

# **SUPPLY CHAIN MANAGEMENT POLICY**

## **BA-PHALABORWA MUNICIPALPALITY**



**Supply Chain Management Policy**

**Reviewed  
January 2023**

**MUNICIPAL SUPPLY CHAIN MANAGEMENT POLICY LOCAL GOVERNMENT:  
MUNICIPAL FINANCE MANAGEMENT ACT, 2003**

Council resolves in terms of section 111 of the Local Government Municipal Finance Management Act (No. 56 of 2003), to adopt the following proposal as the Supply Chain Management Policy of the Ba – Phalaborwa Local Municipality.

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## Abbreviation

AO	Accounting Officer (Municipal Manager)
BAC	Bid Adjudication Committee
BEC	Bid evaluation committee
BSC	Bid Specification Committee
CCA	Closed Corporations Act, Act No 69 of 1984
CIDB	Construction Industry Development Board
CFO	Chief Financial Officer
HDI	Historically Disadvantaged Individual
HOD	Head of Department
IFMS	Integrated Financial Management System
MFMA	Municipal Finance Management Act, 2003 (Act 56 of 2003) ("the Act")
NT	National Treasury
PPPFA	Preferential Procurement Policy Framework Act (Act 5 of 2000)
PPR	Preferential Procurement Paragraphs, 2011
PSP	Professional Service Provider
PT	Provincial Treasury
RFI	Request for Information
RFQ	Request for Quotation
SARB	South African Reserve Bank
SARS	South African Revenue Services
SASAE	South African Standard on Assurance Engagements
SCM	Supply Chain Management
SCP	Supply Chain Procedures
SITA	State Information Technology Agency
SARS	South African Revenue Services
SABS	South African Bureau of Standards
SMME	Small Medium and Micro Enterprise
TOR	Terms of Reference
BPM	Ba-Phalaborwa Municipality

## Definitions

1. In this Policy, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, and – **B-BBEE** – means broad based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

**BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT** – means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)

**CO-OPERATIVE** – means a co-operative registered in terms of section 7 of the Cooperatives ACT, 2005 (Act No. 14 of 2005);

**DESIGNATED SECTOR** – means a sector, sub-sector or industry or product designated in terms of regulation 8 (1) (a);

**FUNCTIONALITY** – means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents;

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

**PRICE** – means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;

“**HDI**” – “Historically Disadvantaged Individual (HDI)” – means a South African Citizen (1) who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act No 110 of 1983) or the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993) (“the Interim Constitution”); and/or (2) Who is a female; and /or (3) Who has a disability; Provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not to be an HDI;

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

**RURAL AREA** - means

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

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

**STIPULATED MINIMUM THRESHOLD** – means the minimum threshold stipulated in terms of regulation 8 (1) (b);  
2000);

**TOWNSHIP** – means an urban living area that any time from the late 19<sup>th</sup> century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994;

**TREASURY** – has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and

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

**“ACCOUNTING OFFICER”** means the Accounting Officer referred to in section 60 of the Municipal Finance Management Act, No. 56 of 2003, in relation to a municipal entity, officer.

**“ACCREDITED AGENT”** means a provider who is authorized to deliver certain goods / services and can be trading in a specific area, however, an accredited agent is not a sole provider.

**“ACCREDITED”** means goods / services that are officially recognized, are generally accepted or having a guaranteed quality.

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

**“COMPETITIVE BIDDING PROCESS”** means a competitive bidding process referred to in paragraph 12 (1 ) (d) of this Policy;

**“emergency procurement”** emergency cases are cases where immediate action is necessary in order to avoid dangerous or risky situation (life threatening) or misery such as floods or fires.

**“exceptional / urgent cases”** exceptional cases are cases where early delivery is of critical importance and the invitation of competitive bids is either impossible or impractical. However a lack of proper planning should not be constituted as an urgent case subject to the approval of the Accounting Officer. The nature of the urgency and the details of the justifiable procurement must be recorded and the AO to approve.

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

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

**"formal written price quotation"** means quotations referred to in paragraph 12 (1) (c) of this Policy;

**“Fruitless and wasteful expenditure”**- is defined in section 1 of the MFMA as follows: expenditure made in vain and would have been avoided had reasonable care been exercised;

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

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

**“IRREGULAR EXPENDITURE”**- means-

**[a]** expenditure incurred by a municipality or municipal entity in contravention of, that is not in accordance with, a requirement of the MFMA, or that is not in accordance with, a requirement of the MFMA, and which has not been condoned in terms of section 170;

**[b]** expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act;

**[c]** expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Public Office-Bearers Act, 1998[ACT No. 20 of 1998]; or

**[d]** expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with a requirement of the supply chain management policy of the municipality

or entity or any of the municipality's by-laws giving effect to such policy; and which has not been condoned in terms of such policy or by-law, but excludes expenditure by a municipality which falls within the definition of "unauthorised expenditure."

In this context "expenditure" refers to any use of municipal funds that is in contravention of the following legislation:

- Municipal Finance Management Act, Act 56 of 2003, and its regulations
- Municipal Systems Act, Act 32 of 2000, and its regulations
- Public Office-Bearers Act, Act 20 of 1998, and its regulations; and
- The municipality's supply chain management policy, and any by-laws giving effect to that policy.

**"long term contract"** means a contract with a duration period exceeding one year;

**"list of accredited prospective providers"** means the list of accredited prospective providers which the municipality must keep in terms of paragraph 14 of this policy;

**"CSD"** - The Central Supplier Database (CSD) is a single database to serve as the source of all supplier information for all spheres of government. The purpose of centralising government's supplier database is to reduce duplication of effort and cost for both supplier and government while enabling electronic procurement processes.

**"E – TENDER PORTAL"** - The eTender Publication Portal facilitates all government institutions to publish their tenders, corrigendum and award notices on a single platform. This portal gives FREE access to public sector tender opportunities in South Africa.

**"Municipality"** means the Ba-Phalaborwa municipality

**"Municipal entity"** has the meaning assigned to it by Section 1 of the Municipal systems Act, 2000.

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

- [a] the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- (b) the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
- [c] the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000);

**“Sole Provider”**-means a provider of specialized or exclusive goods/services who has a sole distribution / patent /manufacturing rights and copy rights.

