

Supply Chain Management Policy

Amahlathi Municipality
2015

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PREAMBLE

This policy was adopted by the Amahlathi Municipality (AM) on 28 May 2015, in terms of section 111 of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003).

The targeted mechanism of the Policy which enhances the development of black economic empowerment (BEE) companies clearly demonstrates the focus of the policy.

Major achievements and goals have been realized through the targeted procurement processes and Policies of the AM. The future focus will be to further enhance the Policy by considering new legislation that have been enacted.

The empowerment (BEE) goals have been reviewed and amended to be in-line with current trends and to be realistic in terms of Council's performance.

Other amendments related to policy gaps and policy performances have been included in the policy to strengthen and enhance the current policy.

The Policy includes a chapter on Empowerment Goals and objectives which strives towards ensuring that BEE companies are presented an opportunity to participate and function in the mainstream of the economy.

The Policy sets out clear guidelines to service providers/contractors who perform projects on behalf of the Municipality to use local labour based human resources to ensure job creation and development of BEE companies in communities where projects will be undertaken.

GOAL

The goal of this Policy is to ensure sound, sustainable and accountable supply chain management with the Amahlathi Municipality (AM), whilst promoting black economic empowerment as a priority of AM.

OBJECTIVES

The objectives of this Policy are:

- [i] To give effect to section 217 of the Constitution of the Republic of South Africa;
- [ii] To implement a policy that is fair, equitable, transparent, competitive and cost effective;
- [iii] To comply with all applicable provisions of the Municipal Finance Management Act;
- [iv] To ensure consistency with all other applicable legislation, including:
 - the Preferential Procurement Policy Framework Act;
 - the Broad-Based Black Economic Empowerment Act;
 - the Construction Industry Development Board Act;
 - the Local Government : Municipal Systems Act; and
 - the Promotion of Administrative Justice Act.
- [v] This policy will also strive to ensure that the objectives for uniformity in supply chain management systems between organs of state in all spheres, is not undermined and that consistency with national economic policy on the promotion of investments and doing business with the public sector is maintained.

COMMENCEMENT AND REVIEW

This Policy is effective with effect from a date determined by Council.

APPLICATION OF THE POLICY

This Policy applies to the acquisition of all goods and services, construction works and consultancy services.

DEFINITIONS

In this policy, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Municipal Finance Management Act 56 of 2003 has the same meaning as in the Act, and –

1.	"agent" means a person mandated by another person ("the principal") to do business for and on behalf of, or to represent in a business transaction, the principal, and thereby acquire rights for the principal against an organ of state and incur obligations binding the principal in favour of an organ of state.
2.	"all applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.
3.	"allocation" in relation to a municipality means - [a] municipality's share of the local government's equitable share referred to in Section 214 (1) (a) of the Constitution; [b] an allocation of money to a municipality in terms of Section 214 (1) (c) of the Constitution; [c] an allocation of money to a municipality in terms of a provincial budget; or [d] any other allocation of money to a municipality by an organ of state, including by another municipality, otherwise than in compliance with a commercial or other business transaction.]
4.	"B-BBEE" means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act.
5.	"B-BBEE status level of contributor" means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.
6.	"bid" means a written offer or bid in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services or goods.
7.	"bidder" means any person submitting a bid.
8.	"break-out procurement" means the procurement of goods and services for any project of the Municipality in the smallest possible quantities without compromising the quality, coverage, cost or developmental impact of the goods and services.
9.	"Broad-Based Black Economic Empowerment Act" means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).
10.	"closing time" means the time and day specified in the bid documents for the receipt of bids.
11.	"competitive bidding process" means a competitive bidding process referred to in section 26 of this policy;
12.	"competitive bid" means a bid in terms of a competitive bidding process;
13.	"comparative price" means the price after the factors of a non-firm price and all unconditional discounts that can be utilised have been taken into consideration.

14.	"consortium or joint venture" means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity necessary for the execution of a contract.
15.	"Construction Industry Development Board Act" means the Construction Industry Development Board Act, 2000 (Act 38 of 2000) and includes the regulations thereto.
16.	"construction works" means any work in connection with: [a] the erection, maintenance, alteration, renovation, repair, demolition or dismantling of or addition to a building or any similar structure; [b] the installation, erection, dismantling or maintenance of fixed plant; [c] the construction, maintenance, demolition or dismantling of any bridge, dam, canal, road, railway, sewer or water reticulation system or any similar civil engineering structure; or [d] the moving of earth, clearing of land, the making of an excavation, piling or any similar type of work.
17.	"consultant" means a person or entity providing services requiring knowledge based expertise.
18.	"contingency" means the amount varying in accordance with the nature of the contract.
19.	"contract" means the agreement that results from the acceptance of a bid by the Municipality and awarded to the successful bidder.
20.	"contract value" means the value of the contract.
21.	"control" the possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous expertise of appropriate managerial authority and power in determining the policies and directing the operations of the business.
22.	"contractor" means a person or body of persons who undertakes to execute and complete constructions works.
23.	"councilor" means a member of a municipal council.
24.	"day(s)" means calendar days unless the context indicates otherwise.
25.	"delegated authority" means any person or committee delegated with authority by the municipality in terms of the provisions of the relevant legislation.
26.	"designated sector" means a sector, sub-sector or industry that has been designated by the Department of Trade and Industry in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content.
27.	"local municipality" means a category B municipality envisaged in terms of section 155 (1)(b) of the constitution.
28.	"employer" means the Amahlathi Municipality.
29.	"end user" means a person who initiates the process of acquisition management and also plays a very important role during the evaluation process.
30.	"mayor" means an mayor elected in terms of section 48 of the Municipal Structures.
31.	"extension of contracts" means contracts where the scope of works or duration must be extended. The possibility of adding to the scope of works exist.
32.	"final award" , in relation to bids or quotations submitted for a tender, means the final decision taken by the municipality for the award of the tender.

33.	"firm price" is the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy or tax which in terms of a law or regulation is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract.
34.	"formal written price quotation" means quotations referred to in section 25 of this policy;
35.	"fruitless and wasteful expenditure" means expenditure that was made in vain and would have been avoided had reasonable care been exercised.
36.	"functionality" means the measurement according to predetermined norms, as set out in the tender documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a tenderer.
37.	"historically disadvantaged individual" means a South African Citizen or any service provider ; a] 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 Act, 1993 (Act No. 200 of 1993) or the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) ("the Interim Constitution"); and/or [b] who is a female; and/or [c] 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.
38.	"imported content" means that portion of the tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry.
39.	"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;
40.	"irregular expenditure" in relation to a municipality or municipal entity, means-

	<p>(a) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the MFMA, and which has not been condoned in terms of section 170 thereof;</p> <p>(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;</p> <p>(c) expenditure incurred by a municipality in contravention of, or that is not in accordance with a requirement of the Remuneration of Public Office-Bearers Act, 1998 (Act No. 20 of 1998); or</p> <p>(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.</p>
41.	"local content" means that portion of the tender price which is not included in the imported content, provided that local manufacture does not take place.
42.	"local municipality" means a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls and which is described in section 155(1) of the Constitution as a category "B" municipality.
43.	"long term contract" means a contract with a duration period exceeding one year;
44.	"list of accredited prospective providers" means the list of accredited prospective providers which a municipality or municipal entity must keep in terms of section 22 of this policy;
45.	"management" in relation to an enterprise or business, means an activity inclusive of control and performed on a daily basis, by any person who is a principal executive officer of the company, by whatever name that person may be designated, and whether or not that person is a director.
46.	"municipal council" means a municipal council referred to in section 157(1) of the Constitution, 1996, and "council" shall have a corresponding meaning.
47.	"municipal entity" means an entity as defined in the Municipal Systems Act.
48.	"Municipal Finance Management Act" means the Local Government: Municipal Finance Management, 56 of 2003 and includes the regulations thereto, and "MFMA" shall have a corresponding meaning.
49.	"municipality" when referred to as – [a] an entity, means a municipality as described in section 2 of the Municipal Systems Act, and [b] a geographic area, means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998)
50.	"municipal manager" means a person appointed by the municipality in terms of section 82 of the Municipal Structures Act and who is the head of administration and also the accounting officer for the Municipality.
51.	"Municipal Structures Act" means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).
52.	"Municipal Systems Act" means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

53.	"non-firm prices" means all prices other than "firm prices".
54.	"organ of state" means an organ of state as defined in section 239 of the Constitution.
55.	Original Equipment Manufacturer (OEM) means machinery or any equipment needing original parts for repairs and maintenance.
56.	"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);
57.	"own" having all the customary incidents of ownership, including the right of disposition, and sharing in all the risks and profits commensurate with the degree of ownership interest, as demonstrated by an examination of the substance, rather than the form of ownership arrangements.
58.	"person" includes reference to a juristic person.
59.	"policy" means this Supply Chain Management Policy as amended from time to time.
60.	"Preferential Procurement Policy Framework Act" means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and includes the regulations thereto.
61.	"privileged or confidential information" means any information: (a) determined by the bid specification, evaluation or adjudication committee to be privileged or confidential; (b) discussed in close sessions by any of the bid committees; (c) disclosure of which would violate a person's right to privacy; (d) declared to be privileged, confidential or secret in terms of any legislative framework.
62.	"quotation or quote" means a written or electronic offer made to the municipality in response to an invitation to submit a quotation.
63.	"rand value" means the total estimated value of a contract in Rand denomination which is calculated at the time of bid invitations and includes all applicable taxes and excise duties.
64.	"regulation" means any clause contained in the Municipal Supply Chain Management Regulations published in terms of Section 168 of the MFMA.
65.	"Renewal of contracts" means contracts such as rental agreements, software licenses, etc. that are to be renewed on a periodic basis.
66.	"republic" means the Republic of South Africa, and "RSA" shall have a corresponding meaning.
67.	"SARS" means the South African Revenue Services.
68.	"service providers" means a) "Professional Service Provider": Any person or body corporate that is under contract to the Employer for the provision of Professional Services.

