



NKOMAZI LOCAL MUNIICPALITY

MP324

# SUPPLY CHAIN MANAGEMENT POLICY

## **VISION**

A leading local municipality that empowers its communities through, excellent service delivery.

## **MISSION**

To enhance the quality of life of all the communities in the Nkomazi Local Municipality area through rendering basic services in an efficient and cost-effective manner that adheres to the principles of sustainable development.

## **MUNICIPALITY'S CORE VALUES**

The Nkomazi Local Municipality subscribes to the following core values:

- Accountability;
- Good Governance;
- Transparency;
- Integrity; and
- Responsiveness.

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## 1. Definitions

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

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

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

**“final award”**, in relation to 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;

**“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.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature;

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

**“list of accredited prospective providers”** means the list of accredited prospective providers which a municipality or municipal entity must keep in terms of paragraph 14 of this policy;

**“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); **and its associated regulations**
- (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);

**“Regulation”** means the Local Government: Municipal Supply Chain Management Regulations, 2005;

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

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

**“verbal quotations”** means quotations submitted verbally whether telephonically or in person;

# CHAPTER 1 ESTABLISHMENT AND IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

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## 2. Supply chain management policy

1. The Nkomazi Local Municipality resolves in terms of section 111 of the Act to have and implement a supply chain management policy that –
  - a) gives effect to –
    - i) section 217 of the Constitution; and
    - ii) Part 1 of Chapter 11 and other applicable provisions of the Act;
  - b) is fair, equitable, transparent, competitive and cost effective;
  - c) complies with –
    - i) the regulatory framework prescribed in Chapter 2 of the Regulations; and
    - ii) any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
  - d) is consistent with other applicable legislation;
  - e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
  - f) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.
2. The municipality may not act otherwise than in accordance with this supply chain management policy when –
  - a) procuring goods or services;
  - b) disposing of goods no longer needed;
  - c) selecting contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
  - d) in the case of a municipality, selecting external mechanisms referred to in section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.
3. Subparagraphs (1) and (2) of this policy do not apply in the circumstances described in section 110 (2) of the Act except where specifically provided otherwise in this policy.

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

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

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

- (1) The council hereby delegates such additional powers and duties to the accounting officer so as to enable the accounting officer –
  - a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
    - i) Chapter 8 of the Act; and
    - ii) the supply chain management policy;
  - b) to maximize administrative and operational efficiency in the implementation of the supply chain management policy;
  - c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favoritism and unfair and irregular practices in the implementation of the supply chain management policy; and
  - d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the 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) of this policy.
- (3) The council or accounting officer may not delegate or sub delegate any supply chain management powers or duties to a person who is not an official of the municipality or to a committee, which is not exclusively composed of officials of the municipality.

- (4) This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this policy.

## 5. Sub delegations

- (1) The accounting officer may in terms of section 79 or 106 of the 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 R10 million (VAT included) may not be sub delegated by the accounting officer;
  - b) above R2 million (VAT included), but not exceeding R10 million (VAT included), may be sub delegated but only to –
    - i) the chief financial officer;
    - ii) a senior manager; or
    - iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or
  - c) not exceeding R2 million (VAT included) may be sub delegated but only to –
    - i) the chief financial officer;
    - ii) a senior manager;
    - iii) a manager directly accountable to the chief financial officer or a senior manager; or
    - iv) a bid adjudication committee.
- (3) An official or bid adjudication committee to which the power to make final awards has been sub delegated in accordance with subparagraph (2) of this policy must within five days of the end of each month submit to the official referred to in subparagraph (4) of this policy 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) of this policy must be submitted –
- (a) to the accounting officer, in the case of an award by –
    - (i) the chief financial officer;
    - (ii) a senior manager; or

- (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or
  - (b) to the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by –
    - (i) a manager referred to in subparagraph (2)(c)(iii) of this policy; 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.

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

- (1) The Council must maintain oversight over the implementation of this supply chain management policy.
- (2) For the purposes of such oversight the accounting officer must –
  - (i) within 30 days of the end of each financial year, submit a report on the implementation of the supply chain management policy of the municipality and of any municipal entity under its sole or shared control, to the council of the municipality,
  - (ii) whenever there are serious and material problems in the implementation of the supply chain management policy, immediately submit a report 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 Executive Mayor.
- (4) The reports must be made public in accordance with section 21A of the Municipal Systems Act.