**“senior manager”** means an executive director appointed in terms of section 56 of the Municipal Systems Act, 2000 or an acting executive director appointed by the Accounting Officer.

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

**“THE REGULATIONS”** means the Local Government: Municipal Finance Management Act, 2003, Municipal Supply Chain Management Regulations published by Government Notice 10684 of 2017;

**“Transversal contract”** means a contract arranged for more then one dept/mun or for more than one level of government eg. National and Provincial Government.

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

**UNAUTHORIZED EXPENDITURE** - means any expenditure incurred by a municipality otherwise than in accordance with section 15 or 11 [3] and includes-

[a] overspending of the total amount appropriated in the municipality’s approved budget;

[b] overspending of the total amount appropriated for a vote in the approved budget;

[c] expenditure from a vote unrelated to the department or functional area covered by the vote; [d] expenditure of money appropriated for a specific purpose ,otherwise than for that specific purpose;

[e] spending of an allocation referred to in paragraph [b],[c] or [d] of the definition of “allocation” otherwise than in accordance with any conditions of the allocation;or [f] a grant by the municipality otherwise than in accordance with the MFMA.

**UNFORESEEN AND UNAVOIDABLE EXPENDITURE** is discussed in section 29 of the MFMA and reads as follows:

[1] The mayor of a municipality may in emergency or other exceptional circumstances authorise unforeseen and unavoidable expenditure for which no provision was made in an approved budget. [2] Any such expenditure-

[a] must be inaccordance with any framework that may be prescribed;

[b] may not exceed a prescribed percentage of the approved annual budget; [c] must be reported by the mayor to the municipal council at its next meeting; and [d] must be appropriated in an adjustments budget.

[3] If such adjustments budget is not passed within 60 days after the expenditure was incurred, the expenditure is unauthorised and section 32 applies.

**“written or verbal quotations”** means quotations referred to in paragraph 12(1)(b) of this Policy.

**“Specific goals”** means specific goals as contemplated in section 2(1)(d) of the Act which may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender and disability including the implementation of programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994.

**“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;

**“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions;

**“Small, Medium and Micro Enterprise (SMME)”** - means a separate and distinct business entity, including co-operative enterprises and non-governmental organisations, managed by one owner or more which, including its branches or subsidiaries, if any, is predominantly carried on in any sector or sub-sector of the economy mentioned in column 1 of the Schedule of the National Small Business Act, 1996 (Act No. 102 of 1996) and which can be classified as a micro- a very small, a small or a medium enterprise by satisfying the criteria mentioned in columns 3,4 and 5 of the Schedule opposite the smallest relevant size or class as mentioned in column 2 of the Schedule;

## CHAPTER 1 IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

### Supply chain management policy

2. (1) All officials and other role players in the supply chain management system of the municipality must implement this Policy in a way that

- (a) gives effect to -
  - (i) section 217 of the Constitution; and
  - (ii) Part 1 of Chapter 11 and other applicable provisions of the Act;
- (b) is fair, equitable, transparent, competitive and cost effective;
- (c) complies with - (i) the Regulations; and
- (ii) any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
- (d) is consistent with other applicable legislation;

- Broad Based Black Economic Empowerment Act [B-BBEEA];
- Corruption Act, 1998 – anti-corruption measures and practices;
- Competition Law and Regulations;
- Promotion of Administrative Justice Act, 2000;
- National Archives of South Africa Act, 1996;
- National Small Business Act;
- Construction Industry Development Board Act, 2000 [Act no 38 of 2000]. - Preferential Procurement Policy Framework Act NO 5 of 2000

- (e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
- (f) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.

(2) The municipal entity must, in addition to complying with subparagraph (1), apply this Policy, to the extent determined by the parent municipality, in a way that and that is consistent with the supply chain management policy of the municipality.

(3) This Policy applies when the municipality-

- (a) procures goods or services;
- (b) disposes goods no longer needed;

- (c) selects contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
- (d) selects external mechanisms referred to in section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that *Act*.

- (4) This Policy, except where provided otherwise, does not apply in respect of the procurement of 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.

**Amendment of the supply chain management policy**

3. (1) The accounting officer must -
- (a) at least annually review the implementation of this Policy; and
  - (b) when the accounting officer considers it necessary, submit proposals for the amendment of this Policy to the council .
- (2) If the accounting officer submits proposed amendments to the council that differs from the model policy issued by the National Treasury, the accounting officer must -
- (a) ensure that such proposed amendments comply with the Regulations; and
  - (b) report any deviation from the model policy to the National Treasury and the relevant provincial treasury.
- (3) When amending this supply chain management policy the need for uniformity in supply chain practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.

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

4. (1) The council hereby delegates all powers and duties to the accounting officer which are necessary to enable the accounting officer-

- (a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of - (i) Chapter 8 or 10 of the Act; and (ii) this Policy;
  - (b) to maximise administrative and operational efficiency in the implementation of this Policy;
  - (c) to enforce reasonable cost effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this Policy; and
  - (d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- (2) Sections 79 and 106 of the Act apply to the sub delegation of powers and duties delegated to an accounting officer in terms of subparagraph (1).
- (3) The accounting officer may not sub delegate any supply chain management powers or duties to a person who is not an official of the municipality or to a committee which is not exclusively composed of officials of the municipality.
- (4) This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.

## **Sub delegations**

5. (1) The accounting officer may in terms of section 79 or 106 of the Act sub delegate any supply chain management powers and duties, including those delegated to the accounting officer in terms of this Policy, but any such sub delegation must be consistent with subparagraph (2) of this paragraph and paragraph 4 of this Policy.