	<p>b) "General Service Provider":</p> <p>Any person or body that is under contract to the Employer for the provision of any type of service.</p>
69.	"SMMs" means a separate and distinct business entity, including cooperative enterprises and non-governmental organizations, 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.
70.	"sponsorship" means paying for or contributing towards the cost of an event.
71.	"stipulated minimum threshold" means that portion of local production and content as determined by the Department of Trade and Industry.
72.	"sub-contracting" means the primary contractor's assigning or leasing or making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract.
73.	"supply chain manager" means an official appointed by the Amahlathi Municipality to fulfill a vital role in the implementation, the monitoring and the continued application of this Policy.
74.	"Systems Act" means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).
75.	"tender" means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive tendering processes or proposals.
76.	"the Act" means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003).
77.	"the constitution" means the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996).
78.	"the Regulations" means the Local Government : Municipal Financial Management Act, 2003, Municipal Supply Chain Management Regulations published by Government Notice 868 of 2005.
79.	"total revenue" bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the Government Gazette on 9 February 2007.
80.	"treasury guidelines" means any guidelines on supply chain management issued by the Minister in terms of section 168 of the Act.
81.	"trust" means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person.
82.	"trustee" means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.
83.	<p>"Unauthorized expenditure" in relation to a municipality, means any expenditure incurred by a municipality otherwise than in accordance with Section 15 or 11(3) of the Act.</p> <p>(a) overspending of the total amount appropriated in the municipality's approved budget;</p>

	<ul style="list-style-type: none"> (b) overspending of the total amount appropriated for a vote in approved budget; (c) expenditure from a vote unrelated to the department of 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 condition of the allocation; or (f) a grant by the Municipality otherwise than in accordance with the MFMA.
84.	"unsolicited bid" means an offer submitted by any person on his, her or its own initiative without having been invited by the municipality to do so.
85.	"variation order" means unforeseen costs pertaining to uncertain circumstances that are part of infrastructure projects.
86.	"written or verbal quotations" means quotations referred to in section 24 of this policy.
Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include females and words importing persons shall include companies, closed corporations and firms, unless the context clearly indicates otherwise.	
All amounts/limits stated in this document shall be deemed to be inclusive of Value Added Tax (VAT).	

CHAPTER 1 EMPOWERMENT GOALS

1. **INTRODUCTION**

In the preamble to this Policy it is stated that “the Supply Chain Management Policy seeks to encourage socio-economic transformation” within its region. To achieve this, empowerment goals have been set, which aim to redress the skewed distribution of wealth and therefore contribute to the alleviation of poverty.

2. **STRATEGY**

The Policy will achieve the above by providing employment opportunities to BEE companies and communities, enabling socio-economic transformation objectives to be linked to fair, transparent, equitable, competitive and cost effective procurement practices. In this regard, the following empowerment goals are proposed to be used as measures by Council in assessing the impact of its policy in realizing the socio-economic transformation agenda of government in all spheres.

3. **PROCESS : GOALS**

3.1 **PERCENTAGE ALLOCATED TO COMPANIES THAT HAVE ATTAINED THEIR B-BBEE STATUS LEVEL OF CONTRIBUTOR**

Council aims to have allocated its projects to BEE companies that have attained the B-BBEE status level of contributor in accordance with the table below:

B-BBEE Status Level of Contributor	% Allocated
1	100%
2	90%
3	80%
4	70%
5	60%
6	50%
7	40%
8	30%
Non-Compliant Contributor	0%

3.2 EMPLOYMENT/JOB CREATION

In all capital projects, preference will be given to service providers who demonstrate labour intensive employment strategies along the following categories and ratios:

- 35% of labour be women [above youth age category of 36 years];
- 35% of labour be youth [men and women];
- 28% of labour be men [above youth age category of 36 years]
- 2% of labour be disabled people [regardless of gender]

3.3 MONITORING MECHINATION

For purposes of monitoring the allocation of bids along the empowerment goals mentioned above, Supply Chain Management shall table a report as part of consideration of the bids, detailing how many of the bids that were adjudicated during a particular quarter and if there are any variations to the stated objectives. A progress report will also be tabled every quarter to the Council Committee and Council for noting and/or comments where there is deviation or lack of visible progress.

CHAPTER 2

ESTABLISHMENT AND IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

Supply chain management policy

- 4.** (1) The AM resolves in terms of section 111 of the Municipal Finance Management Act 56 of 2003 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 Municipal Finance Management Act 56 of 2003;
 - (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 AM 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) 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.

Amendment of the supply chain policy

- 5. (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.

Delegation of supply chain management powers and duties

- 6. (1) The AM hereby delegates such additional powers and duties to the accounting officer so as to enable the accounting officer –
 - (a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
 - (i) Chapter 8 or 10 of the Municipal Finance Management Act 56 of 2003; and
 - (ii) this 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, 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 Municipal Finance Management Act 56 of 2003.

- (2) Sections 79 and 106 of the Municipal Finance Management Act 56 of 2003 apply to the sub-delegation of powers and duties delegated to an accounting officer in terms of subsection 5(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 AM or to a committee which is not exclusively composed of officials of the AM;
- (4) This section 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 section 34 of this policy.

Sub-delegations

- 7. (1) The accounting officer may in terms of section 79 or 106 of the Municipal Finance Management Act 56 of 2003 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 subsection 6(2) and section 5 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 (reporting to the accounting officer);
or
 - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member;
 - (c) not exceeding R2 million (VAT included) may be sub-delegated but only to –
 - (i) the chief financial officer;

- (ii) a senior manager(reporting to the accounting officer); or
 - (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 this policy must within five days of the end of each month submit to the official referred to in subsection 6(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 subsection 6 (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(reporting to the accounting officer); or
 - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member;
 - (b) to the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by –
 - (i) a manager referred to in subsection 6(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) Subsections 6(3) and (4) of this policy do not apply to procurements out of petty cash.
- (6) This section 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 section 34 of this policy.
- (7) No supply chain management decision-making powers may be delegated to an advisor or consultant.

Oversight role of council

- 8. (1) The Municipal Finance Management Act 56 of 2003 prohibits a councilor from being a member of a bid committee or any other committee evaluating or approving quotations or bids nor may a councilor attend any such meeting as an observer.
- (2) Council, however has an oversight role to ensure that the accounting officer implements all supply chain management activities in accordance with this Policy.
- (3) 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 the supply chain management policy of the municipality and of any municipal entity under its sole or shared control of the municipality, 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 of the Municipality.
- (4) The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the Mayor.
- (5) The reports must be made public in accordance with section 21A of the Municipal Systems Act.

Supply chain management unit

- 9.** (1) The accounting officer must establish a supply chain management unit to implement this policy.
- (2) The supply chain management unit must operate under the direct supervision of the chief financial officer or an official to whom this duty has been delegated in terms of section 82 of the Municipal Finance Management Act 56 of 2003.

Training of supply chain management officials

- 10.** 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 3

CONCEPT OF SUPPLY CHAIN MANAGEMENT

11. SUPPLY CHAIN MANAGEMENT DEFINED

SCM involves the management of working capital that is invested in goods, stores and services with the objective of optimizing the economic return on such investment. The process begins when the needs are identified during the strategic planning phase of the organization when service delivery targets are identified, to the point of finally disposing of an asset.

12. OBJECTIVES OF SUPPLY CHAIN MANAGEMENT

As a concept, Supply Chain Management has the following broad objects:

- (a) Promoting uniformity in the processes relevant to the repealing of bid board legislation in the various spheres of government and devolving the responsibility and accountability for procurement-related functions to accounting officers or authorities.
- (b) Promoting uniformity in the various spheres of government in the interpretation of government's preferential procurement legislation and policies, also in the context of other broad-based but related legislative and policy requirements of government.
- (c) Replacing the outdated procurement and provisioning practices in government with a supply chain management function and a systematic competitive procedure for the appointment of consultants as an integral part of financial management in government that conforms to internationally accepted best practice principles.
- (d) Introducing parameters for the promulgation of a regulatory framework in terms of the Public Finance Management Act (PFMA) and MFMA to ensure compliance to minimum norms and standards, but in such a manner that the principles of co-operative governance are observed.
- (e) Introducing parameters for the promulgation of a regulatory framework in terms of the Public Finance Management Act (PFMA) and MFMA to ensure compliance to minimum norms and standards, but in such a manner that the principles of co-operative governance are observed. To give effect to the provisions of the Constitution.
- (f) To give effect to the provisions of the MFMA and PFMA.

- (g) To transform procurement and provisioning practices into an integrated SCM function.
- (h) To introduce a systematic approach for the appointment of consultants.
- (i) To create an understanding of Government's preferential procurement policy objectives.
- (j) To make significant improvement to financial management.
- (k) To promote consistency in respect of supply chain policy and other related policy initiatives.
- (l) To adhere to international best practices.

13. IMPROVING ACCOUNTABILITY

The MFMA aims to improve accountability by placing responsibility for decisions in the hands of each accounting officer, and by ensuring that there is support from National Treasury, for example in the form of "best practice" guidelines, to assist managers in delivering services to communities as efficiently and effectively as possible.

The accountability chain is the most critical driver for improving financial management in the public sector. The Annual Report and the report of the Auditor-General will indicate achievement against the intentions specified in each municipality's or municipal entity's Integrated Development Plan (IDP) and may highlight areas that require improvement.

A particular requirement of the MFMA is that each accounting officer undertakes a "risk assessment" for his or her municipality or municipal entity. Risk management acknowledges that all the activities of an organization involve some element of risk. Management should decide what is an acceptable level of risk (given cost and other social factors) by objectively assessing the factors (risks) that may prevent a particular activity from meeting its objective. In the case of SCM, this will include ensuring, on a case-by-case basis, that clearly worded and unambiguous contract documents, guarantees or insurance arrangements are in place (i.e. managers must manage).