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

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

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

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

## **CHAPTER 2**

### **9. FRAMEWORK FOR SUPPLY CHAIN MANAGEMENT**

#### **9.1 Format of supply chain management**

This supply chain management policy provides systems for –

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

#### **9.2 Planning and stipulation of the Preference Point System (80/20 or 90/10) to be utilized**

- (1) The Nkomazi Local Municipality must, prior to making an invitation for tenders:-
  - (a) properly plan for, and, as far as possible, accurately estimate the costs of the provision of services, works or goods for which an invitation for tenders is to be made;
  - (b) determine and stipulate the appropriate preference point system to be utilized in the evaluation and adjudication of the tenders; and

## EVALUATION OF TENDERS ON FUNCTIONALITY

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

## THE 80/20 PREFERENCE POINT SYSTEM FOR ACQUISITION OF SERVICES, WORKS OR GOODS UP TO A RAND VALUE EQUAL TO OR ABOVE R30 000 AND UP TO R 50 MILLION

1. the following formula must be used to calculate the points for price in respect of tenders (including price quotations) with a Rand value equal to, or above R 30,000 up to a Rand value of R 50,000,000 (all applicable taxes included):

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

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

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

Pmin = Comparative price of lowest acceptable tender or offer.

2. Points must also be awarded to a tenderer for attaining their B-BBEE status level contributor in accordance with the table below:

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

3. A maximum of 20 points may be allocated for the promotion of B-BBEE.

4. The points scored by a tenderer in respect of B-BBEE contribution must be added to the points scored for price.
5. The contract must be awarded to the tenderer who scores the highest total number of points.

**THE 90/10 PREFERENCE POINT SYSTEM FOR ACQUISITION OF SERVICES, WORKS OR GOODS WITH A RAND VALUE ABOVE R 50 MILLION**

1. The following formula must be used to calculate the points for price in respect of tenders with a Rand value above R 50,000,000 (all applicable taxes included):

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

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

2. Points must also be awarded to a tenderer for attaining their B-BBEE status level contributor in accordance with the table below:

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

3. A maximum of 10 points may be allocated for the promotion of B-BBEE.
4. The points scored by a tenderer in respect of B-BBEE contribution must be added to the points scored for price.
5. The contract must be awarded to the tenderer who scores the highest total number of points.

## **Part 1: DEMAND MANAGEMENT**

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

- 10.1. The accounting officer must establish, through operational procedures, an effective system of demand management in order to ensure that the resources required to support the strategic and operational commitments are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy the needs.
- 10.2. 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 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;
  - (c) Provide for the compilation of the required specifications to ensure that its needs are met.
  - (d) Undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximised.

## **Part 2: ACQUISITION MANAGEMENT**

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

- (1) The accounting officer must establish, through operational procedures, an effective system of acquisition management in order to ensure –
- a) that goods and services are procured by the municipality in accordance with authorized processes only;
  - b) that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the 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 in accordance with any applicable legislation; and
  - e) that any Treasury guidelines on acquisition management are properly taken into account.
- (2) This supply chain management policy, except where provided otherwise in the policy, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the 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.
- (3) The following information must be made public wherever goods or services contemplated in section 110(2) of the Act are procured other than through the supply chain management system -
- a) the kind of goods or services; and
  - b) the name of the supplier.

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

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

- a) petty cash purchases, up to a transaction value of R2 000 (VAT included);
  - b) formal written price 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) One formal written price quotation be obtained for any specific procurement of a transaction value lower than R2 000;
    - (ii) Three formal written price quotations be obtained for any specific procurement of a transaction value lower than R10 000; or
    - (iii) Three formal written price quotations be obtained and a preferential procurement process be followed for any specific procurement of a transaction value lower than R200 000.
- (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.

**(4) The range of procurement processes set out in paragraph 12(1) on the policy can be tabled as follows:**

| PROCESS                         | VALUE   | ADVERTISEMENT  |
|---------------------------------|---|--|
| Petty Cash Purchases            | Up to R2000 [VAT included]  | No   |
| Informal Written Quotations     | Over R2001 [VAT included] up to R 30 000 [VAT included]                     | No   |
| Formal Written Price Quotations | Over R 30 001 [VAT included] up to R 200 000 [VAT included]                 | Municipal notice boards and website and preferential procurement process be followed |
| Competitive Bidding             | Over R 200 001 [VAT included] or Long Term Contracts exceeding one [1] year | Yes  |

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

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

(a) has furnished that provider's –

- (i) full name;
- (ii) identification number or company or other registration number; and
- (iii) tax reference number and VAT registration number, if any;

(b) has authorized the municipality to obtain a tax clearance from the South African Revenue Services that the provider's tax matters are in order; and

(c) has indicated –

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

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

- 1) The accounting officer must –
  - (a) keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements of the municipality through written price quotations and formal written price quotations; and
  - (b) at least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
  - (c) specify the listing criteria for accredited prospective providers; and
  - (d) disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.
- 2) Prospective providers of goods and services that must be used for the procurement requirements of the municipality will be performed through the Web Based Central Supplier Data Base (CSD) administered by the National Treasury. CSD assist the municipality in performing validation functions of key supply information.

The Central Supplier Database maintains a database of organisations, institutions and individuals who can provide goods and services to government. The CSD will serve as the single source of key supplier information for organs of state providing consolidated, accurate, up-to-date, complete and verified supplier information to procuring organs of state.