- (2) The power to make a final award -
  - (a) above R 10 million (VAT included) may not be sub delegated by the accounting officer;
  - (b) above R2 million (VAT included), but not exceeding R10 million (VAT included), may be sub delegated but only to -

- (i) the chief financial officer;
- (ii) a senior manager; or
- (iii) a bid adjudication committee comprises of:

Chief Financial Officer

Head Infrastructure

Head Social Development

Head Institutional Development

(c) not exceeding R2 million (VAT included) may be sub delegated but only to -

- (i) the Chief Financial Officer;
- (ii) a Senior Manager;
- (iii) a manager -directly accountable to the Chief Financial Officer or a senior manager;  
or -
- (iv) a bid adjudication committee comprises of:

Chief Financial Officer

Head Infrastructure

Head Social Development

Head Institutional Development

(3) An official or bid adjudication committee to which the power to make final awards has been sub delegated in accordance with subparagraph (2) must within five days of the end of each month submit to the official referred to in subparagraph (4) a written report containing particulars of each final award made by such official or committee during that month, including-

- (a) the amount of the award;
- (b) the name of the person to whom the award was made; and (c) the reason why the award was made to that person.

(4) A written report referred to in subparagraph (3) must be submitted (a) to the accounting officer, in the case of an award by -

- (i) the chief financial officer;
- (ii) a senior manager; or
- (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or

(b) to the chief financial officer or the senior manager responsible for the relevant bid; in the case of an award by-

- (i). a manager referred to in subparagraph (2)(c)(iii); or-
- (ii) a bid adjudication committee of which the chief financial officer or a senior manager is not a member.

- (5) Subparagraphs (3) and (4) of this policy do not apply to procurements out of petty cash.
- (6) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.
- (7) No supply chain management decision-making powers may be delegated to an advisor or consultant.

### **Oversight role of council**

6 (1) The council reserves its right to maintain oversight over the implementation of this Policy.

- (2) For the purposes of such oversight the accounting officer must -
  - (a) (i) within 30 days of the end of each financial year, submit a report on the implementation of this Policy and the supply chain management policy to the council of the municipality.
  - (ii) whenever there are serious and material problems in the implementation of this Policy, immediately submit a report to the council, who must then submit the report to the accounting officer of the municipality for submission to the council.
- (3) The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the mayor.**

- (4) The reports must be made public in accordance with section 21A of the Municipal Systems Act.**

## **Supply chain management unit**

7. (1) A supply chain management unit is hereby established to implement this Policy.

(2) The supply chain management unit operates under the direct supervision of the chief financial officer or an official to whom this duty has been delegated in terms of section 82 of the Act.

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

8. The training of officials involved in implementing this Policy should be in accordance with any Treasury guidelines on supply chain management training.

## **CHAPTER 2 SUPPLY CHAIN MANAGEMENT SYSTEM**

### **Format of supply chain management systems**

**9** This Policy provides systems for -

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

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

### **System of demand management**

10 (1) The accounting officer must establish and implement an appropriate demand management system in order to ensure that the resources required by the municipality support its operational commitments and its strategic goals outlined in the Integrated Development Plan

(2) The demand management system must -

- (a) include timely planning and management processes to ensure that all goods and services required by the municipality are quantified, budgeted for and timely and effectively delivered at the right locations and at the critical delivery dates, and are of the appropriate quality and quantity at a fair cost;
  - (b) take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature; and
  - (c) provide for the compilation of the required specifications to ensure that its needs are met.
  - (d) To undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.
- (d) The municipality must compile a Procurement Plan containing all planned procurement for the financial year in respect of the procurement of goods, services and infrastructure projects which exceed R 200 000 [all applicable taxes included] per case as described in the Supply Chain Management Guide for Accounting Officers. The procurement plan must be finalized on the 1 July every year. The relevant information should preferably be furnished in the format contained in the Procurement Plan Template enclosed as Annexure A.
- (f) Also refer to National Treasury MFMA Circular 62.

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

### **System of acquisition management**

11. (1) The accounting officer must implement the system of acquisition management set out in this Part in order to ensure -
- (a) that goods and services are procured by the municipality in accordance with authorised processes only;
  - (b) that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
  - (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 as per National and Provincial prescripts [SCM Practice note 2, Explanatory notes: Revised quotation / bid forms ];
  - (e) that the preference point system used in accordance with the Revised Preferential Procurement Policy Regulations of 7 December 2011 [utilizing B-BBEE status level verification certificates to claim preference points];

(f) that any Treasury guidelines on acquisition management are properly taken into account.

(g) Verification of bids in excess of R10 million **Prior to advertisement:**

Verification by the CFO of the following:

The senior manager responsible for a vote must submit to the CFO:

-proof that budgetary provision exists for the procurement of the goods/services and / or infrastructure projects;

- any ancillary budgetary implications related to the bid;
- any multi-year budgetary implications;

**Prior to the award of a bid**

Contracts above the value of R 10 million [all applicable taxes included] may only be awarded to the preferred bidder after the CFO has verified in writing that budgetary provision exists for the acquisition of the goods, infrastructure projects

and /or services and that it is consistent with the Integrated Development Plan. (h)

Publication of awards in respect of advertised competitive bids [above the threshold value of R 200 000 (inclu)]

The following information on the successful bids must be placed on the municipal website:

- Contract numbers and description of goods, services or infrastructure projects;
- Names of the successful bidders and the B-BBEE level of contribution claimed;
- Brand names, price and dates for completion of contracts.

(I) Functionality

Adhere to the revised guidelines when functionality is included as a criterion in the evaluation of bids [National Treasury note issued in September 2010].

- Clear indication must be given in bid documents if bids will be evaluated on functionality.
- Evaluation criteria must be objective.
- The weight of each criterion, applicable values and the minimum qualifying score [for each bid on its own merit] must be indicated in the bid documents.
- Bidders failing to achieve the qualifying score for functionality must be disqualified.
- Bidders achieving the minimum qualifying score must be evaluated further in terms of points for price and B-BBEE status level contribution

## Pre –evaluation

- After closure of the bid pre-evaluation is done to ensure all bidders comply with the prescribed minimum norms and standards, NO TECHNICAL EVALUATION IS DONE AT THIS POINT.
- Bidders are then invited to prepare for a functionality presentation in line with the criteria set out in the bid document on a specific date and provided with a time slot.

### Appointment of a functionality committee

-The functionality committee is an ad-hoc committee appointed per bid. - It should consist out of a cross functional team - To be included as well:

- A SCM Practitioner;
- The end-user;
- Technical experts;
- Members of the Bid Evaluation- and Adjudication committees;  
-CFO or a person with knowledge of the available budget from the CFO's office; -

Any other official deemed to be relevant;

-Provincial SCM official may attend per request.