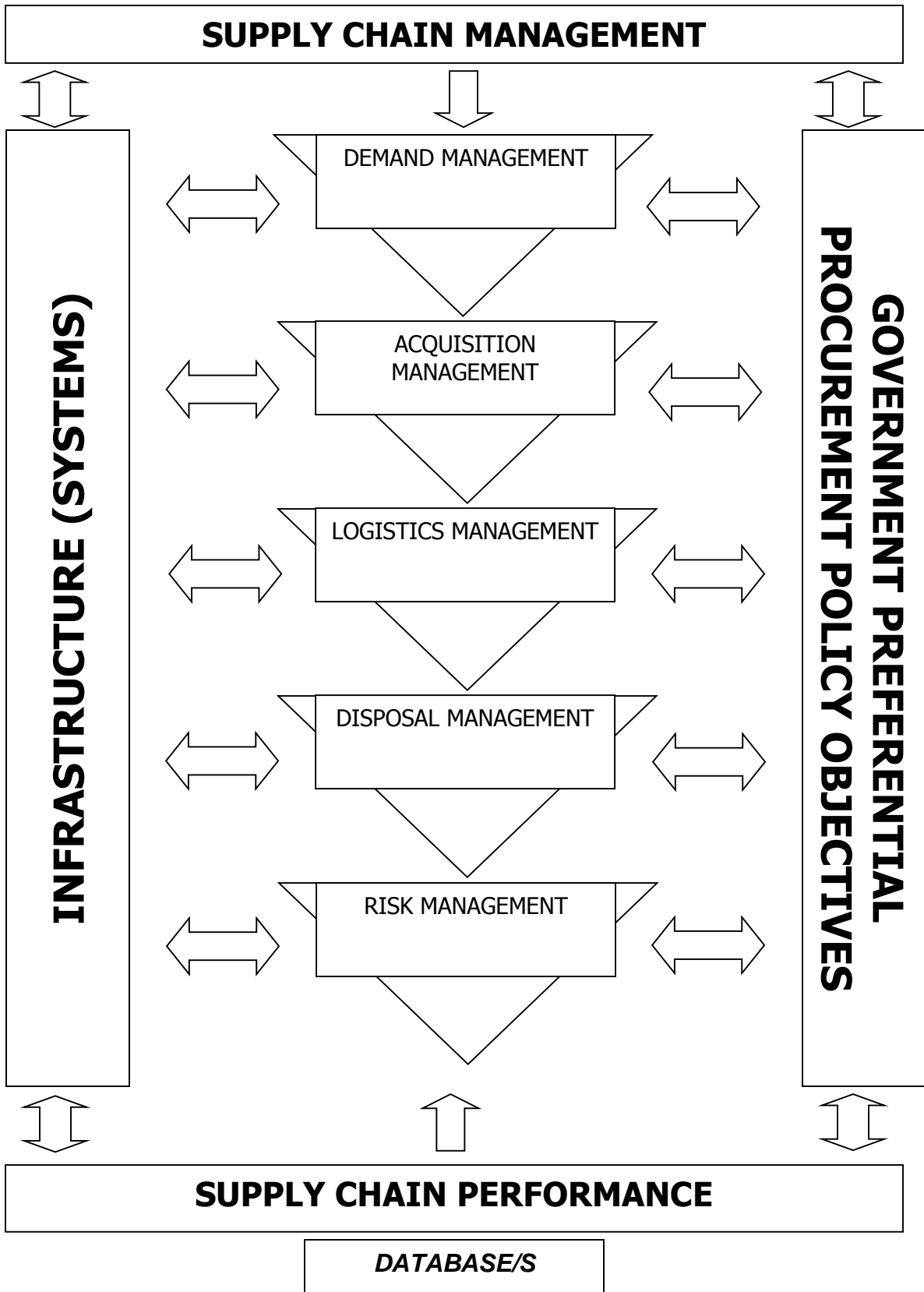
In addition, the award and management of contracts is an area where fraud and corruption has been found in the past, and the Municipality's Anti-Fraud

Management Strategy should reflect this, through cost-effective use of control measures and procedures and an ethical culture.

14. GOOD GOVERNANCE

In order to achieve the ideals of good corporate governance and to address deficiencies in SCM, fundamental institutional reforms will have to be implemented. Such reforms need to promote efficient and effective procurement and provisioning systems and practices that enable municipalities/municipal entities to deliver the required quality and quantity of services to its clients. The establishment of uniformity in procedures, policies, documentation and contract options and the implementation of sound systems of control and accountability should form the cornerstone of institutional reform.

15. THE ELEMENTS / FRAMEWORK 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.

15.1 DEMAND MANAGEMENT

This is the beginning of the supply chain, and must begin with a needs assessment, to ensure:

- (a) that goods or services are required in order to deliver the agreed service;
- (b) that specifications are precisely determined;
- (c) that requirements are linked to the budget; and
- (d) that the supplying industry has been analyzed.

This phase will bring the supply chain practitioner close to the end user, to ensure that value for money is achieved. This policy provides for an effective system of demand management in order to ensure that the resources required to support the strategic and operational commitments of the Municipality, are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy the needs of the Municipality.

15.2 ACQUISITION MANAGEMENT

This refers to the management of procurement by a municipality. The Municipality must:

- (a) decide on the manner in which the market will be approached;
- (b) establish the total cost of ownership of a particular type of asset;

- (c) ensure that bid documentation is complete, including evaluation criteria;
- (d) evaluate bids in accordance with published criteria; and
- (e) ensure that proper contract documents are signed.

15.3 LOGISTICS MANAGEMENT

This aspect addresses the setting of inventory levels, placing of orders, receiving and distribution of material and goods, stores, warehouse and transport management, expediting orders, the review of vendor performance, maintenance and contract administration. From these processes, the financial system is activated to generate payments.

15.4 DISPOSAL MANAGEMENT

A supply chain management policy must provide for an effective system of disposal management for the disposal or letting of assets no longer needed, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the MFMA.

At this stage, consideration must be given to:

- (a) obsolescence planning;
- (b) maintaining a data base of redundant material;
- (c) inspecting material for potential re-use;
- (d) determining a disposal strategy; and
- (e) executing the physical disposal process.

15.5 RISK MANAGEMENT

A supply chain management policy must provide for an effective system of risk management for the identification, consideration and avoidance of potential risks in the supply chain management system. 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.

15.6 PERFORMANCE MANAGEMENT

This is a monitoring process, undertaking a retrospective analysis to determine whether the proper processes have been followed and whether the desired objectives were achieved. Some of the issues that may be reviewed are:

- (a) compliance to norms and standards;
- (b) cost efficiency of procurement process (i.e. the cost of the process itself); and
- (c) whether supply chain practices are consistent with Government's broader policy focus.

16. Five pillars of procurement

- (1) Value for money

The term "value for money" includes the monetary value as well as the quality and the utilisation of the procurement system to achieve government's policy objectives (see the Regulations pertaining to the PPPFA). Due consideration should, however, be given to the quality of goods required, the time to administrate the process, and the cost effectiveness of the ensuing contracts. This is an essential test against which a municipality or municipal entity must justify a procurement outcome.

- (2) Open and effective competition

The pillar of public sector procurement requires the following:

- (a) a framework of procurement laws, policies, practices and procedures that is transparent; in other words they must be readily accessible to all parties;
- (b) openness in the procurement process;
- (c) encouragement of effective competition through procurement methods suited to market circumstances; and
- (d) observance of the provisions of the PPPFA.

(3) Ethics and fair dealing

All parties involved in procurement should comply with the following ethical standards:

- (a) deal with each other on a basis of mutual trust and respect; and
- (b) conduct their business in a fair and reasonable manner and with integrity,

(4) Accountability and reporting

This involves ensuring that individuals and organizations are answerable for their plans, actions and outcomes. Openness and transparency in administration, by external scrutiny through public reporting, is an essential element of accountability

(5) Equity

The word "equity" in the context of the five pillars of public sector procurement means the application and observance of government policies that are designed to advance persons or categories of persons disadvantaged by unfair discrimination. This fifth pillar is vital to public sector procurement in South Africa. It ensures that Government is committed to economic growth by implementing measures to support the industry in general. No public procurement system should be operated if it is not founded on this pillar.

CHAPTER 4 DEMAND MANAGEMENT

System of demand management

- 17.** (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.
- (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.
- (3) The AM's Integrated Development Plan (IDP) is a comprehensive strategy document setting out how the AM intends to tackle its development challenges in a financial year. It is on the basis of the IDP that the resources of the Municipality will be allocated and on which the budget is based.
- (4) The objective is to ensure that the resources required to fulfil the needs identified in the IDP are delivered at the correct time, price and place, and that the quantity and quality will satisfy those needs.
- (5) In order to achieve the objectives of good governance and to address deficiencies in supply chain management, fundamental institutional reforms will have to be implemented. These reforms will promote

efficient and effective provisioning and procurement systems and practices to enable the AM to deliver the required quantity and quality of services to the communities.

- (6) The establishment of uniformity in policies, procedures, documents and contract options and the implementation of sound systems of control and accountability shall form the cornerstone of institutional reform.
- (7) The development of a world-class professional supply chain management system should result in continuing improvement in affordability and value for money, based on total cost of ownership and quality of procurement as competition amongst suppliers is enhanced.
- (8) Resources required for the fulfillment of the Municipality's obligations will be clearly analysed. This includes a detailed analysis of the goods, works and services required.
- (9) In dealing with suppliers and potential suppliers, the AM shall respond promptly, courteously and efficiently to enquiries, suggestions and complaints.

The Demand Management Process

- 18.** (1) This is the beginning of the supply chain where the following major activities associated with the identifying demand should take place:
- (a) establishing requirements;
 - (b) determining needs; and
 - (c) deciding on appropriate procurement strategies.
- (2) Demand management accordingly shall involve the following activities:
- (a) SCM integration in the strategic planning process;
 - (b) understanding the future needs;
 - (c) identifying critical delivery dates;
 - (d) identifying the frequency of need;

- (e) linking the requirement to the budget;
- (f) conducting an expenditure analysis based on past expenditures;
- (g) determining requirements;
- (h) compiling of specifications;
- (i) conducting a commodity analysis in order to check for alternatives;
- (j) conducting a market/industry analysis; and
- (k) providing regular feedback to and from the role players.

This is a cross-functional exercise that brings the supply chain practitioner closer to the end user and ensuring that value for money is achieved.

Strategy for achieving the Preferential Procurement Policy Framework Act (PPPFA) objectives and linking the system to Black Economic Empowerment (BEE) objectives

- 19.** In order to achieve the objectives as stated in Chapter 1 of this Policy, the Municipality will use the public sector SCM system as a tool to achieve the BEE objectives/goals. This will be achieved within the prescribed framework of the PPPFA and its Regulations.

In order to achieve the BEE objectives and goals the specifications and terms of reference for each project will be drafted prior to publication. The specifications will be drafted in a manner that will assist in achieving the BEE targets set by the Municipality. The accounting officer or the delegated official will approve all specifications drafted by the Bid Specification Committee prior to publication.

Planning and stipulation of preference point system to be utilized

- 20.** An organ of state 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
- (c) determine whether the services, works or goods for which an invitation for tenders is to be made has been designated for local production and content in terms of regulation 9.

CHAPTER 5 ACQUISITION MANAGEMENT

System of acquisition management

- 21.** (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 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 Municipal Finance Management Act 56 of 2003;
 - (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 Municipal Finance Management Act 56 of 2003, 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 Municipal Finance Management Act 56 of 2003 are procured other than through the supply chain management system –
- (a) the kind of goods or services; and

(b) the name of the supplier.

22. Range of procurement processes

STRUCTURE OF APPROVAL		
GOODS/SERVICE VALUE	PROCUREMENT METHOD MINIMUM	APPROVAL AUTHORITY
R0 – R2 000	Petty Cash	Head of Department or Delegated Authority
R2 001 – R5 000	One Quote	Head of Department or Delegated Authority
R5 001 – R30 000	Three Quotations	Head of Department or Delegated Official
R30 001-R200 000.00	1 Week Bulletin Notice and Advertisement via Website: Three Quotations	Chief Financial Officer
R200 001 – R2 Million	Competitive Bidding Process	Bid Adjudication Committee
R2 Million – R10 Million	Competitive Bidding Process	Bid Adjudication Committee
Above R10 Million	Competitive Bidding Process	Accounting Officer

- (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 R5 000 up to R200 000 (VAT included); and
 - (c) 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 subsection (1); or,
 - (b) direct that –

- (i) written quotations be obtained for any specific procurement of a transaction value lower than R2 000;
 - (ii) formal written price quotations be obtained for any specific procurement of a transaction value more than R5 000; or
 - (iii) a competitive bidding process be followed for any specific procurement of a transaction value more 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.

