy; or
- (c) any alleged breach of this code of ethical standards.

Breach of the code

28. A breach of the code of conduct adopted will be dealt with in accordance with the Code of Conduct for Staff.

SCHEDULE 2

CODE OF CONDUCT FOR MUNICIPAL STAFF MEMBERS

1. Definitions.

In this Schedule “partner” means a person who permanently lives with another person in a manner as if married.

2. General conduct.

A staff member of a municipality must at all times—

- (a) loyally execute the lawful policies of the municipal council;
- (b) perform the functions of office in good faith, diligently, honestly and in a transparent manner;
- (c) act in such a way that the spirit, purport and objects of section 50 are promoted;
- (d) act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and
- (e) act impartially and treat all people, including other staff members, equally without favour or prejudice.

3. Commitment to serving the public interest.

A staff member of a municipality is a public servant in a developmental local system, and must accordingly—

- (a) implement the provisions of section 50 (2);
- (b) foster a culture of commitment to serving the public and a collective sense of responsibility for performance in terms of standards and targets;

- (c) promote and seek to implement the basic values and principles of public administration described in section 195 (1) of the Constitution;
- (d) obtain copies of or information about the municipality's integrated development plan, and as far as possible within the ambit of the staff member's job description, seek to implement the objectives set out in the integrated development plan, and achieve the performance targets set for each performance indicator;
- (e) participate in the overall performance management system for the municipality, as well as the staff member's individual performance appraisal and reward system, if such exists, in order to maximise the ability of the municipality as a whole to achieve its objectives and improve the quality of life of its residents.

4. Personal gain.

- (1) A staff member of a municipality may not—
 - (a) use the position or privileges of a staff member, or confidential information obtained as a staff member, for private gain or to improperly benefit another person; or
 - (b) take a decision on behalf of the municipality concerning a matter in which that staff member, or that staff member's spouse, partner or business associate, has a direct or indirect personal or private business interest.
- (2) Except with the prior consent of the council of a municipality a staff member of the municipality may not—
 - (a) be a party to a contract for—
 - (i) the provision of goods or services to the municipality; or
 - (ii) the performance of any work for the municipality otherwise than as a staff member;
 - (b) obtain a financial interest in any business of the municipality; or
 - (c) be engaged in any business, trade or profession other than the work of the municipality.

5. Disclosure of benefits.

- (1) A staff member of a municipality who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose in writing full particulars of the benefit to the council.
- (2) This item does not apply to a benefit which a staff member, or a spouse, partner, business associate or close family member, has or acquires in common with all other residents of the municipality.

6. Unauthorised disclosure of information.

- (1) A staff member of a municipality may not without permission disclose any privileged or confidential information obtained as a staff member of the municipality to an unauthorised person.
- (2) For the purpose of this item "privileged or confidential information" includes any information—

- (a) determined by the municipal council or any structure or functionary of the municipality to be privileged or confidential;
 - (b) discussed in closed session by the council or a committee of the council;
 - (c) disclosure of which would violate a person's right to privacy; or
 - (d) declared to be privileged, confidential or secret in terms of any law.
- (3) This item does not derogate from a person's right of access to information in terms of national legislation.

7. Undue influence.

A staff member of a municipality may not—

- (a) unduly influence or attempt to influence the council of the municipality, or a structure or functionary of the council, or a councillor, with a view to obtaining any appointment, promotion, privilege, advantage or benefit, or for a family member, friend or associate;
- (b) mislead or attempt to mislead the council, or a structure or functionary of the council, in its consideration of any matter; or
- (c) be involved in a business venture with a councillor without the prior written consent of the council of the municipality.

8. Rewards, gifts and favours.

(1) A staff member of a municipality may not request, solicit or accept any reward, gift or favour for —

- (a) persuading the council of the municipality, or any structure or functionary of the council, with regard to the exercise of any power or the performance of any duty;
- (b) making a representation to the council, or any structure or functionary of the council;
- (c) disclosing any privileged or confidential information; or
- (d) doing or not doing anything within that staff member's powers or duties.

(2) A staff member must without delay report to a superior official or to the speaker of the council any offer which, if accepted by the staff member, would constitute a breach of subitem (1).

9. Council property.

A staff member of a municipality may not use, take, acquire, or benefit from any property or asset owned, controlled or managed by the municipality to which that staff member has no right.

10. Payment of arrears.

A staff member of a municipality may not be in arrears to the municipality for rates and service charges for a period longer than 3 months, and a municipality may deduct any outstanding amounts from a staff member's salary after this period.

11. Participation in elections.

A staff member of a municipality may not participate in an election of the council of the municipality, other than in an official capacity or pursuant to any constitutional right.

12. Sexual harassment.

A staff member of a municipality may not embark on any action amounting to sexual harassment.

13. Reporting duty of staff members.

Whenever a staff member of a municipality has reasonable grounds for believing that there has been a breach of this Code, the staff member must without delay report the matter to a superior officer or to the speaker of the council.

14. Breaches of Code.

Breaches of this Code must be dealt with in terms of the disciplinary procedures of the municipality envisaged in section 67 (1) (h) of this Act.

14A. Disciplinary steps.

(1) A breach of this Code is a ground for dismissal or other disciplinary steps against a staff member who has been found guilty of such a breach.

(2) Such other disciplinary steps may include—

- (a) suspension without pay for no longer than three months;
- (b) demotion;
- (c) transfer to another post;
- (d) reduction in salary, allowances or other benefits; or
- (e) an appropriate fine.

SCHEDULE 3

LISTS OF ACCREDITED PROSPECTIVE PROVIDERS OF GOODS AND SERVICES:
FOR PROCUREMENT THROUGH WRITTEN OR VERBAL QUOTATIONS AND FORMAL
WRITTEN PRICE QUOTATIONS

1. The accounting officer must keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements of the municipality through written or verbal quotations and formal written price quotations; and
2. The accounting officer must at least once a year through newspapers commonly circulating locally, the website of the municipality and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
3. The accounting officer must specify the listing criteria for accredited prospective providers.

4. The accounting officer must 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.
5. The accounting officer must update the list 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.
6. The accounting officer must compile the list per commodity and per type of service.

SCHEDULE 4

CIRCUMSTANCES THAT WARRANT EMERGENCY DISPENSATION

1. Circumstances that warrant emergency dispensation includes but are not limited to -
 - (a) the possibility of human injury or death,
 - (b) the prevalence of human suffering or deprivation of rights,
 - (c) the possibility of damage to property, or suffering and death of livestock and animals,
 - (d) the interruption of essential services, including transportation and communication facilities or support 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 possibility that the security of the state could be compromised.

2. 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 tender process.

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