- Each member will complete a score sheet per bidder.

-The totals to be calculated by SCM, an average calculated and only the bidders who scored the minimum qualifying score will be evaluated further.

-Prior to the functionality committee meeting the end-user and the technical experts can sit with all the appointed committee members and peruse each bidder's proposal and draw-up a list of questions for clarification. Each member can add his / her own questions and during the presentations clarify or verify the information presented with relevant questions.

NOTE: There cannot be two [2] technical evaluation processes, only one done by a duly appointed functionality committee.

- Functionality evaluation forms part of the formal evaluation processes and is open for legal scrutiny and challenges –therefore it is a formal once off process with proper procedures and score sheets to be completed per committee member for each bidder, duly signed off by the relevant committee member.
- Score sheets form part of a bid and year-end audit by the Auditor –General.
- Not following proper processes may lead to expenditure been classified as irregular by the Auditor-General's office.

(2) When procuring goods or services contemplated in section 110(2) of the Act, the accounting officer must make public the fact that such goods or services are procured otherwise than through the municipality's chain management system, including

-

(a) the kind of goods or services; and (b) the name of the supplier.

### **Range of procurement processes**

12. (1) Goods and services may only be procured by way of-

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

(2) The accounting officer may, in writing-

- (a) lower, but not increase, the different threshold values specified in subparagraph (1); or
- (b) direct that-
  - (i) written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000 [all taxes included];
  - (ii) formal written price quotations be obtained for any specific procurement of a transaction value lower than R 10 000[all taxes included]; or
  - (iii) formal written price quotations for procurements of a transaction value over R 10 000 up to R 200 000 (vat included); and
  - (iv) a competitive bidding process be followed for any specific procurement of a transaction value of R200 000 [all taxes included].

(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. 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.

**General preconditions for consideration of written quotations or bids**

13. A written quotation or bid may not be considered unless the provider who submitted the quotation or bid - (a) has furnished that provider's -

- (i) full name;
- (ii) identification number or company or other registration number; and
- (iii) tax reference number and VAT registration number, if any;
- (iv) original valid tax clearance certificate from the South African Revenue Services;
- (v) check in respect of the recommended bidder (quotations as well), whether municipal rates and taxes and municipal service charges are not in arrears for more than three [3] months if service provider resides within the municipality.

If the suppliers are not resident in this municipality, but offer their services from any other municipality, the same applies. It should be established if they are not in arrears in their own municipality.

- (vi) requirements for construction and engineering related bids should be awarded according to CIDB regulations;
- (vii) The CIDB Act requires that all projects need to be registered with the CIDB.
- (viii) Before an award is done to a contractor, the contractor's CIDB grading must be confirmed on the CIDB website;
- (ix) The CIDB grading designation is as follows:

Contractor Grading Designation	Upper limit of Tender Value Range Designation	Administration / Renewal Fee in respect of each Grade applied for	Annual Fees Payable in respect of the Highest Contractor Grading Designation
2	R 650 000	R 450	R 250
3	R 2 000 000	R 750	R 350
4	R 4 000 000	R 750	R 900
5	R 6 500 000	R 750	R 1 750
6	R 13 000 000	R 750	R 3 500
7	R 40 000 000	R 750	R 9 000
8	R 130 000 000	R 750	R 29 000
9	No limit	R 750	R 55 000

(b) has authorised the municipality to obtain a tax clearance from the South African Revenue Services that the provider's tax matters are in order; (the CSD is now able to verify the tax clearance certificate) and

(c) has indicated -

- (i) whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
- (ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
- (iii) whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to in subparagraph (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.

#### **Lists of accredited prospective providers is replaced by the CSD**

14. (1) The accounting officer must-

- (a) use the CSD to source accredited service providers of goods and services that must be used for procurements through written, verbal quotations and formal written price quotations; (the central supplier database) and
- (b) at least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to register on the CSD; and
- (c) dis-allow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.

(2) Suppliers can update their CSD status continuously;

(3) CSD is compiled per commodity and per type of service.

(5) Utilization of web based national central supplier database - the CSD has been fully effective as from 1<sup>st</sup> July 2016.

## 14.2. PROCESS TO APPOINT FROM A PANEL OF APPOINTED SERVICE PROVIDERS

- (1) The appointment of a panel of service-providers must be executed against a signed and approved specification.
- (2) The appointment of a panel of service providers must follow a two-stage process. The first stage is conducted as a pre-qualification enquiry where suppliers are first screened and prequalified for general compliance requirements, including specific goals, if applicable. Price is generally not requested as part of the pre-qualification enquiry, unless a standard rate is prescribed for acceptance.
- (3) Once pre-qualified, suppliers on the panel may then compete on a task order basis as part of the second stage, where they may tender based on the 80:20 or 90:10 preference point system as may be relevant to the task order, or where capacity /capability /location, treated as objective criteria, may become factors in task order award.
- (4) Panels may be used as a mechanism to support the development of emerging suppliers where task order allocations are based on principles of rotation wherein the **rates** are equal.
- (5) The end user department must send the requisition to SCM Unit for the appointment process to start;
- (6) Requests from user departments must include specifications and be signed off by relevant authority;
- (7) All specifications relating to task orders must be formally received and administered by Supply Chain Management;
- (8) Criteria for the selection of a particular supplier for the allocation of work / task orders should follow the principle of ROTATION to ensure equal and fair distribution of work and Opportunities If the service providers have been appointed on equal rates.
- (9) task orders are placed against contracts with sufficient funds and time available for the completion of the supply / services;

- (10) For quotations under R200 000.00, a minimum of three quotations must be obtained from the panel, Price and BBBEE level of contribution must be considered during evaluation and the service provider who score the highest points be appointed
- (11) Approved task orders are supported by an appointment letter/ SLA from confirming the order / commitment; and Procurement targets and objectives are being monitored and tracked
- (12) All of the above controls must be dealt with upfront as part of the approved strategy, and executed during the contract management phase.