General preconditions for consideration of written quotations or bids

- 23.** A written quotation or bid may not be awarded 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 authorised AM 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 subsection (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

- 24.** (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 AM through written or verbal quotations and formal written price quotations;
 - (b) at least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
 - (c) specify the listing criteria for accredited prospective providers; and
 - (d) disallow the listing of any prospective provider whose name appears on the National Treasury’s database as a person prohibited from doing business with the public sector.
 - (e) disallow the listing of any prospective provider whose tax clearance certificate has expired.
 - (f) disallow the listing of any prospective provider who is in the service of the state, or has been in the service of the state in the previous twelve months.
- (2) The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.
- (3) The list must be compiled per commodity and per type of service.
- (4) Suppliers will be required to register not more than three services.

Petty cash purchases

- 25.** (1) In certain cases it is not possible or economically viable to procure goods and services through written or competitive bidding processes. This situation will arise where the total costs of engaging in written quotation or competitive bidding far outweigh the value of the items or services being sought. This situation is envisaged for items or services below R2 000.00 VAT inclusive only.
- (2) The accounting officer must establish the conditions for procurement of goods by means of petty cash purchases referred to in section 22 (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.

Written or verbal quotations

- 26.** The accounting officer must establish the conditions for the procurement of goods or services through written or verbal quotations, which must include conditions stating that–
- (a) quotations must be obtained from at least three different accredited providers registered in the AM database;
 - (b) Providers not registered on the data base will only be considered if no technically suitable suppliers are registered on the data base and/or if it would be in the best interests of AM that such suppliers

be considered, provided that such providers meet the listing criteria required by section 21(c) of this policy;

- (c) as far as possible all suppliers must be afforded an opportunity to quote on a rotational 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, then 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;
- (g) if a quotation was submitted verbally, then the order may be placed only against written confirmation by the selected provider; and
- (h) splitting of requirements with the sole intention of circumventing any of the procurement mechanism listed, is not allowed.

Formal written price quotations

- 27.** (1) The accounting officer must establish the conditions for the procurement of goods or services through formal written price quotations, which must include conditions stating that–
- (a) quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the Municipality;
 - (b) Providers not registered on the database will only be considered if no technically suitable suppliers are registered on the data base and/or if it would be in the best interests of AM that such suppliers be considered, provided that such providers meet the listing criteria required by section 22(c) of this policy;
 - (c) if it is not possible to obtain at least three quotations, then the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer;

- (d) the accounting officer must record the names of the potential providers and their written quotations; and
 - (e) splitting of requirements with the sole intention of circumventing any of the procurement mechanism listed is not allowed.
- (2) A designated official referred to in subsection (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 subsection.

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

- 28.** (1) The accounting officer must determine the operational procedure for the procurement of goods or services through written or verbal quotations or formal written price quotations, which must stipulate that–
- (a) when using the list of accredited prospective providers the accounting officer must promote ongoing competition amongst providers, including the invitation of providers to submit quotations on a rotation basis;
 - (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 section 25, be advertised for at least seven days on the website and an official notice board of the Municipality;
 - (c) offers received must be evaluated on a comparative basis taking into account unconditional discounts;
 - (d) if there are frequent procurements of the same or similar goods or services, and where the amount per transaction is less than R200 000.00, then such procurements must be consolidated and a single contract must be concluded after having followed a competitive bidding process;
 - (e) the accounting officer must take all reasonable steps to ensure that the procurement of goods and services through

written or verbal quotations or formal written price quotations is not abused;

- (f) 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;
 - (g) 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;
 - (h) proper record keeping must be maintained, including the requirements therefor;
 - (i) splitting of requirements with the sole intention of circumventing any of the procurement mechanism listed is not allowed.
- (2) With regard to the procurement of goods and services with a transaction value lower than R200 000 -
- (a) the procurement of goods and services between R0 and R30 000 falls within the scope of the heads of departments;
 - (b) the procurement of goods and services between R30 001 and R200 000 will be delegated by the accounting officer to the Chief Financial Officer.
- (3) For purposes of the procurement of goods and services in terms of sub-section 2 –
- (a) the regulation thereof will be assessed and monitored by the supply chain management unit to ensure alignment with the empowerment goals set out in Chapter 1;
 - (b) the Municipality shall establish a database of service providers and suppliers which must be updated at least quarterly or whenever deemed necessary in accordance with section 24 of this policy;
 - (c) three databases shall be established in terms of subsection 3 (b), namely:

- (i) General Services;
 - (ii) Professional Services (Built Environment and Management of Consultants); and
 - (iii) Contractors;
- (d) in order to be considered for listing on any of the databases referred to in subsection (c), a service provider or supplier must produce proof of compliance with the following prerequisites:
- (i) current original certificate of good standing in terms of VAT/Income Tax;
 - (ii) offices should preferably be in the jurisdiction of the AM;
 - (iii) company registration with the registrar of businesses in terms of the Companies Act, 1973 (Act No. 61 of 1973); and,
 - (iv) registration with a professional body, where relevant;
 - (v) food caterers must comply with the regulations governing general hygiene compliance for food premises and the transport of food, and be in possession of a certificate of acceptability, as required by Regulation GNR918 of 30 July 1991, made by the Minister of Health in terms of section 35, read with section 40, of the Health Act, 1977 (Act No. 63 of 1977).
 - (vi) contractors must be registered with the Construction Industry Development Board (CIDB) and be in possession of a grading certificate.
 - (v) ensure in respect of the preferred bidder, that the bidder's municipal rates and taxes and municipal service charges are not in arrears.
- (e) the supply chain management unit must submit a quarterly report, including an analysis of the achievement of set goals.

- (f) The Supply Chain Management unit will submit a quarterly report on the procurement of goods and services in this category. An analysis will be provided stating the achievement and/or failure in compliance with the set goals.

Competitive bidding process

- 29.** (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 section 22(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) Prospective service providers must be registered as VAT vendors in order to tender for bids of any value.

Process for competitive bidding

- 30.** The accounting officer must establish procedures for a competitive bidding process for each of the following stages:
- (a) the compilation of bidding documentation;
 - (b) the public invitation of bids;
 - (c) site meetings or briefing sessions, if applicable;
 - (d) the handling of bids submitted in response to public invitation;
 - (e) the evaluation of bids;
 - (f) the award of contracts;
 - (g) the administration of contracts:
 - (i) after approval of a bid, the accounting officer or delegated authority and the bidder must enter into a written agreement.
 - (h) 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

31. (1) The accounting officer must establish the criteria to which bid documentation for a competitive bidding process must comply, which in addition to section 20 of this policy, the bid documentation 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;

(2) Bids exceeding R10 million

- (a) If the value of the transaction is expected to exceed R10 million (VAT included), then the bid documentation must stipulate that bidders are required to furnish–
 - (i) their audited annual financial statements if required by law to do so –
 - (aa) for the past three years; or
 - (bb) since their establishment, if established during the past three years,

in the event that the bidder is required by law to prepare annual financial statements for auditing;

- (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; and
 - (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.
- (b) The bid documentation must also 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.

(3) Construction works

If the bid relates to construction works as contemplated by the Construction Industry Development Board Act then the requirements of that Act must be taken into account in the bid documentation.

Public invitation for competitive bids

- 32.** (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 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 subsection (2) of this policy; and
 - (ii) a statement that bids may only be submitted on the bid documentation provided by the Municipality.
- (2) The accounting officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.
- (3) Bids submitted must be sealed.
- (4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

Procedure for handling, opening and recording of bids

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

- (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired;
 - (iii) 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
- (c) the accounting officer :
- (i) to record in a register all bids received in time;
 - (ii) to make the register available for public inspection; and
 - (iii) to publish the entries in the register and the bid results on the website.

Negotiations

- 34.** (1) The negotiation process maybe used when:
- (a) procuring goods and services from single or sole suppliers;
 - (b) negotiating the terms and conditions of the contract concluded with the preferred bidder; and
 - (c) negotiating annual price increases.
- (2) 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.

- (3) Minutes of such negotiations must be kept for record purposes.
- (4) The approval or mandate to negotiate with any supplier must be obtained in writing from the Accounting Officer or Bid Adjudication Committee.
- (5) The approval or mandate to negotiate must address at least the following:
 - (a) reasons for negotiations;
 - (b) negotiation parameters;
 - (c) objectives of the negotiations; and
 - (d) supplier(s) to be negotiated with.
- (6) The outcome of the negotiation must be approved by the Bid Adjudication Committee before the contract can be awarded to the preferred bidder.
- (7) Records of all negotiations must be kept and submitted to the BAC during the award.

Two-stage bidding process

- 35.** (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

- 36.** (1) The accounting officer is required to –
- (a) establish a committee system for competitive bids consisting of at least –
 - (i) a bid specification committee;
 - (ii) a bid evaluation committee; and
 - (iii) a bid adjudication committee;
 - (b) appoint the members of each committee, taking into account section 117 of the Municipal Finance Management Act 56 of 2003; and
 - (c) provide for an attendance or oversight process by a neutral or independent observer, appointed by the accounting officer, when this is appropriate for ensuring fairness and promoting transparency.
- (2) The committee system must be consistent with –
- (a) sections 35, 36 and 37 of this policy; and
 - (b) any other applicable legislation.
- (3) The accounting officer may apply the committee system to formal written price quotations.

Bid specification committees

- 37.** (1) The 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 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) subject to (h), below, 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 terms of the PPPFA;
 - (g) must be approved by the accounting officer prior to publication of the invitation for bids in terms of section 30 of this policy; and
 - (h) may stipulate that an item of a particular trade mark, name, patent, design, type, specific origin or producer must be supplied in the event that such item is a component of existing equipment that is of the same trade mark, name, patent, design, type, specific origin or producer.
- (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.

Bid evaluation committees

- 38.** (1) The 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 the PPPFA;
 - (b) evaluate each bidder’s ability to execute the contract;
 - (c) ensure in respect of the recommended bidder that his or her or its municipal rates and taxes and municipal service charges are not in arrears;
 - (d) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
- (2) The bid evaluation committee must as far as possible be composed of –
- (a) officials (technical experts) from departments requiring the goods or services;
 - (b) at least one supply chain management practitioner of the Municipality to ensure compliance with SCM procedures.
- (3) Subject to subsection (2) :
- (a) the composition of the bid evaluation committee may change to accommodate different scenarios;
 - (b) members from the bid specification committee may also form part of the bid evaluation committee; and
 - (c) a member from the bid evaluation committee may present reports to the bid adjudication committee, but only as an advisor.