The registration of a supplier on the CSD has the same effect as paper based registration processes which are carried out through manual submission of the supplier information to an organ of state. Registration as supplier on the CSD does not prevent the supplier from registering by submitting the required information and documents to an organ of state manually or by any other manner accepted by the organ of state.

## **15. Petty cash purchases**

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

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

(c) The use of petty cash float is strictly confined to individual department cash purchases up to a maximum of R 2000, 00. Purchases are restricted up to 500, 00 at a go. Any purchases above R 500, 00 at a go can be allowed in the cases of emergency. And in terms of petty cash purchases refer to the draft proposed petty cash policy

## **16. Verbal quotations**

No verbal quotations will be accepted from prospective service providers whether submitted telephonically or in person.

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

- (1) The accounting officer or chief financial officer by delegation must establish the conditions for the procurement of goods or services through written price quotations, which must include conditions stating –
  - (a) that quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the municipality, provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria in the supply chain management policy required by 14(1)(b) and (c) of this policy;
  - (b) that, to the extent feasible, providers must be requested to submit such quotations in writing;
  - (c) that if it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the accounting officer or another official designated by the accounting officer;

- (d) that the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices;
  - (e) that no order will be placed without obtaining three price quotations from different service providers.
  - (f) that if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer, and
- (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.

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

- (1) The accounting officer or chief financial officer by delegation must determine the operational procedure for the procurement of goods or services through formal written price quotations, which must stipulate –
- (a) that all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 16, be advertised for at least seven days on the website and an official notice board of the municipality or municipal entity;
  - (b) that when using the list of accredited prospective providers the accounting officer must promote ongoing competition amongst providers, including by inviting providers to submit quotations on a rotation basis;
  - (c) that the accounting officer or chief financial officer must take all reasonable steps to ensure that the procurement of goods and services through formal written price quotations are not abused;
  - (d) that the accounting officer or chief financial officer must on a monthly basis be notified in writing of all formal written price quotations accepted by an official acting in terms of a sub delegation, and;
  - (e) requirements for proper record keeping.

### **19. Competitive bidding process**

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

- b) No requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

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

- (1) The accounting officer or chief financial officer must establish procedures for a competitive bidding process for each of the following stages:
  - (a) the compilation of bidding documentation;
  - (b) the public invitation of bids;
  - (c) site meetings or briefing sessions, if applicable;
  - (d) the handling of bids submitted in response to public invitation;
  - (e) the evaluation of bids;
  - (f) the award of contracts;
  - (g) the administration of contracts; and
  - (h) proper record keeping.

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

- (1) The accounting officer or chief financial officer must establish the criteria to which bid documentation for a competitive bidding process must comply, which in addition to paragraph 13 of this policy, the bid documentation must –
  - (a) take into account –
    - (i) the general conditions of contract;
    - (ii) any Treasury guidelines on bid documentation; and
    - (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
  - (b) include evaluation and adjudication criteria, including any criteria required by other applicable legislation;
  - (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
  - (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish–

- (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
    - (a) for the past three years; or
    - (b) 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 non-compliance or dispute concerning the execution of such contract;
  - (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

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

- (1) The accounting officer must determine the procedure for the invitation of competitive bids, which must stipulate that:
  - (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 municipal entity or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and
  - (b) 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 R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2) of this policy; and
    - (ii) a statement that bids may only be submitted on the bid documentation provided by the municipality or municipal entity.
- (2) The accounting officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.

- (3) Bids submitted must be sealed.
- (4) no electronic format submissions and bid documents will be accepted.

### **23. ADVERTISEMENT OF BIDS ON THE e-TENDER PUBLICATION PORTAL**

- (1) Referred to National Treasury MFMA Circular No 83, which provide information to municipalities and municipal entities regarding the advertisement of bids and the publication of notices in respect of awarded bids, cancelled bids, deviations, variations and extensions of existing contracts of a municipality or municipal entity on the eTender Publication Portal.
- (2) Accounting officers of municipalities and municipal entities are required to advertise all bids on the eTender Publication Portal as provided below.  
All bids advertised on the eTender Publication Administrator must at least contain the following information:
  - a) Bid description;
  - b) Bid number;
  - c) Name of Municipality or Entity;
  - d) The physical location where the goods, services or works specified in the bid are required;
  - e) The closing date and time of the bid;
  - f) Municipality or entity's contact details (postal and physical address, telephone number, email address, etc.);
  - g) The physical location where hard copies of bids can be collected;
  - h) The physical location where bids should be delivered; and
  - i) The bid documents (MBDs, Terms of Reference, GCC and any other relevant documents)

### **24. PUBLICATION OF NOTICES OF BID AWARDS, CANCELLATIONS, DEVIATIONS, VARIATIONS AND EXTENSIONS ON THE eTENDER PUBLICATION PORTAL**

- (1) Accounting officers of municipalities and municipal entities are required to publish the awards of all competitive bids on the eTender Publication Portal as mentioned below.  
Municipalities and municipal entities are required to publish the following information on successful bids<sup>2</sup> within seven (7) working days of awarding the bids:
  - a) Names of the successful bidder(s) and preference points claimed;
  - b) Contract price(s) ;
  - c) Contract period;
  - d) Contact details;
  - e) Names of Directors; and
  - f) Date of completion/award.