### **Petty cash purchases**

15. The conditions for the procurement of goods by means of petty cash purchases referred to in paragraph 12 (1) (a) of this Policy, are as follows - (a) council determine the terms on which a manager may delegate

responsibility for petty cash to an official reporting to the manager; (b)

council determine the maximum number of petty cash purchases or the maximum amounts per month for each manager;

(c) council determine any types of expenditure from petty cash purchases that are excluded, where this is considered necessary; and

(d) a monthly reconciliation report from each manager must be provided to the chief financial officer, including -

(i) the total amount of petty cash purchases for that month; and (ii) receipts and appropriate documents for each purchase.

### **Written or verbal quotations**

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

(a) Quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the CSD, provided that if quotations are obtained from providers who are not listed, such providers must first register on the CSD before an order can be issued to them.

(b) where no suitable accredited service providers are available from the CSD, quotations may be obtained from other possible providers not on the CSD, provided that such service

providers meet the listing criteria set out on the CSD database. [c] quotations must be approved on a rotation basis.

[d] to the extent feasible, providers must be requested to submit such quotations in writing

- (e) 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;
- (f) the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices; and
- (g) if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider:
- (h) The municipality will investigate and utilize various other options to advertise bids/quotations viz. community boards, the library, public buildings, police station, etc. This is to ensure that the municipality tried to obtain at least three quotations.
- (i) In cases where there are only a few suppliers for certain goods eg. vehicle repairs, fuel outlets, etc. the municipality will then use these suppliers on a rotation basis, in order to give everybody a chance. This practice will only be utilized in exceptional cases. As soon as more suppliers become available, such goods / services will be provided via the normal scm quotations and CSD.

### **Formal written price quotations -**

**17.** (1) The conditions for the procurement of goods or services through formal written price quotations, are as follows:

- (a) quotations must be obtained in writing from at least three different providers whose names appear on CSD (*quotations must be sourced from the central supplier database*)
- (b) quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria of the CSD;
- (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.

(2) A designated official referred to in subparagraph (1) (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 in terms of that subparagraph.

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

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

- (a) when using the CSD, the accounting officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;

*(quotations must be sourced from the central supplier database)*

- (b) all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, be advertised for at least seven days on the website and or official notice board of the municipality;

offers received must be evaluated on a comparative basis taking into account unconditional discounts;

- (c) the accounting officer or 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 sub delegation;
- (d) offers below R30 000 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;
- (e) acceptable offers, which are subject to the preference points system (PPPFA and associated regulations), must be awarded to the bidder who's offer is according to specifications, has the ability to deliver and is compliant with all the other requirements and scored the highest points.
- (f) Minimum requirements for proper record keeping must be complied with.

### **Competitive bids**

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

- (2) No requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.
- (3) The 80 / 20 principle is applicable; 80 points for price and 20 points for B- BBEE status level verification certificates.

A bid must not be disqualified from the bidding process if the bidder does not submit a certificate substantiating the B-BBEE status level of contribution or is a non-compliant contributor.

PLEASE NOTE: [a] The 80/20 point system is applicable from R30 000 [all taxes included] up to R50 million [all taxes included]

[b] The 90/10 point system is applicable to bids invited exceeding R 50 million [all taxes included] This should not be interpreted that quotations can be invited for up to R 50 million.

The threshold for the invitation of quotations did not change and it is still at R200 000.

Note: Quotations can only be invited not exceeding R 200 000.

4. The specification committee will make proposals if functionality points need to be used and the adjudication committee or accounting officer will approve a variation in the functionality point system for a specific bid.
5. For construction procurements the CIDB Act and Regulations are to be used for quotations/bids.

### **Process for competitive bidding**

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

- (a) Compilation of bidding documentation as detailed in paragraph 21;
- (b) Public invitation of bids as detailed in paragraph 22;
- (c) Site meetings or briefing sessions as detailed in paragraph 22;
- (d) Handling of bids submitted in response to public invitation as detailed in paragraph 23;
- (e) Evaluation of bids as detailed in paragraph 28;
- (f) Award of contracts as detailed in paragraph 29;

(g) Administration of contracts

(i) After approval of a bid, the accounting officer and the bidder must enter into a written agreement.

## **TENDERS TO BE EVALUATED ON FUNCTIONALITY**

(1) An organ of state must state in the tender document if the tender will be evaluated on functionality.

(2) The evaluation criteria for measuring functionality must be objective.

(3) The tender documents must specify –

(a) the evaluation criteria for measuring functionality;

(b) the points for each criteria, if any, each sub-criterion; and (c) the minimum qualifying score of the functionality.

(4) The minimum qualifying score for functionality for a tender to be considered further

–

(a) must be determined separately for each tender, and

(b) may not be so –

(i) low that it may jeopardise the quality of the required goods or services, or (ii) high that it is unreasonable restrictive.

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

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

(7) Each tender that obtained the minimum qualifying score for functionality must be evaluated further in terms of price and the preference point system and any objective criteria envisaged in regulation 11.

(l) Sale and letting of assets

The Preferential Procurement Regulations, 2011, are not applicable to the sale and letting of assets.

In instances where assets are sold or leased, by means of a bidding process, the bid must be awarded to the bidder with the highest price (m) Proper record keeping

(i) Original / legal copies of written contracts agreements should be kept in a secure place for reference purposes.

### **Bid documentation for competitive bids**

21. The criteria to which bid documentation for a competitive bidding process must comply, must- (a) take into account -

- (i) the general conditions of contract and any special conditions of contract, if specified;
- (ii) any Treasury guidelines on bid documentation; and
- (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
- (b) include the preference points system to be used , goals as contemplated in the Preferential Procurement Regulations and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (d) if the value of the transaction is expected to exceed R 10 million (VAT included), require bidders to furnish-
  - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements-
    - (aa) for the past three years; or
    - (bb) since their establishment if established during the past three years;
  - (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
  - (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material noncompliance or dispute concerning the execution. of such contract;
  - (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality is expected to be transferred out of the Republic; and

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

(f) The Accounting Officer reserves the right to stipulate such a dispute to be settled utilizing a court of law preferably within the municipal boundaries or as close as possible to the municipal boundaries

### **Public invitation for competitive bids**

22. (1) The procedure for the invitation of competitive bids, is as follows:

(a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the municipality or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and

#### **GOODS AND SERVICES:**

(b) Advertisement of Bids and the Publication of notices in respect of Awards, Cancelled Bids, Verification and Extension of existing contracts on the e-Tender Publication Portal and Government Tender Bulletin.