Bid adjudication committees

- 39.** (1) The bid adjudication committee must –
- (a) consider the report and recommendations of the bid evaluation committee; and
 - (b) either –
 - (i) depending on the extent of its delegated authority, make a final award or a recommendation to the accounting officer to make the final award; or
 - (ii) make another recommendation to the accounting officer how to proceed with the relevant procurement.
- (2) The bid adjudication committee must consist of at least four senior managers of the Municipality which must include –
- (i) 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;
 - (ii) the senior manager responsible for the bid or another manager reporting directly to that senior manager;
 - (ii) at least one senior supply chain management practitioner who is an official of the Municipality; and
 - (iii) a technical expert in the relevant field who is an official, if such an expert exists.
- (3) The accounting officer must appoint the chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.
- (4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.
- (5) (a) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee,

the bid adjudication committee must prior to awarding the bid
–

- (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;
 - (ii) notify the accounting officer.
- (b) The accounting officer may –
- (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in subsection (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) If a tender other than the recommended tender is approved, then the accounting officer must comply with section 114 of the Municipal Finance Management Act 56 of 2003 within 10 working days.

Evaluation panel

- 40.** (1) In respect of functionality assessment, the accounting officer may evaluate each technical bid/proposal using an evaluation panel consisting of one or more specialists in their field of expertise.
- (2) Officials conducting the functionality assessment must be appointed by the relevant head of department.
- (3) Should specialists in their field of expertise not exist internally, external specialists may be appointed.
- (3) A supply chain management official must be present at each functionality assessment to ensure that the process is fair.

Bid administration section

- 41.** (1) The accounting officer shall establish a bid administration section in the SCM unit of the Municipality to handle all the administrative tasks pertaining to the bidding process.
- (2) The duties of the officials in this section shall entail, inter alia:
- (a) the invitation for bids;
 - (b) the opening of bids on the closing date;
 - (c) the processing of the bid documents;
 - (d) consultation; and,
 - (e) the submission of a recommendation by the bid evaluation committee to the bid adjudication committee.

Advisors

- 42.** The accounting officer may procure the services of advisors to assist in the execution of the supply chain management function. In this regard:
- (a) these services must be obtained through a competitive bidding process;
 - (b) no advisor may, participate in the final decision-making process regarding the award of bids; and,

- (c) the accounting officer may not delegate decision-making authority to an advisor.

Preference points system, evaluation of bids, awarding of bids not scoring highest points, cancellation and re-invitation of bids

43. The 80/20 preference point system for the acquisition of services, works or goods up to a Rand value of R1 million

- (1)(a) The following formula must be used to calculate the points for price in respect of bids (including price quotations) with a Rand value equal to, or above R30 000 and up to a Rand value of R1 000 000 (all applicable taxes included):

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

Where

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

Pt = Comparative price of bid or offer under bid consideration

Pmin = Comparative price of lowest acceptable bid or offer

- (b) The Municipality may apply the formula in (a) for price quotations with a value less than R30 000, if and when appropriate.
- (2) Subject to sub-section (3), points must be awarded to a bidder for attaining the B-BBEE status level of contributor in accordance with the table below:

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

- (3) A maximum of 20 points may be allocated in accordance with sub-section (2).
- (4) The points scored by a bidder in respect of B-BBEE contribution contemplated in sub-section (2) must be added to the points scored for price as calculated in accordance with sub-section (1).
- (5) Subject to section 49, the contract must be awarded to the tenderer who scores the highest total number of points.

44. The 90/10 preference point system for acquisition of services, works or goods with a Rand value above R1 million

- (1) The following formula must be used to calculate the points for price in respect of bids/procurement with a Rand value above R1 000 000 (All applicable taxes included):

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

Where

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

Pt = Comparative price of bid or offer under consideration

Pmin = Comparative price of lowest acceptable bid or offer

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

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

- (23) A maximum of 10 points may be allocated in accordance with sub-section (2).
- (34) The points scored by a bidder in respect of the level of B-BBEE contribution contemplated in sub-section (2) must be added to the points scored for price as calculated in accordance with sub-section (1).
- (45) Subject to section 49, the contract must be awarded to the tenderer who scores the highest total number of points.

45. The sale and letting of assets

- (1) The Preferential Procurement Regulations, 2011 is not applicable to the sale and letting of assets.
- (2) In instances where assets are sold or leased by means of a bidding process, the bid must be awarded to the bid with the highest price.

Planning and Stipulation of preference point system to be used

46. Prior to making an invitation for tenders, the Municipality must:

- (1) 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;
- (2) determine and stipulate the appropriate preference point system to be utilized in the evaluation and adjudication of the tenders; and

- (3) determine whether the services, works or goods for which an invitation for tender is to be made has been designated for local production and content.

Local Production and Content

- 47.** (1) The Municipality must, in the case of designated sectors, where in the award of tenders local production and content is of critical importance, advertise such tenders with specific tendering condition that only locally produced goods, services or works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- (2) The Minister of Trade and Industry has designated the following sectors/sub-sectors / industries to which the minimum thresholds for local content should apply:

Sector/Sub-Sector/Industries	Minimum Threshold for Local Content
Buses (Bus Body)	80%
Textiles, Clothing, Leather and Footwear	100%
Power Pylons	100%
Canned / Processed Vegetables	80%
Rolling Stock	65%

- (3) Where there is no designated sector, the Municipality may include, as a specific tendering condition, that only locally produced services, works or goods or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered, on condition that such prescript and threshold(s) are in accordance with the specific directives issued for this purpose by the National Treasury in consultation with the Department of Trade and Industry.
- (4) Every bid issued in terms of section 46 must be measurable and audited.
- (5) Where necessary, for bids referred to in sub-section (1) and (3), a two-stage tendering process may be followed, where the first stage involves functionality and minimum threshold for local production and content and the second stage price and B-BBEE with the possibility of price negotiation only with the short listed bidder(s).

Evaluation of bids on functionality

- 48.** (1) The Municipality must, in the bid documents, indicate if, in respect of a particular bid invitation, bids will be evaluated on functionality.
- (2) The evaluation criteria for measuring functionality must be objective.
- (3) When evaluating tenders on functionality, the following must be clearly specified in the bid document:
- (a) evaluation criteria for measuring functionality;
 - (b) weight of each criterion;
 - (c) applicable values; and
 - (d) minimum qualifying score for functionality.
- (4) No tender must be regarded as an acceptable tender if it fails to achieve the minimum qualifying score for functionality as indicated in the tender invitation.
- (5) Tenders that have achieved the minimum qualification score for functionality must be evaluated further in terms of the preference point systems prescribed in sections 43 and 44.

Broad-Based Black Economic Empowerment Status Level Certificates

- 49.** (1) Bidders with annual total revenue of R5 million or less qualify as Exempted Micro Enterprises (EMEs) in terms of the Broad-Based Black Economic Empowerment Act, and must submit a certificate issued by a registered auditor, accounting officer (as contemplated in section 60(4) of the Close Corporation Act, 1984 (Act No. 69 of 1984)) or an accredited verification agency.
- (2) Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating.
- (3) The submission of such certificates must comply with the requirements of instructions and guidelines issued by the National Treasury and be in accordance with notices published by the Department of Trade and Industry in the Government Gazette.
- (4) The B-BBEE status level attained by the bidder must be used to determine the number of points contemplated in sections 43 and 44.

Award of contract to bid not scoring the highest number of points

- 50.** (1) A contract must be awarded to the tenderer who scores the highest points, unless objective criteria and reasons justifies the award to another tenderer.

Cancellation and re-invitation of bids

- 51.** (1) (a) In the event that, in the application of the 80/20 preference point system as stipulated in the bid documents, all bids received exceed the estimated Rand value of R1 000 000, the bid invitation must be cancelled.

(b) If one or more of the acceptable tenders received are within the prescribed threshold of R1 000 000, all tenders received must be evaluated on the 80/20 preference point system.

- (2) (a) In the event that, in the application of the 90/10 preference point system as stipulated in the bid documents, all bids received are equal to, or below R1 000 000, the bid must be cancelled.

(b) If one or more of the acceptable tenders received are above the prescribed threshold of R1 000 000, all tenders received must be evaluated on the 90/10 preference point system.

- (3) When the Municipality cancels a bid invitation as stated in subsections (1)(a) and (2)(a) above, a re-invitation of bids will be published and the bid document must stipulate the correct preference point system to be applied.

- (4) The Municipality may, prior to the award of a bid, cancel a bid if:
- (a) due to changed circumstances, there is no longer need for the goods or services; or
 - (b) funds are no longer available to cover the total envisaged expenditure; or
 - (c) no acceptable bids are received.

- (5) The decision to cancel a tender in terms of sub-section (4) must be published in the media in which the original bid invitation was advertised.

General Conditions in the evaluation of bids

52. (1) When evaluating written quotations and/or bids the written quotation or bid may not be awarded unless the provider who submitted the quotation or bid has –

No.	Normal Goods and/or Services	Infrastructure related goods and/or services
1.	Completed and signed the Invitation to Bid (MBD 1)	Completed and signed the Form of Offer;
2.	Completed the bid document in black ink.	Completed the bid document in black ink.
3.	Not used correctional fluid (tippex) on the pricing schedule, Invitation to Bid (MBD 1) and any of the declaration forms.	Not used correctional fluid (tippex) on the Bill of Quantities, Form of Offer and any of the declaration forms.
4.	Attended the compulsory briefing session (attendance register to be attached to bid report).	Attended the compulsory site inspection (attendance register to be attached to bid report).
5.	Fulfilled or offered equal or more than the exact specifications as listed in the schedule or terms of reference.	Fulfilled or offered equal or more than the exact specifications as listed in the Bill of Quantities.
6.	Fulfilled any other special conditions included in the bid document.	Fulfilled any other special conditions included in the bid document.
7.	Completed and signed all declarations: (i) Declaration of Interest (Kinship, Relationship with Persons employed by AM); (ii) Declaration of Interest (in the service of the State); (iii) Declaration of Validity of Information Provided; (iv) Declaration of Bidder's Past SCM Practices; (v) Certificate of Independent Bid Determination.	Completed and signed all declarations: (i) Declaration of Interest (Kinship, Relationship with Persons employed by AM); (ii) Declaration of Interest (in the service of the State); (iii) Declaration of Validity of Information Provided; (iv) Declaration of Bidder's Past SCM Practices; (v) Certificate of Independent Bid Determination.
8.	Attached to the bid document the formalized Joint Venture Agreement where a joint venture has been entered into.	Attached to the bid document the formalized Joint Venture Agreement where a joint venture has been entered into.
9.	Attached to the bid document audited Annual Financial Statements for the past three (3) years for bids exceeding R10m.	Attached to the bid document audited Annual Financial Statements for the past three (3) years for bids exceeding R10m.
10.	Attached to the bid document particulars of any contracts awarded by	Attached to the bid document particulars of any contracts awarded by