In addition to the information required above, accounting officers of municipalities and municipal entities are required to publish information on unsuccessful bids on the eTender

Publication Portal and publish the following data within the same time frame referred to above:

- a) Names of the unsuccessful bidder(s); and
- b) Contact details.

Notice of a cancelled bid must be published on the same day, or at the latest, the day after a municipality or municipal entity decided to cancel a bid.

Notice of all awards to suppliers through deviations from competitive bidding procedures must be published on the eTender Publication Portal within seven (7) working days after the award was made. Notice of all awards through variations and extensions of existing contracts must be published on the eTender Publication Portal within seven (7) working days after the award was made.

## 25. ACCESS TO THE eTENDER PORTAL BY DESIGNATED OFFICIAL(S)

- a) The National Treasury will grant access to the eTender Publication Portal to designated official(s) to upload information required in terms of this circular.

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

- (1) The accounting officer must determine the procedures for the handling, opening and recording of bids, which must stipulate that:
  - (a) Bids–
    - (i) must be opened only in public; and
    - (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired;
  - (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price; and
  - (c) The accounting officer must –
    - (i) record in a register all bids received in time;
    - (ii) make the register available for public inspection; and
    - (ii)** publish the entries in the register and the bid results on municipality notice boards.

## 24 Cancellation and re-invitation of tenders

1. (a) In the event that in the application of 80/20 preference points system as stipulated in the tender documents, all tenders received exceed the estimated rand value of R 50 000 000, the tender invitation must be cancelled.
  - (b) If One or more of the acceptable tenders received or within the prescribed threshold of R50 000 000, all tenders must be evaluated on the 80/20 preference points system.

2. (a) In the event that, in the application of the 90/10 preference point system as stipulated in the tender documents all tenders received are equal to, or below R50 000 0000 in the tender must be cancelled.
3. In case the municipality cancelled a tender invitation as contemplated in paragraph 23(1) (a) and 23(2) (a) must re-invite tenders and, in the tender documents stipulate the correct preference points system to be applied.
4. The municipality may prior to the award of a tender, cancel the tender if
  - a. Due to changed circumstances, there is no longer a need for the services, works or goods request, or
  - b. Tenders are no longer available to cover the total envisage expenditure.
  - c. No acceptable tenders are received.
5. The municipality decide to cancel the tender based on the information above must then publish the message on the media in which the original tender was advertised.

## **27. Negotiations with preferred bidders**

- (1) The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation—
  - (a) does not allow any preferred bidder a second or unfair opportunity;
  - (b) is not to the detriment of any other bidder; and
  - (c) does not lead to a higher price than the bid as submitted.
- (2) Minutes of such negotiations must be kept for record purposes.

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

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

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

- (1) The accounting officer is required to –

- (a) establish a committee system for competitive bids consisting of at least –
    - (i) a bid specification committee;
    - (ii) a bid evaluation committee; and
    - (iii) a bid adjudication committee;
  - (b) appoint the members of each committee in writing, taking into account section 117 of the Act; to serve from the beginning of the financial year to the end of that financial year.
  - (c) provide for an attendance or oversight process by a neutral or independent observer, appointed by the accounting officer, when this is appropriate for ensuring fairness and promoting transparency.
- (2) The committee system must be consistent with –
- (a) paragraph 27, 28 and 29 of this policy; and
  - (b) any other applicable legislation.

## **28. Bid specification committees**

- (1) The bid specification committee must compile the specifications for each procurement of goods or services by the municipality.
- (2) Specifications –
  - (a) must be 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 Organization, or an authority accredited or recognized by the South African National Accreditation System with which the equipment or material or workmanship should comply;
  - (c) where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
  - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labeling of conformity certification;
  - (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise

or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the words “equivalent”;

- (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2011; and
  - (g) must be approved by the accounting officer prior to publication of the invitation for bids in terms of paragraph 22 of this policy.
- (3) The bid specification committee must be composed of one or more officials of the municipality, preferably the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.
- (4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.

## **29. Bid evaluation committees**

- (1) The bid evaluation committee must –
- (a) evaluate bids in accordance with –
    - (i) the specifications for a specific procurement; and
    - (i) the points system set out in terms of paragraph 9.2
  - (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.
  - (e) The municipality must, when calculating competitive prices take into account any discounts which have been offered unconditionally.
  - (f) A discount which has been offered condition must despite not being taken into account for evaluation purposes, be implemented when payment is effected
  - (g) Points scored must be rounded off to the nearest two (2) decimal places
  - (h)(i) In the event that two or more tenders have scored equal total points, the successful tender must be the one scoring the highest number of preference points for BBBEE
  - (ii) However, functionality is part of the evaluation process and two or more tenders have scored equal points including equal preferential points for

BBBEE, the successful tender must be the one scoring the highest score for functionality.