#### **WORKS AND INFRASTRUCTURE:**

- i) Advertisement of Bids and the Publication of notices in respect of Awards, Cancelled Bids, Verification and Extension of existing contracts on the e-Tender Publication Portal and Government Tender Bulletin.
  - ii) CIDB i-Tender portal
- (c) the information contained in a public advertisement, must include-
- i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R 10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2) of this policy;
  - ii) a statement that bids may only be submitted on the bid documentation provided by the municipality; and
  - iii) date, time and venue of any proposed site meetings or briefing sessions;

- (2) The accounting officer may determine a closure date for the submission of bids on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.
- (3) Bids submitted must be sealed.
- (4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

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

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

- (a) Bids-
  - (i) must be opened only in public;
  - (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
  - (iii) received after the closing time should not be considered and returned unopened immediately.
- (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price;
- (c) No information, except the provisions in subparagraph (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
- (d) The accounting officer must-
  - (i) record in a register all bids received in time;
  - (ii) make the register available for public inspection; and
  - (iii) publish the entries in the register and the bid results on the website.

### **Negotiations with preferred bidders**

24. (1) The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation -

- (a) does not allow any preferred bidder a second or unfair opportunity;

- (b) is not to the detriment of any other bidder; and
- (c) does not lead to a higher price than the bid as submitted.

(2) Minutes of such negotiations must be kept for record purposes.

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

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

- (a) large complex projects;
- (b) projects where it may be undesirable to prepare complete detailed technical specifications; or
- (c) long term projects with a duration period exceeding three years.

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

(3) In the second stage final technical proposals and priced bids should be invited.

### **Committee system for competitive bids**

26. (1) A committee system for competitive bids is hereby established, consisting of the following committees for each procurement or cluster of procurements as the accounting officer may determine:

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

(2) The accounting officer appoints the members of each committee, taking into account section 117 of the Act; and

(3) A neutral or independent observer, appointed by the accounting officer, must attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.

(4) The committee system must be consistent with - (a) paragraph 27, 28 and 29 of this Policy; and (b) any other applicable legislation.

- (5) The accounting officer may apply the committee system to formal written price quotations.

### **Bid specification committees**

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

(2) Specifications -

- (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
  - (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;
  - (c) must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
  - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification;
  - (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word "equivalent";
  - (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2001; and
  - (g) must be approved by the accounting officer prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.
- (3) A bid specification committee must be composed of one or more officials of the municipality preferably the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.

- (4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.

### **Bid evaluation committees**

28. (1) A bid evaluation committee must-

- (a) evaluate bids in accordance with -
  - (i) the specifications for a specific procurement; and
  - (ii) the points system set out in terms of paragraph 27(2) (f).
- (b) evaluate each bidder's ability to execute the contract;
- (c) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, and;
- (d) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.

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

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

### **Bid adjudication committees**

29. (1) A bid adjudication committee must -

- (a) consider the report and recommendations of the bid evaluation committee; and (b) either-
  - (i) depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or
  - (ii) make another recommendation to the accounting officer how to proceed with the relevant procurement.

(2) A bid adjudication committee must consist of at least four senior\_managers of the municipality , which must include -

- (a) The chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer; and

- (b) at least one senior supply chain management practitioner who is an official of the municipality ; and
- (c) a technical expert in the relevant field who is an official, and who requests the goods /services must be co-opted any way.

Outside technical experts can also be co-opted, they must leave the meeting after advice has been given. Only standing committee members can be involved in final deliberation and recommendations or final approval.

(d) Where the Bid Adjudication Committee is of the view that the tenderer is charging prices higher than the fair market price, the Bid Adjudication Committee may request for the AO/AA to subject the tender to price negotiations with the tenderers scoring the highest points (from first highest to third highest) before award is made.

- (3) The accounting officer must appoint the chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.
- (4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.
- (5) (A) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid -
  - (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and; (ii) Notify the accounting officer.
    - (b) The accounting officer may-
      - (i) After due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
      - (ii) If the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (6) The accounting officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.

- (7) The accounting officer must comply with section 114 of the Act within 10 working days
- (8) For the purposes of continuity and not to delay meetings the Accounting Officer may also appoint any official to temporarily replace members that are absent from meetings due to illness, leave, etc. The Accounting Officer may also decide whether or not such an official will have the same powers as committee members.

### **Procurement of banking services**

30. (1) A contract for banking services- (a) Must be procured through competitive bids;
- (b) Must be consistent with section 7 or 85 of the Act; and
  - (c) May not be for a period of more than five years at a time.
- (2) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.
- (3) The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of paragraph 22(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990):

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

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

(4) If SITA comments on the submission and the municipality disagrees with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the relevant provincial treasury and the Auditor General.

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

32. (1) The accounting officer may procure goods or services under a contract secured by another organ of state, but only if -

- (a) The contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
- (b) There is no reason to believe that such contract was not validly procured;
- (c) There are demonstrable discounts or benefits to do so; and
- (d) That other organ of state and the provider have consented to such procurement in writing.

(2) Subparagraphs (1)(c) and (d) do not apply if-

- (a) a municipal entity procures goods or services through a contract secured by its parent municipality; or
- (b) a municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.

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

33. (1) the acquisition and storage of goods in bulk (other than water), which necessitate special safety arrangements, including gasses and fuel, should be avoided where ever possible.

(2) Where the storage of goods in- bulk is justified, such justification must be based on sound reasons, including the total cost of ownership, cost advantages and environmental impact and must be approved by the accounting officer.