	an organ of state in the past five (5) years for bids exceeding R10m.	an organ of state in the past five (5) years for bids exceeding R10m.
11.	Attached to the bid document proof that rates and taxes are not in arrears.	Attached to the bid document proof that rates and taxes are not in arrears.
12.	Separated the technical and financial proposal where the Two-Envelope Tender System has been utilized.	Separated the technical and financial proposal where the Two-Envelope Tender System has been utilized.
13.	Provided an original and current Tax Clearance Certificate.	Provided an original and current Tax Clearance Certificate.
14.	Not listed in the Register for Tender Defaulters in terms section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004) or has not been listed on National Treasury's database as a person prohibited from doing business with the public sector.	Not listed in the Register for Tender Defaulters in terms section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004) or has not been listed on National Treasury's database as a person prohibited from doing business with the public sector.
15.	Is not in the Service of the State or has not been in the Service of the State in the previous 12 months.	Is not in the Service of the State or has not been in the Service of the State in the previous 12 months.
16.	<p>When sub-contracting a portion of the works, has the service provider submitted details of the sub-contract together with the names of the sub-contractor to AM.</p> <p>If details of the subcontract are not disclosed, the bid will be set aside.</p> <p>If the sub-contracting firm has been involved with AM previously and has performed poorly and/or has been involved in any irregular activities, the tender may be set aside.</p> <p>No sub-contractors are to further sub-contract any portion of the works without disclosing details to AM for approval prior to commencement of works.</p>	<p>When sub-contracting a portion of the works, has the service provider submitted details of the sub-contract together with the names of the sub-contractor to AM.</p> <p>If details of the subcontract are not disclosed, the bid will be set aside.</p> <p>If the sub-contracting firm has been involved with AM previously and has performed poorly and/or has been involved in any irregular activities, the tender may be set aside.</p> <p>No sub-contractors are to further sub-contract any portion of the works without disclosing details to AM for approval prior to commencement of works.</p>
17.	<p>When sub-contracting to Non-HDI owned companies the restriction of 25% of the total contract value has not been exceeded.</p> <p>When sub-contracting to an HDI owned company, there will be a 50% restriction.</p>	<p>When sub-contracting to Non-HDI owned companies the restriction of 25% of the total contract value has not been exceeded.</p> <p>When sub-contracting to an HDI owned company, there will be a 50% restriction.</p>

18.		Completed and signed the Compulsory Enterprise Questionnaire. In the case of a JV, each partner of the JV must complete a separate Compulsory Enterprise Questionnaire.
19.		Is registered with CIDB and has at least the required grade and in the required class of works. All joint venture partners must be registered with CIDB.
20.		Completed the Form of Offer in words.

- (2) The Municipality may, before a bid is adjudicated or at any time, require a bidder to substantiate claims it has made with regard to preference.
- (3) The Municipality must, when calculating comparative prices, take into account any discounts which have been offered unconditionally.
- (4) A discount which has been offered conditionally must, despite not being taken into account for evaluation purposes, be implemented when payment is affected.
- (5) In the event that different prices are tendered for different periods of a contract, the price for each period must be regarded as a firm price if it conforms to the definition of a "firm price" as defined in this policy.
- (6) Points scored, must be rounded off to the nearest 2 decimals.
- (7)
 - (a) In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
 - (b) However, when functionality is part of the evaluation process and two or more tenders have scored equal points including equal preference points for B-BBEE, the successful tender must be the one scoring the highest score for functionality.
 - (c) Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

- (8) A trust, consortium or joint venture will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- (9) A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate tender.
- (10) A person must not be awarded points for B-BBEE status level if it is indicated in the tender documents that such a tenderer intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a tenderer qualifies for, unless the intended sub-contractor is an exempted micro enterprise that has the capability and ability to execute the sub-contract.
- (11) A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- (12) When an organ of state is in need of a service provided by only tertiary institutions, such services must be procured through a tendering process from the identified tertiary institutions.
- (13) Tertiary institutions referred to in sub-section (12) will be required to submit their B-BBEE status in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- (14)(a) Should the Municipality require a service that can be provided by one or more tertiary institution or public entity and enterprises from the private sector, the appointment of a contractor must be done by means of a tendering process;
- (b) Public entities will be required to submit their B-BBEE status in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

Remedies

- 53.** (1) The Municipality must act against the tenderer or person awarded the contract, upon detecting that:
- (a) the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis; or
 - (b) any of the conditions of the contract have not been fulfilled.
- (2) The Municipality may, in addition to any other remedy it may have against the person contemplated in sub-regulation (1):
- (a) disqualify the person from the tendering process;
 - (b) recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) restrict the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the *Audi alteram partem* (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution.

Declarations

- 54.** A bidder must, in the manner stipulated in the tender document, declare that-
- (a) the information provided is true and correct;
 - (b) the signatory to the bid document is duly authorized; and
 - (c) documentary proof regarding any bid will, when required, be submitted to the satisfaction of the Municipality.

Specific goals

- 55.** (1) The bid conditions may stipulate that specific goals, as contemplated in terms of the PPPFA, be attained.
- (2) The stipulation contemplated in section (1) must include the method to be used to calculate the points scored for achieving specific goals.

Procurement of banking services

- 56.** (1) A contract for the provision of banking services to the Municipality:
- (a) must be procured through competitive bids;
 - (b) must be consistent with section 7 or 85 of the Municipal Finance Management Act 56 of 2003; 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 section 30(1) of this policy. 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

- 57.** (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 provincial treasury and the Auditor General.

Procurement of catering services

- 58.**
- (1) That Health and Protection Services from Amatole District must inspect the food handlers premises for health and hygiene compliance on an ongoing basis. Confirmation from ADM must be submitted to Amahlathi SCM office.
 - (2) The Council standardize menus to be used by the Municipality.
 - (3) Catering service providers must be appointed on a rotational basis for the provision of catering services.
 - (4) The SCM Unit is responsible for giving effect to such rotational appointment.
 - (5) If catering services are required in an area where there are no registered catering service providers on the database, then the normal procurement process will apply, as depicted in section 20 of this policy.
 - (6) When contracting with food caterers, officials to ensure compliance with section 28(3)(d)(v) of this policy.
 - (7) The Council standardize price for menus used by the municipality as follows: R100.00 for full meal, R50.00 for morning tea, lunch pack for R65.00 and R40.00 for afternoon tea.
 - (8) The Council shall review the rates paid for catering services annually.

59. Procurement of Accommodation and Conferences facilities

- (1) Accommodation and/or facilities for conferences, seminars, workshops, “lekgotlas” etc. should, whenever possible, be obtained by means of written price quotations.
- (2) If the procurement is under R200 000,00 vat inclusive, the approval must be made by the relevant head of department or delegated authority.
- (3) If the procurement is above R200 000,00, the approval must be made by the accounting officer.

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

- 60.** (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) Subsections (1)(c) and (d) do not apply if the 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

- 61.** (1) The acquisition and storage of goods in bulk (other than water) which necessitate special safety arrangements, including gases and fuel, should be avoided whenever 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.

Proudly SA campaign

62. The accounting officer must determine internal operating procedures supporting the Proudly SA Campaign to the extent that preference is given, in the following order, to procuring local goods and services from suppliers and businesses located:

- (a) within the jurisdiction of the AM;
- (b) within the Eastern Cape Province; and
- (c) within the RSA.

Deviation from procurement processes

63. (1) The procedures governing procurement in this policy may be dispensed with and any required goods or services may be procured through any convenient process, which may include direct negotiations, but only:

- (a) in an emergency as defined in section 60;
- (b) if such goods or services are produced or available from a single provider only;
- (c) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
- (d) acquisition of animals for zoos;
- (e) acquisition of breeding stock; and
- (f) in any other exceptional circumstances where it is impractical or impossible to follow the official procurement process, including:
 - (i) any purchase made at a public auction;
 - (ii) any contract with another organ of state for:
 - (aa) the provision of goods or services to the AM;

- (bb) the provision of a municipal service or assistance in the provision of a municipal service;
 - (cc) the procurement of goods and services under a contract secured by that other organ of state, provided that the relevant supplier has agreed to such procurement;
 - (vi) any contract in respect of which compliance therewith would not be in the public interest;
 - (vii) ad-hoc repairs to plant and equipment where it is not possible to ascertain the nature or extent of the work required in order to call for bids; and
- (2) For purposes of the interpretation of subsection 59(1):
- (a) the SCM Unit must ensure compatibility, continuity and alignment;
 - (b) authorized agents must produce a letter from the Original Equipment Manufacturer before their appointment can be made; and
 - (c) to ensure transparency and fairness, any goods or services that can only be obtained from a single provider must be advertised for fourteen (14) days prior to procurement.
- (3) Services for the routine repair of plant and equipment shall, where possible, be procured by means of annual bids where price is determined in accordance with prescribed work rates.
- (4) When deviating from procurement procedures as stated in 59(1) above, strict compliance with the procurement procedures reflected in the AM's SCM Manual must be adhered to.

Emergency dispensation

- 64.** (1) The conditions warranting an emergency dispensation must include the existence of one or more of the following:
- (a) the real and imminent risk of human injury or death;

- (b) the prevalence of human suffering and deprivation of fundamental human rights;
 - (c) the real and imminent risk of substantial damage to property and the suffering or death of livestock or other animals;
 - (d) the significant interruption of essential services, including transportation, communication or other support services critical to the effective functioning of the AM as a whole;
 - (e) the real and imminent risk of serious damage occurring to the natural environment;
- (2) The aforesated conditions must be of such a nature and scale that they cannot readily be alleviated by interim measures to permit the implementation of standard procurement procedures.
 - (3) An emergency dispensation shall not be approved in respect of any circumstances other than those contemplated in subsection 60(1).
 - (4) Where possible, three quotes must be obtained, in accordance with general acquisition management principles, and a report must be submitted to the accounting officer for approval.
 - (5) In situations where time is of the essence, the emergency shall be addressed immediately and the process must be formalized in a report to the accounting officer as soon as possible thereafter.

Extension of contracts

- 65.** (1) Requests for extension of contracts must be considered by the Bid Adjudication Committee or the delegated authority.
- (2) Any extension of a contract must be done in accordance with the provisions of the contract itself and in compliance with the AM's delegation policy, provided that:
 - (a) the requirements of section 33 of the MFMA are met; and
 - (b) the extension of the contract does not amount to the provision of new goods or services, such that the purposes of this policy are defeated.

- (c) Project Managers must as far as possible refrain from extending/expanding contracts and/or allowing variation orders as it increases the risks, reflects possible flaws in the planning process and it creates an uncompetitive environment, possibly unfairly prejudicing other possible vendors.
- (d) The extension of a contract must be finalised before the current expiry date of the contract.

Renewal of contracts

- 66.** (1) The renewal of contracts must be treated in accordance with the principles set out in section 62, applied mutatis mutandis to the contract in question.
- (2) In the case of computer software renewals/license fees, it is normally required that AM pay renewal / license fees for the continual use of the product. The Accounting Officer or the delegated authority must approve such renewals/license fees.