- (I) A trust, consortium or joint venture will qualify for point for their BBBEE status level is legal entity, provided that the entity submits their BBBEE status level certificate.
  - (J) A trust, consortium or joint venture will qualify for points for their BBBEE status level as an unincorporated entity, provided that the entity submits their consolidated BBBEE score card as if they were a group structure and that such a consolidated BBBEE score card is prepared for every separate tender.
  - (k) A person must be awarded points for BBBEE status level if it is indicated in the tender documents that such a tender intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a tender qualifies for, unless the intended sub-contractor is an exempted micro enterprise that has the capability and ability to execute the sub-contract.
  - (l) A person awarded a contract may not sub-contract more than 20% of the value of the contract to any other enterprise that does not have an equal or higher BBBEE status level than the person concerned, unless the contract is sub-contracted to an exempted micro enterprise that has the capability and the ability to execute the sub-contract.
  - (m) A person awarded a contract in relation to the designated sectors may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
  - (n) When an organ of state is in need of a service provided by only tertiary institution, such services must be procured through a tertiary process from identified tertiary institution.
  - (o) Tertiary institution referred to in paragraph (N) will be required to submit their BBBEE status in terms of specialized scorecard contained in the BBBEE codes of good practice.
- (2) The bid evaluation committee must as far as possible be composed of –
- (a) officials from departments requiring the goods or services; and
  - (b) at least one supply chain management practitioner of the municipality.

### **(3) LOCAL CONTENT**

3.1. The department of Trade and Industry may, in consultation with the National Treasury-

- (a) Designate a sector, sub-sector or industry or product in accordance with national development and industrial policies for local production and content, where only locally produced services or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content, taking into account economic and other relevant factors, and
- (b) Stipulate a minimum threshold for local production and content,

3.2. An organ of state must, in the case of designated sector, advertise the invitation to tender with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered.

#### **4. SUB-CONTRACTING AS CONDITIONS OF TENDER**

4.1. If feasible to subcontract for a contract above R30 million, an organ of state must apply subcontracting to advance designated groups

4.2. If an organ of state applies subcontracting as contemplated in sub regulation above,  
- the organ of state must advance advertise the tender with a specific tendering condition that the successful tenderer must subcontract a minimum of 30% of the value of the contract to

- a. an EME or QSE
- b. an EME of QSE is at least 51% owned by black people'
- c. an EME of QSE is at least 51% owned by black people who are young
- d. an EME of QSE is at least 51% owned by black people who are women
- e. an EME of QSE is at least 51% owned by black people with disabilities
- f. an EME of QSE is at least 51% owned by black people living in rural or underdeveloped areas or townships
- g. A cooperative which is at least 51% owned by black people
- h. an EME of QSE is at least 51% owned by black people who are military veterans;  
or
- i. morethan one of the categories referred to in paragraphs (a) to (h)

#### **30. Bid adjudication committees**

- (1) The bid adjudication committee must –
  - (a) consider the report and recommendations of the bid evaluation committee;  
and

- (i) make a final award or a recommendation to the accounting officer to make the final award;
  - (ii) Make another recommendation to the accounting officer how to proceed with the relevant procurement.
  - (iii) Consider recommendations/reports regarding the amendment, variation, extension, cancellation or transfer of contracts awarded.
  - (iii) Consider for approval the recommendations of the Bid Specification Committee
- (2) The bid adjudication committee must consist of at least four senior managers of the municipality, constituted as follows:
- (i) Chairperson: where the chairperson should be the chief financial officer.
  - (ii) Vice chairperson: the vice chairperson should be a senior manager (as referred by section 56 of the Municipal Systems Act).
  - (iii) Other members: a senior supply chain management practitioner who is an official of the municipality; and
    - (iv) where necessary a technical expert in the relevant field/ or advisors who is an official, if such an expert exists.
- (3) Neither a member of a bid evaluation committee, nor an advisor or a person assisting the evaluation committee, may be a member of a bid adjudication committee.
- (4) ;(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.

- (5) 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.
- (6) The accounting officer must comply with section 114 of the Act within 10 working days.

### **31. Procurement of banking services**

- (1) Banking services –
  - (a) must be procured through competitive bids;
  - (b) must be consistent with section 7 or 85 of the 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).

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

- (1) The accounting officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.
- (2) Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.
- (3) The accounting officer must notify SITA together with a motivation of the IT needs if –
  - (a) the transaction value of IT related goods or services required in any financial year will exceed R50 million (VAT included); or
  - (b) the transaction value of a contract to be procured whether for one or more years exceeds R50 million (VAT included).
- (4) If SITA, comments on the submission and the municipality disagrees with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the relevant provincial treasury and the Auditor General.