## **REMEDIES**

**The regulation has been enhanced to include sub-regulations related to: i) Giving tenderer an opportunity to make a submission; ii) Informing the relevant treasury in writing of any actions taken against the Tenderer; iii) The responsibilities of the treasury after receiving documents from the organ Of state concerned**

**CIRCULARS AND GUIDELINES**

YEAR	TREASURY INSTRUCTION NOTE
<u>2017-18:</u>	
02 OF 2017-18	National Travel Policy Framework
<u>2016 – 17:</u>	
02 OF 2016 -17	Cost Containment Measures
05 OF 2016	Payments exceeding 30 days
4 A OF 2016-17	Central Supplier Database
03 OF 2016-17	Prevention and combating abuse in SCM
02 OF 2016-17	Procurement Plans – Submission and Reporting
<u>2015 – 16:</u>	
01 OF 2015-16	Advertisement of Bids and the Publication of Awards on the eTender Publication Portal
04 OF 2015-16	Standard for Infrastructure Procurement and Delivery Management
<u>2014 – 15:</u>	
3A OF 2014 - 15	Clarification Regarding Implementation of Tax Compliance Status Instruction
<u>2013:</u>	
Practice Note 11 of 2008/09	Unsolicited Proposals
<u>2012:</u>	
National Treasury Instruction notes:	On invitation and evaluation of sectors based on an stipulated minimum threshold for local production and content: For the textile, leather, clothing and footwear sector

## **Proudly SA Campaign**

34. The municipality supports the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services from:

- Firstly - suppliers and businesses within the municipality or district;
- Secondly - suppliers and businesses within the relevant province; □ Thirdly - suppliers and businesses within the Republic.

## **Appointment of consultants**

35. (1) The accounting officer may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.

(2) Consultancy services must be procured through competitive bids if (a) the value of the contract exceeds R200 000 (VAT included); or (b) the duration period of the contract exceeds one year.

(3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of -

(a) all consultancy services provided to an organ of state in the last five years; and (b) any similar consultancy services provided to an organ of state in the last five years.

(4) The accounting officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the municipality.

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

36. (1) The accounting officer may -

(a) dispense with the official procurement processes established by this Policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only -

- (i) in an emergency;
- (ii) if such goods or services are produced or available from a single provider only;
- (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;

- (iv) acquisition of animals for zoos and/or nature and game reserves; or
- (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and

(b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.

(2) The accounting officer must record the reasons for any deviations in terms of subparagraphs (1)(a) and (b) of this policy and report them to the next meeting of the council and include as a note to the annual financial statements.

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

### **Management of expansion or variation of orders against the original contract**

37. 1. Contracts may be expanded or varied by not more than 20% R20 million (including VAT and other taxes) for construction related goods, services and /or infrastructure projects and 15% or R 15 million (including VAT and all other taxes) for all other goods and/or services of the original value of the contract.

Furthermore, anything beyond the above mentioned thresholds must be reported to council. Any expansion or variation in excess of these thresholds must be dealt with in terms of the provisions of Section 116 (3) of the MFMA which will be regarded as an amendment of the contract.

2. The contents of this paragraph are not applicable to transversal contracts, facilitated by the relevant treasuries on behalf of municipalities and specific term contracts. The latter refers to orders placed as and when commodities are required and at the time of awarding contracts, the required quantities were unknown.

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### **Unsolicited bids**

39. (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.

(2) The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if-

- (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
- (b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
- (c) the person who made the bid is the sole provider of the product or service; and
- (d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.

(3) If the accounting officer decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with -

- (a) reasons as to why the bid should not be open to other competitors;
- (b) an explanation of the potential benefits if the unsolicited bid were accepted; and (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.

(4) The accounting officer must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, to the National Treasury and the relevant provincial treasury for comment.

(5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, depending on its delegations.

(6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.

(7) When considering the matter, the adjudication committee must take into account - (a) any comments submitted by the public; and

(b) any written comments and recommendations of the National Treasury or the relevant provincial treasury.

(8) If any recommendations of the National Treasury or Provincial Treasury are rejected or not followed, the accounting officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.

- (9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality to the bid may be entered into or signed within 30 days of the submission.

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

40. (1) The accounting officer must-
- (a) take all reasonable steps to prevent abuse of the supply chain management system;
  - (b) investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this Policy, and when justified -
    - (i) take appropriate steps against such official or other role player; or
    - (ii) report any alleged criminal conduct to the South African Police Service;
  - (c) check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
  - (d) reject any bid from a bidder-
    - (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality or to any other municipality, are in arrears for more than three months; or
    - (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
  - (e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
  - (f) cancel a contract awarded to a person if -
    - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
    - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
  - (g) reject the bid of any bidder if that bidder or any of its directors -
    - (i) has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;

- (ii) has been convicted for fraud or corruption during the past five years;
- (iii) has wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
- (iv) has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).

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

40 [3] The accounting officer [who may delegate the task to the CFO] must, as part of complying with section 62[1][d] of the MFMA set up and maintain a register of Unauthorised, Irregular, Fruitless and Wasteful Expenditures. The aim with the register is also to serve as a tool for recording all unauthorised, irregular, fruitless and wasteful expenditures and for tracking progress in dealing with the consequences flowing from such expenditures until all the issues that gave rise to the expenditures are properly resolved in accordance with the legal framework. Please also consult National Treasury MFMA Circular 68 dated 10 May 2013 in this regard.

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

#### **Logistics management**

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

- (a) the monitoring of spending patterns on types or classes of goods and services incorporating, where practical, the coding of items to ensure that each item has a unique number;
- (b) the setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;
- (c) the placing of manual or electronic orders for all acquisitions other than those from petty cash;
- (d) before payment is approved, certification by the responsible officer that the goods and services are received or rendered on time and is in accordance with the order, the general conditions of contract and specifications where applicable and that the price charged is as quoted in terms of a contract; .

- (e) appropriate standards of internal control and warehouse management to ensure that goods placed in stores are secure and only used for the purpose for which they were purchased;
- (f) regular checking to ensure that all assets including official vehicles are properly managed, appropriately maintained and only used for official purposes; and
- (g) monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for particular goods or services.
- (h) the maintenance and administration of term contracts is co-managed with acquisition management for general goods / services a with and for infrastructure with technical services.

### **Disposal management**

42. (1) The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act, are to be determined by council.