Unsolicited bids

- 67.** (1) In accordance with section 113 of the MFMA there is no obligation to consider unsolicited bids received outside a normal bidding process.
- (2) The accounting officer may decide in terms of section 113(2) of the MFMA to consider an unsolicited bid, but only if –
- (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
 - (b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages for, the Municipality;
 - (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) In this regard, the SCM Unit must submit a report to the accounting officer, seeking approval to take the unsolicited bid process further.
- (4) If the accounting officer decides to consider an unsolicited bid that complies with subsection (2) of this policy, then 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 for the Municipality 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.
- (5) For purposes of transparency and fairness, an unsolicited bid must be advertised for fourteen (14) days, requesting proposals from other interested parties, provided that:
 - (a) the request for proposal must be of a standard format and must not prejudice the intellectual property rights of the unsolicited bidder; and
 - (b) prior to advertising the unsolicited bid, the bidder will be informed of the Municipality's intention in this regard.
- (6) All written comments received pursuant to subsection (4), including any responses from the unsolicited bidder, must be submitted to the National Treasury and the relevant provincial treasury for comment.
- (7) 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.
- (8) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (9) 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.
- (10) 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.
- (11) Such submission must be made within seven (7) 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.

- (12) The Municipality reserves the right to award the bid to any third party who responds to the request for a proposal, subject to the principles contained in this policy.
- (13) The Municipality may reject any bidder who submits an unsolicited bid prepared on the basis of privileged or confidential information.

Ratification of minor breaches of procurement processes

- 68.** Any minor breaches of the procurement processes which are purely of a technical nature, and which are perpetrated by an official or committee acting in terms of delegated powers or duties, shall be reported to the accounting officer for ratification.

Obligation to report

- 69.** All deviations from procurement processes, as described in terms of section 59, shall be recorded and reported by the accounting officer to Council at its next meeting, and shall be included as a note to the annual financial statements.

Contracts having budgetary implications beyond three financial years

- 70.** The AM may not enter into any contract that will impose financial obligations beyond the three years covered in the annual budget for that financial year, unless the requirements of section 33 of the MFMA have been fully complied with.

CHAPTER 6

APPOINTMENT OF CONSULTANTS

Introduction

- 71.** The purpose of this chapter is to explain the procedures for selecting, contracting, and monitoring consultants required for projects. In general, the procedures described in the previous chapters apply. Only the peculiarities of appointing consultants are dealt with herein, as the services to which these procedures apply are of an intellectual and advisory nature.

Where a conflict in interpretation or application arises between the contents of this chapter and the provisions contained elsewhere in this policy, the latter shall prevail.

Consultants Defined

- 72.** (1) The term consultants includes consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, other multinational organizations, investment and merchant banks, universities, research agencies, government agencies, non-governmental organizations (NGO's), and individuals.
- (2) Accounting officers may use the organizations listed in subsection 69(1) above as consultants to help in a wide range of activities such as policy advice, accounting officer's/authority's reform management, engineering services, construction supervision, financial services, procurement services, social and environmental studies, and identification, preparation, and implementation of projects to complement accounting officers' capabilities in these areas.

Need for appointment

- 73.** Consultants should only be engaged when –
- (a) the necessary skills and/or resources to perform a project/duty/study are not available; and
 - (b) the accounting officer cannot be reasonably expected either to train or to recruit people in the time available.

Nature of appointment

74. (1) Appointment by means of a formal contract

- (a) The relationship between the accounting officer and the consultant should be one of purchaser/provider and not employer/employee.
- (b) The work undertaken for the accounting officer by a consultant should be regulated by a contract.
- (c) In procuring consulting services the accounting officer should satisfy himself/herself that:
 - (i) the procedures to be used will result in the selection of consultants who have the necessary professional qualifications;
 - (ii) the selected consultant will carry out the assignment in accordance with the agreed schedule, and
 - (iii) the scope of the services is consistent with the needs of the project.

(2) Selection methods for the appointment of consultants

- (a) The accounting officer should be responsible for preparing and implementing the project, for selecting the consultant, awarding and subsequently administering the contract, as well as for the payment of consulting services under the project.
- (b) While the specific rules and procedures to be followed for employing consultants depend on the circumstances of the particular case, at least the following four major considerations should guide the accounting officer on the selection process:
 - (i) the need for high-quality services;
 - (ii) the need for economy and efficiency;
 - (iii) the need to give qualified consultants an opportunity to compete in providing the services; and

- (iv) the importance of transparency in the selection process.
- (c) The particular method to be followed for the selection of consultants for any given project should be selected by the accounting officer in accordance with the criteria outlined in treasury guidelines.
- (d) The method of selection is determined by the scope of the assignment, the quality of service, the complexity of the assignment and whether assignments are of a standard and routine nature.
- (e) The following are the methods most generally used for the appointment of consultants:

(i) Quality and Cost Based Selection (QCBS)

(aa) In the majority of cases, the abovementioned major considerations can best be addressed through competition among firms in which the selection is based both on the quality of the services to be rendered and on the cost of the services to be provided, i.e. Quality and Cost-Based Selection (QCBS). This method is used in the event of an assignment not complex or specialized.

(bb) Cost as a factor of selection should be used judiciously.

(cc) The relative weight to be given to the quality and cost should be determined for each case depending on the nature of the assignment.

(dd) Investment and commercial banks, financial firms, and fund managers hired by accounting officer for the sale of assets, issuance of financial instruments, and other corporate financial transactions, notably in the context of privatization operations, should be selected under QCBS.

(ee) Auditors typically carry out auditing tasks under well-defined Terms of Reference (TOR) and professional standards. They should be selected according to QCBS, or by the "Least Cost Selection". When consultants are appointed to execute an audit function on behalf of the accounting officer, the tariffs agreed by the Auditor-General and the South African Institute for Chartered Accountants (SAICA) may be used as a guideline to determine the appropriate tariff or to, determine the reasonableness of the tariffs. These tariffs can be obtained from SAICA's website under www.saica.co.za. The tariffs are captured in a circular issued by SAICA.

(ff) In some circumstances, QCBS is not the most appropriate method for selecting consultants, and other methods are more appropriate. This section describes other selection methods and the circumstances under which they are generally appropriate.

(ii) Quality Based Selection (QBS)

(aa) QBS is appropriate for the following types of assignments:

(aaa) complex or highly specialized assignments for which consultants are expected to demonstrate innovation in their proposals (for example, financial sector reforms) for which it is difficult to define TOR and the required input from the consultants, and for which the client expects the consultants to demonstrate innovation in their proposals (for example, country economic or sector studies, multi-sectoral feasibility studies, design of a hazardous waste remediation plant or of an urban master plan, financial sector reforms);

(bbb) Assignments that have a high downstream impact and in which the objective is to have the best experts (for example, feasibility and

structural engineering design of such major infrastructure as large dams, policy studies of national significance, management studies of large government agencies); and

- (ccc) assignments that can be carried out in substantially different ways, such that proposals will not be comparable (for example, management advice, and sector and policy studies in which the value of the services depends on the quality of the analysis).
- (bb) In QBS, the Request for Proposals (RFP) may request submission of a technical proposal only (without the financial proposal), or request submission of both technical and financial proposals at the same time, but in separate envelopes (two-envelope system). The RFP should not provide the estimated budget, but it may provide the estimated number of key staff time, specify that this information is given as an indication only, and that consultants should be free to propose their own estimates.
- (cc) If technical proposals alone were invited, after evaluating the technical proposals using the same methodology as in QCBS, the accounting officer should request the consultant with the highest ranked technical proposal to submit a detailed financial proposal. The accounting officer and the consultant should then negotiate the financial proposal and the contract. All other aspects of the selection process should be identical to those of QCBS. If, however, consultants were requested to provide financial proposals initially together with the technical proposals, safeguards should be built in to ensure that the price envelope of only the selected proposal is opened and the rest returned unopened, after the negotiations are successfully concluded.

(iii) Selection under a fixed budget

The method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed. The RFP should indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes, within the budget. The TOR should be particularly well prepared to ensure that the budget is sufficient for the consultants to perform the expected tasks. Evaluation of all technical proposals should be carried out first as in the QCBS method where after the price envelopes should be opened in public. Proposals that exceed the indicated budget should be rejected. The consultant who has submitted the highest ranked technical proposal should be selected and invited to negotiate a contract.

(iv) Least-cost selection

This method is more appropriate to selection of consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, and so forth) where well-established practices and standards exist, and in which the contract amount is small. Under this method, a "minimum" qualifying mark for the "functionality" is established. Proposals to be submitted in two envelopes are invited. Potential suppliers may be obtained from the list of approved service providers. Technical envelopes are opened first and evaluated. Those securing less than the minimum mark should be rejected and the financial envelopes of the rest are opened in public. The firm with the highest points should then be selected. Under this method, the qualifying minimum mark should be established, keeping in mind that all proposals above the minimum compete only on "cost" and points for B-BBEE status level of contributor. The minimum mark to qualify should be stated in the RFP.

(v) Single-source selection

(aa) Single-source selection of consultants does not provide the benefits of competition in regard to quality and cost and lacks transparency in selection, and could encourage unacceptable practices. Therefore, single-source selection should be used only in exceptional

cases. The justification for single-source selection should be examined in the context of the overall interests of the client and the project.

- (bb) Single-source selection may be appropriate only if it presents a clear advantage over competition:
 - (aaa) for tasks that represent a natural continuation of previous work carried out by the firm;
 - (bbb) where rapid selection is essential (for example, in an emergency operation);
 - (ccc) for very small assignments; or
 - (ddd) when only one firm is qualified or has experience of exceptional worth for the assignment.
- (cc) The reasons for a single-source selection must be recorded and approved by the accounting officer or his/her delegate prior to the conclusion of a contract.
- (dd) When continuity for downstream work is essential, the initial RFP should outline this prospect and if practical, the factors used for the selection of the consultant should take the likelihood of continuation into account. Continuity in the technical approach, experience acquired, and continued professional liability of the same consultant may make continuation with the initial consultant preferable to a new competition, subject to satisfactory performance in the initial assignment. For such downstream assignments, the accounting officer should ask the initially selected consultant to prepare technical and financial proposals on the basis of TOR furnished by the accounting officer, which should then be negotiated.
- (ee) If the initial assignment was not awarded on a competitive basis or was awarded under tied financing or reserved procurement or if the downstream assignment is substantially larger in value, a competitive process acceptable to the accounting officer should normally be followed in which the

consultant carrying out the initial work is not excluded from the consideration if it expresses interest.

(vi) Selection based on consultants' qualifications

This method may be used for very small assignments for which the need for preparing and evaluating competitive proposals is not justified. In such cases, the accounting officer should prepare the TOR, request expressions of interest and information on the consultants' experience and competence relevant to the assignment and select the firm with the most appropriate qualifications and references. Potential suppliers may be obtained from the list of accredited service providers. The selected firm should be requested to submit a combined technical-financial proposal and then be invited to negotiate the contract.