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

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

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

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

### **35. Proudly SA Campaign**

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

### **36. Appointment of consultants**

- (1) The accounting officer may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.
- (2) Consultancy services must be procured through competitive bids if –
  - (a) the value of the contract exceeds R200 000 (VAT included);  
or
  - (b) the duration period of the contract exceeds one year.

- (3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of –
  - (a) all consultancy services provided to an organ of state in the last five years; and
  - (b) any similar consultancy services provided to an organ of state in the last five years.
- (4) The accounting officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the municipality.

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

- (1) The accounting officer may –
  - (a) dispense with the official procurement processes established by this policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only –
    - (i) in an emergency;
    - (ii) if such goods or services are produced or available from a single provider only;
    - (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
    - (iv) acquisition of animals for zoos and/or nature and game reserves; 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 through the office of the Executive Mayor 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.

### **38. Accommodation and Conferences**

1. The municipality shall procure accommodation and conference facilities through;
  - a) Written quotations; or
  - b) Competitive bid process
2. where it is not possible or practical to procure such services through competitive bidding process, written quotations must be obtained
3. Based on the location and facilities available in the area of the event that both of the above methods not being possible, the municipality will deviate from supply chain management procedure and follow processes under deviation. (paragraph 34)

### **39. Unsolicited bids**

- (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) All written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, must be submitted to the National Treasury and the relevant provincial treasury for comment.

- (5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, depending on its delegations.
- (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (7) When considering the matter, the adjudication committee must take into account:
  - (a) any comments submitted by the public; and
  - (b) any written comments and recommendations of the National Treasury or the relevant provincial treasury.
- (8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the accounting officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.
- (8) 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.

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

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

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, favoritism, unfair or irregular practices or failure to comply with this supply chain management policy, and when justified –
    - (i) take appropriate steps against such official or other role player; or
    - (ii) report any alleged criminal conduct to the South African Police Service;
  - (c) check the National Treasury’s database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
  - (d) reject any bid from a bidder–

- (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality, or to any other municipality or municipal entity, are in arrears for more than three months; or
  - (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
- (e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
- (f) cancel a contract awarded to a person if –
  - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
  - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
- (g) reject the bid of any bidder if that bidder or any of its directors
  - (i) has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;
  - (ii) has been convicted for fraud or corruption during the past five years;
  - (iii) has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - (iv) has been listed in the Register for Tender Defaulters In terms section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- (2) The accounting officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) of this policy.

## **Part 3: LOGISTICS, DISPOSAL, RISK AND PERFORMANCE MANAGEMENT**

### **41. Logistics Management**

- (1) The accounting officer must establish an effective system of logistics

management in order to provide for the setting of inventory levels, placing of orders, receiving and distribution of goods, stores and warehouse management, expediting orders, transport management, vendor performance, maintenance and contract administration.

## 42. Disposal management

- (1) The accounting officer must establish an effective system of disposal management for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 of the Act, which must stipulate the following:
  - (2) The disposal of assets must–
    - (a) be by one of the following methods –
      - (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;
    - (b) provided that –
      - (i) immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
      - (ii) movable assets may be sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
      - (iii) in the case of the free disposal of computer equipment, the provincial department of education must first be approached to indicate within 30 days whether any of the local schools are interested in the equipment; and
      - (v) in the case of the disposal of firearms, the National Conventional Arms Control Committee has approved any sale or donation of firearms to any person or institution within or outside the Republic;
    - (c) furthermore ensure that –
      - (i) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise; and (ii) all fees, charges, rates, tariffs, scales of fees or other charges

relating to the letting of immovable property are annually reviewed;  
and

- (d) ensure that where assets are traded in for other assets, the highest possible trade-in price is negotiated.

#### **43. Risk management**

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

#### **44. Performance management**

- (1) The accounting officer must establish an effective internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorized supply chain management processes were followed and whether the desired objectives were achieved.

### **Part 4: OTHER MATTERS**

#### **45. Prohibition on awards to persons whose tax matters are not in order and implementation of the tax compliance status system**

- 1. The accounting officer must ensure that, irrespective of the procurement process followed, no award above R15 000 is given 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 person 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 matters may for purposes of subparagraph (1) be presumed to be in order.