- (2) Assets may be disposed of by -
  - (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
  - (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
  - (iii) selling the asset; or
  - (iv) destroying the asset.
- (3) The accounting officer must ensure that -
  - (a) immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
  - (b) movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
  - (c) firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;

- (d) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;
- (e) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;
- (f) where assets are traded in for other assets, the highest possible trade-in price is negotiated; and
- (g) in the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment.

### **Risk management**

43. (1) The criteria for the identification, consideration and avoidance of potential risks in the supply chain management system, are to be determined by council

(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.

### **Performance management**

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

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

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

45. (1) No award above R 15 000 [all taxes included], may be made in terms of this Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order.

- (2) Before making an award to a person the accounting officer must first check with SARS whether that person's tax matters are in order.
- (3) If SARS does not respond within 7 days such person's tax matters may for purposes of subparagraph (1) be presumed to be in order.

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

46. Irrespective of the procurement process followed, no award may be made to a person in terms of this Policy - (a) who is in the service of the state;

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

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

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

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

### **Ethical standards**

48. (1) A code of ethical standards as set out in subparagraph (2) is hereby established for officials and other role players in the supply chain management system of the municipality in order to promote -

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

(2) An official or other role player involved in the implementation of this Policy -

- (a) must treat all providers and potential providers equitably;
- (b) may not use his or her position for private gain or to improperly benefit another person;
- (c) may not accept any reward, gift, favour, hospitality or other benefit directly" or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
- (d) notwithstanding subparagraph (2) (c), must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
- (e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the municipality ;
- (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
- (g) must be scrupulous in his or her use of property belonging to municipality ;
- (h) must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
- (i) must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including -
  - (i) any alleged fraud, corruption, favouritism or unfair conduct;
  - (ii) any alleged contravention of paragraph 47(1) of this Policy; or
  - (iii) any alleged breach of this code of ethical standards.

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

- (a) must be recorded in a register which the accounting officer must keep for this purpose;
- (b) by the accounting officer must be made to the council of the municipality who must ensure that such declarations are recorded in the register.

(4) The National Treasury's code of conduct must also be taken into account by supply chain management practitioners and other role players involved in supply chain management.

- (5) A breach of the code of ethics must be dealt with as follows -
- (a) in the case of an employee, in terms of the disciplinary procedures of the municipality envisaged in section 67(1)(h) of the Municipal Systems Act;
  - (b) in the case a role player who is not an employee, through other appropriate means in recognition of the severity of the breach.
  - (c) In all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act.

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

49 (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant -

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

### **Sponsorships**

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

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

## **Objections and complaints**

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

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

52. (1) the accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes -

- (a) to assist in the resolution of disputes between the municipality and other persons regarding
  - (i) any decisions or actions taken in the implementation of the supply chain management system; or
  - (ii) Any matter arising from a contract awarded in the course of the supply chain management system; or
- (b) To deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.

(2) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.

(3) The person appointed must ~

- (a) Strive to resolve promptly all disputes, objections, complaints or queries received; and
- (b) Submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.

(4) A dispute, objection, complaint or query may be referred to the relevant provincial treasury if -

- (a) The dispute, objection, complaint or query is not resolved within 60 days; or (b) No response is forthcoming within 60 days.

(5) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.

(6) This paragraph must not be read as affecting a person's rights to approach a court at any time.

### **Contracts providing for compensation based on turnover-**

53. If a service provider acts on behalf of 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.

## **PREFERENTIAL PROCUREMENT REGULATION, 2022**

### 1. Identification of preference point system

(1) An organ of state must, in the tender documents, stipulate—

(a) the applicable preference point system as envisaged in regulations 4, 5, 6 or 7;

(b) the specific goal in the invitation to submit the tender for which a point may be awarded, and the number of points that will be awarded to each goal, and proof of the claim for such goal.

(2) If it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

(a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or

(b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system.

2. 80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million

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

$$Pt - P \text{ min}$$

$$Ps = 80 \quad 1 -$$

P min

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of lowest acceptable tender.

(2) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender. ( The allocation of preference points for tenders above the quotation threshold to be decide and allocated per tender)

(3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

(4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

3. 90/10 preference point system for acquisition of goods or services with Rand value above R50 million

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

Where-

$$P_t - P_{\min}$$

$$P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

$$P_{\min}$$

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

$P_t$  = Price of tender under consideration; and

$P_{\min}$  = Price of lowest acceptable tender.

(2) A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender. ( The allocation of preference points for tenders above the quotation threshold to be decide and allocated per tender)

(3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

(4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

4.80/20 preference points system for tenders for income-generating contracts with Rand value equal to or below R50 million

(1) The following formula must be used to calculate the points for price in respect of an invitation for tender for income-generating contracts, with a Rand value equal to or below R50 million,

$$P_t - P_{\max}$$

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

$$P_{\max}$$

Where-

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

$P_t$  = Price of tender under consideration; and

$P_{\max}$  = Price of highest acceptable tender.

(2) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender. ( The allocation of preference points for tenders above the quotation threshold to be decide and allocated per tender)

(3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

(4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

5.90/10 preference point system for tenders for income-generating contracts with Rand value above R50 million

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

$$P_s = 90 - \frac{P_t - P_{max}}{P_{max}}$$

Where:

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

$P_t$  = Price of tender under consideration; and

$P_{max}$  = Price of highest acceptable tender.

(2) A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender. ( The allocation of preference points for tenders above the quotation threshold to be decide and allocated per tender)

(3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

(4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

#### Criteria for breaking deadlock in scoring

(1) If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest points for specific goals.

(2) If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

#### Remedies

(1) If an organ of state is of the view that a tenderer submitted false information regarding a specific goal, it must—

(a) inform the tenderer accordingly; and

(b) give the tenderer an opportunity to make representations within 14 days as to why the tender may not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part.

(2) After considering the representations referred to in subregulation (1)(b), the organ of state may, if it concludes that such information is false—

(a) disqualify the tenderer or terminate the contract in whole or in part; and

(b) if applicable, claim damages from the tenderer.

## **Attachments**

**Annexure A – Local Government Framework for Infrastructure Delivery and Procurement Management**

## **Commencement**

54. This Policy takes effect on 16<sup>th</sup> of January 2023 as per the new PPR 2022