4. referred to National Treasury Circular No 90, tax compliance status, purpose is to provide information to Accounting Officers of municipalities and municipal entities regarding the implementation of a revised tax management system applicable to supply chain management processes and introduces a revised Municipal Bidding Document 1 (MBD) to give effect to the new Tax Clearance System (TCS) as a way of verifying the tax compliance status of bidders.
5. It is therefore essential to ensure that persons conducting business with the State are tax compliant when participating in tenders or other bidding processes. The South African Revenue Service (SARS) introduced an enhanced TCS system aimed at improving compliance and making it easier for taxpayers to manage their tax affairs.
6. Therefore, the new TCS impacts on SCM processes and documentation that must be submitted as SARS no longer issues tax compliance certificates.
7. implementation of the tax compliance status system , in order to comply with the new TCS system and the condition of bids that a successful bidder's tax matters must be in order, Accounting Officers of all municipalities and municipal entities should :
  - a) Designate officials, preferably from the supply chain management unit, whose function will be to verify the tax compliance status of a taxpayer and to manage the TCS system on the SARS website and have the functionality to verify the tax compliance status of a taxpayer on the SARS' e-Filing system. Guidance to the Tax Compliance functionality on eFiling is available on the SARS website [www.sars.gov.za](http://www.sars.gov.za).
  - b) Utilise the Municipal Bid Document 1 (MBD1) issued with this circular when inviting bids.
  - c) As a bid condition, request bidders to register on government's Central Supplier Database (CSD) and include in their quotations or bids, their Master Registration Number or tax compliance status PIN to enable the municipality to verify the bidder's tax compliance status.
  - d) Utilise the Master Registration Number or tax compliance status PIN to verify bidders' tax compliance status.
  - e) Print the tax compliance status screen view or letter with the result of the bidder's status at the date and time of verification to file with the bidder's bid documents for audit purposes
8. The CSD and tax compliance status PIN are the approved methods to be used to prove tax compliance as the SARS no longer issues Tax Clearance Certificates but has made provision online, via e-Filing, for bidders to print their own Tax Clearance Certificates which they can submit with their bids or price quotations.

9. Accounting Officers may therefore, accept printed or copies of Tax Clearance Certificates submitted by bidders and verify them on e-Filing. The verification result should be filed for audit purposes.
10. Where a supplier does not submit a tax compliance status PIN but provides a CSD number, the accounting officer should utilise the CSD number via its website [www.csd.gov.za](http://www.csd.gov.za) to access the supplier records and verify tax compliance status. A printed screen view at the time of verification should then be attached to the supplier's records for audit purposes.
11. Where goods and services are procured from foreign suppliers with tax obligations in South Africa, proof of tax compliance status should be obtained from the supplier.
12. Foreign suppliers with neither South African tax obligations nor history of doing business in South Africa should complete a pre-award questionnaire on the MBD 1 for their tax obligation categorisation. Where a recommendation for award of a bid has been made to a bidder who is a foreign supplier and who completed the pre-award questionnaire on the MBD 1, the Accounting Officer must submit a copy of the completed MBD 1 received from the bidder to SARS on the following email address: [GovernmentInstitute@sars.gov.za](mailto:GovernmentInstitute@sars.gov.za). SARS will issue a letter to the procuring entity confirming whether or not the foreign supplier has tax obligations in South Africa.
13. Where goods and services are procured from foreign suppliers with no tax obligation in South Africa, there is no need to request proof of tax compliance status.
14. Where goods and services are imported, all custom related taxes shall be applied as prescribed by SARS.
15. application during SCM process
  - a) The designated official(s) should verify the bidder's tax compliance status prior to the finalisation of the award of the bid or price quotation.
  - b) Where the recommended bidder is not tax compliant, the bidder should be notified of their non-compliant status and the bidder must be requested to submit to the municipality or municipal entity, within 7 working days, written proof from SARS of their tax compliance status or proof from SARS that they have made an arrangement to meet their outstanding tax obligations. The proof of tax compliance status submitted by the bidder to the municipality or municipal entity must be verified via the CSD or e-Filing.

- c) The accounting officer should reject a bid submitted by the bidder if such a bidder fails to provide proof of tax compliance status within the timeframe stated above.
- d) Where goods or services have been delivered satisfactorily without any dispute, accounting officers should not delay processing payment of invoices due to outstanding tax matters

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

- (1) The supply chain management policy of a municipality or municipal entity must, irrespective of the procurement process followed, state that the municipality or municipal entity may not make any award to a person-
  - (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 stake holder is a person in the service of the state; or
  - (c) Who is an advisor or consultant contracted with municipality or municipal entity”

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

- (1) The notes to the annual financial statements must disclose particulars of any award of more than R2000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –
  - (a) the name of that person;
  - (b) the capacity in which that person is in the service of the state; and
  - (c) the amount of the award.

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

- (1) A code of ethical standards is hereby established, in accordance with subparagraph (2), for officials and other role players in the supply chain management system in order to promote –
  - (a) mutual trust and respect; and
  - (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
- (2) An official or other role player involved in the implementation of the supply chain management policy –
  - (a) must treat all providers and potential providers equitably;

- (b) may not use his or her position for private gain or to improperly benefit another person;
  - (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
  - (d) notwithstanding subparagraph (2)(c), must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
  - (e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the municipality;
  - (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
  - (g) must be scrupulous in his or her use of property belonging to the municipality;
  - (h) must assist the accounting officer in combating fraud, corruption, favoritism 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, favoritism 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 Executive Mayor of the municipality who must ensure that such declarations are recorded in the register.
- (4) The National Treasury's code of conduct must also be taken into account by supply chain management practitioners and other role players involved in supply chain management.

- (5) It is recommended that the municipality adopt the National Treasury's Code of Conduct for supply chain management practitioners and other role players involved in supply chain management. When adopted, such code of conduct becomes binding on all officials and other role players involved in the implementation of the supply chain management policy of the municipality or municipal entity. A copy of the National Treasury code of conduct is available on the website [www.treasury.gov.za/mfma](http://www.treasury.gov.za/mfma) located under "legislation". This code of conduct must be adopted by Council.
- (6) A breach of the code of conduct adopted by the municipality must be dealt with in accordance with schedule 2 of the Systems Act.

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

1. No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
  - (a) any inducement or reward to the municipality for or in connection with the award of a contract; or
  - (b) any reward, gift, favour or hospitality to –
    - (i) any official; or
    - (ii) any other role player involved in the implementation of the supply chain management policy.
2. The accounting officer must promptly report any alleged contravention of subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.

#### **50. Sponsorships**

- (1) 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.

#### **51. Objections and complaints**

- (1) 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 to the municipality against the decision or action.

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

- (1) The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes –
  - (a) to assist in the resolution of disputes between the municipality and other persons regarding –
    - (i) any decisions or actions taken in the implementation of the supply chain management system; or
    - (ii) any matter arising from a contract awarded in the course of the supply chain management system; or
  - (b) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.
- (2) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.
- (3) The person appointed must –
  - (a) strive to resolve promptly all disputes, objections, complaints or queries received; and (b) submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.
- (4) A dispute, objection, complaint or query may be referred to the relevant provincial treasury if –
  - (a) the dispute, objection, complaint or query is not resolved within 60 days; or
  - (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.

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

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

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

### **Payments of sub-contractors and or joint ventures systems**

The chief financial officer or an official designated by the chief financial officer may consent to the direct of payment of sub-contractors or joint venture partners by way of

- (c) An approved cession sign by both parties and their lawyers
- (d) An agreement to direct payments.

### **Extending and varying a contract**

1. Subject to paragraph 55(2) the municipality on its own initiative or upon receipt of application from the person, body, organization or corporation supplying food or services to the municipality in terms of this policy may resolve to extend or vary or contract it.
  - (a) with due regard to administrative efficiency and attentiveness, the accounting officer deems it appropriate.
2. The municipality may not extend or vary contract
  - (a) More than once
  - (b) For a period exceeding the duration of the original agreement or
  - (c) May be expanded or varied by not more than 20% for construction related goods.
  - (d) Anything beyond the above mention threshold must be reported to council.
3. The above is applicable of contracts awarded on the basis of as and when commodities are required since at the time of awarding the contracts, the required quantity were unknown.
4. Within one (1) month of the decision referred to in paragraph 55(1) the matters specified in paragraph 55(1) must be...
  - a. Publish by the municipality at least in an appropriate news paper circulating within the boundaries of the municipality and
  - b. Displayed at a prominent place that is designated for that purpose by the municipality.
5. The matters to be published or displayed are :
  - (a) The reasons for displaying with the prescribed procedure.
  - (b) A summary of the requirements of the goods and services, and
  - (c) The details o the person, body, organization or corporation supplying the goods or services.
6. The functions of the accounting officer in terms of paragraph 55 may not be assigned nor delegated.

## 54. Remedies

1. Upon detecting that a tenderer submitted false information regarding its BBEE status level of contributor, local production and content, or any other matter required in terms of these Regulations which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any subcontracting arrangements, the municipality must-
  - a) Inform the tenderer accordingly;
  - b) Give the tenderer an opportunity to make representation within 14 days as to why-
    - i. The tender submitted should not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part;
    - ii. If the successful tenderer subcontracted a portion of the tender to another person without disclosing it, the tenderer should not be penalized up to 10 percent of the value of the contract; and
    - iii. The tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state; and
  - c) If it concludes, after considering the presentations referred to in sub-regulation (1)(b), that
    - i. Such false information was submitted by the tenderer-  
(aa) disqualify the tenderer or terminate the contract in whole or in part; and  
(bb) if applicable, claim damages from the tenderer; or
    - ii. The successful tenderer subcontracted a portion of the tender to another person without disclosing; penalize the tenderer up to 10 percent of the value of the contract.
2. (a) an organ of state must-
  - i. Inform the National Treasury, in writing, of any actions taken in terms of sub-regulation (1);
  - ii. Provide written submissions as to whether the tender should be restricted from conducting business with any organ of state; and
  - iii. Submit written representation from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.

(b) The National Treasury may request an organ of state to submit further information pertaining to sub-regulation (1) within a specified period
3. The National Treasury must-
  - a) After considering the representations of the tenderer and any other relevant information, decide whether to restrict the tenderer from doing business with any organ of state for a period not exceeding 10years; and
  - b) Maintain and publish on its official website a list of restricted suppliers.

## 55. Commencement

The amendment to this policy takes effect on the date on which it is adopted by Council.