(vii) Selection of individual consultants

- (aa) Individual consultants may normally be employed on assignments for which:
 - (aaa) teams of personnel are not required;
 - (bbb) no additional outside (home office) professional support is required; and
 - (ccc) the experience and qualifications of the individual are the paramount requirement.
- (bb) When coordination, administration, or collective responsibility may become difficult because of the number of individuals, it would be advisable to employ a firm.
- (cc) Individual consultants should be selected on the basis of their qualifications for the assignment. They may be selected on the basis of references or through comparison of qualifications among those expressing interest in the assignment or approached directly by the accounting officer. Individuals employed by the accounting officer should meet all relevant qualifications and should be fully capable of carrying out the assignment. Capability is judged on the basis

of academic background, experience and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system, and local government environment.

- (dd) From time to time, permanent staff or associates of a consulting firm may be available as individual consultants. In such cases, the conflict of interest provisions described in these guidelines should apply to the parent firm.

(viii) Selection of particular types of consultants

(aa) Use of Nongovernmental Organisations (NGO's)

NGO's are voluntary non-profit organizations that may be uniquely qualified to assist in the preparation, management, and implementation of projects, essentially because of their involvement and knowledge of local issues, community needs, and/or participatory approaches. NGO's may be included in the short list if they express interest and provided that the accounting officer is satisfied with their qualifications. For assignments that emphasise participation and considerable local knowledge, the short list may comprise entirely NGO's. If so, the QCBS procedure should be followed, and the evaluation criteria should reflect the unique qualifications of NGO's, such as voluntarism, non-profit status, local knowledge, scale of operation, and reputation. An accounting officer may select the NGO on a single-source basis, provided the criteria outlined for single-source selection are fulfilled.

(bb) Inspection agents

Accounting officers may wish to employ inspection agencies to inspect and certify goods prior to shipment or on arrival in the country. The inspection by such agencies usually covers the quality and quantity of the goods concerned and reasonableness of price. Inspection agencies should be registered with the South African National Accreditation System (SANAS)

and the services of these inspection agents should be obtained by means of competitive bidding.

(cc) Banks

Investment and commercial banks, financial firms, and fund managers hired by accounting officers for the sale of assets, issuance of financial instruments and other corporate financial transactions, notably in the context of privatization operations, should be selected under QCBS. The RFP should specify selection criteria relevant to the activity – for example, experience in similar assignments or network of potential purchasers – and the cost of the services. In addition to the conventional remuneration (called a “retainer fee”), the compensation includes a “success fee.” This fee can be fixed, but is usually expressed as a percentage of the value of the assets or other financial instruments to be sold. The RFP should indicate that the cost evaluation will take into account the success fee, either in combination with the retainer fee or alone. If alone, a standard retainer fee should be prescribed for all short-listed consultants and indicated in the RFP, and the financial scores should be based on the success fee as a percentage of a pre-disclosed notional value of the assets. For the combined evaluation (notably for large contracts), cost may be accorded as weight higher or the selection may be based on cost alone among those who secure a minimum passing mark for the quality of the proposal. The RFP should specify clearly how proposals will be presented and how they will be compared.

(dd) Auditors

Auditors typically carry out auditing tasks under well-defined TOR and professional standards. They should be selected according to QCBS, with cost as a substantial selection factor, or by the “Least-Cost Selection.” When consultants are appointed to execute an audit function on behalf of the accounting officer, the tariffs agreed by the Auditor-General and the South African Institute for Chartered Accountants (SAICA) may be used as a guideline to determine the

appropriate tariff or to determine the reasonableness of the tariffs. These tariffs can be obtained from SAICA's website under www.saica.co.za. The tariffs are captured in a circular issued by SAICA.

(ee) "Service Delivery Contractors"

Projects in the social sectors in particular may involve hiring of large numbers of individuals who deliver services on a contract basis (for example, social workers, nurses and paramedics). The job descriptions, minimum qualifications, terms of employment and selection procedures should be described in the project documentation.

(ix) Association between consultants

Consultants may associate with each other to complement their respective areas of expertise, or for other reasons. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. The association may take the form of a joint venture or a sub-consultancy. In case of a joint venture, all members of the joint venture should sign the contract and are jointly and severally liable for the entire assignment. Once the bids or Requests for Proposals (RFP's) from service providers are issued, any association in the form of joint venture or sub-consultancy among firms should be permissible only with the approval of the accounting officer or his/her delegate. Accounting officers should not compel consultants to form associations with any specific firm or group of firms, but may encourage associations with the aim to enhance transfer of skills.

Invitation of bids/proposals, using QCBS

75. Appointing consultants to assist accounting officers with the execution of their duties implies the procurement of services. In all public sector procurement, the prescripts of the PPPFA, must be adhered to.

(1) Request for bids

In the request for bids the following steps would generally be followed in appointing consultants where clear Terms of Reference

(TOR), including a detailed task directive, have been compiled and the objectives, goals and scope of the assignment are clearly defined:

(a) Preparation of Terms of Reference (TOR)

- (i) The accounting officer should prepare the TOR. The scope of services described should be compatible with the available budget. The TOR should define as clearly as possible the task directive (methodology), objectives, goals and scope of the assignment and provide background information (including a list of existing relevant studies and basic data) to facilitate the consultants' preparation of their bids.
- (ii) If the assignment includes an important component for training or transfer of knowledge and skills, the TOR should indicate the objectives, nature, scope, and goals of the training programme, including details on trainers and trainees, skills to be transferred, time frames, and monitoring and evaluation arrangements to enable consultants to estimate the required resources. The TOR should list the services and surveys necessary to carry out the assignment and the expected outputs (for example reports, data, maps, surveys, etc), where applicable.
- (iii) Time frames linked to various tasks should be specified, as well as the frequency of monitoring actions. The respective responsibilities of the accounting officer and the consultant should be clearly defined.
- (iv) A clear indication should be given of the preference point system to be used, as described in terms of the PPPFA and its associated Regulations.
- (v) Detailed information on the evaluation process should be provided and it must be stated whether the tender will be evaluated on functionality as prescribed in section 46.
- (vi) Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be

earmarked. The cost estimate should be based on the accounting officer's assessment of the resources needed to carry out the assignment such as staff time, logistical support and physical inputs (i.e. vehicles, laboratory equipment, etc). The cost of staff time must be estimated on a realistic basis for foreign and local personnel.

- (vii) The TOR should specify the validity period (normally 60 – 90 days).
- (viii) In more complicated projects, provision may also be made for pre-bid briefing sessions as part of the evaluation process.
- (ix) The TOR should form part of the standard bid documentation. At this stage the evaluation panel, consisting of least three members who are demographically representative in terms of race, gender and expertise, should also be selected and finalised.

(2) Request for proposals

This method should be followed where selection is based both on the quality of a proposal and on are requested and encouraged to propose their own methodology the cost of the service through competition among firms. This method will be applicable on more complex projects where consultants and to comment on the TOR in their proposals.

(a) Preparation and issue of a Request for Proposal (RFP)

When possible, accounting officers should include at least the following documents in the RFP:

(i) **Letter of Invitation (LOI)**

The LOI should state the intention to enter into a contract for the provision of consulting services, the details of the client and the date, time and address for submission of proposals.

(ii) **Information to Consultants (ITC)**

Whenever possible, the accounting officer should use RFPs, which include the ITC covering the majority of assignments. The ITC should contain all necessary information that would assist consultants to prepare responsive proposals. It should be transparent and provide information on the evaluation process by indicating the evaluation criteria and factors and their respective weights and the minimum qualifying score in respect of functionality. A clear indication should be given of which preference points system will be applicable in terms of the PPPFA and its regulations. The budget is not specified (since cost is selection criterion), but should indicate the expected input of key professionals (staff time). Consultants, however, should be free to prepare their own estimates of staff time necessary to carry out the assignment. The ITC should specify the proposal validity period (normally 60 – 90 days).

The ITC should include adequate information on the following aspects of the assignment:

- (aa) a very brief description of the assignment;
- (bb) standard formats for the technical and financial proposals;
- (cc) the names and contact information of officials to whom clarifications should be addressed and with whom the consultants' representative should meet, if necessary;
- (dd) details of the selection procedure to be followed, including:

- (aaa) a description of the two-stage process, if appropriate;
 - (bbb) a listing of the technical evaluation criteria and weights given to each criterion;
 - (ccc) the details of the financial evaluation;
 - (ddd) the relative weights for quality and cost in the case of QCBS;
 - (eee) the minimum pass score for quality; and
 - (fff) the details on the public opening of financial proposals;
-
- (ee) an estimate of the level of key staff inputs (in staff-months) required of the consultants, and an indication of minimum experience, academic achievement, and so forth, expected of key staff or the total budget, if a given figure cannot be exceeded;
 - (ff) information on negotiations, and financial and other information that should be required of the selected firm during negotiation of the contract;
 - (gg) the deadline for submission of proposals;
 - (hh) a statement that the firm and any of its affiliates should be disqualified from providing downstream goods, works or services under the project if, in the accounting officer's judgement, such activities constitute a conflict of interest with the services provided under the assignment;
-
- (ii) the method in which the proposal should be submitted, including the requirement that the technical proposals and price proposals be sealed and submitted separately in a manner

that should ensure that the technical evaluation is not influenced by price;

- (jj) request that the invited firm acknowledges receipt of the RFP and informs the accounting officer whether or not it will be submitting a proposal;
- (kk) the shortlist of consultants being invited to submit proposals, and whether or not associations between short-listed consultants are acceptable;
- (ll) the period for which the consultants' proposals should be held valid (normally 60 – 90 days) and during which the consultants should undertake to maintain, without change, the proposed key staff, and should hold to both the rates and total price proposed; in case of extension of the proposal validity period, the right of the consultants not to maintain their proposal;
- (mm) the anticipated date on which the selected consultant should be expected to commence the assignment;
- (nn) a statement indicating all prices should be VAT inclusive;
- (oo) if not included in the TOR or in the draft contract, details of the services, facilities, equipment, and staff to be provided by the accounting officer;
- (pp) phasing of the assignment, if appropriate; and likelihood of follow-up assignments;
- (qq) the procedure to handle clarifications about the information given in the RFP; and
- (rr) any conditions for subcontracting part of the assignment.

Notes:

- (1) If under exceptional circumstances, the accounting officer needs to amend the standard ITC, he or she should do so through the technical data sheet and not by amending the main text.
- (2) Any granting of a substantial extension of the stipulated time for performance of a contract, agreeing to any substantial modification of the scope of the services, substituting key staff, waiving the conditions of a contract, or making any changes in the contract that would in aggregate increase the original amount of the contract by more than 15% percent, will be subject to the approval of the accounting officer or his/her delegate, and the provisions of this policy.

(iii) The TOR

The TOR should be compiled by a specialist in the area of the assignment and the scope of services described should be compatible with the available budget. The TOR should define as clearly as possible the objectives, goals and scope of the assignment including background information to facilitate the consultant in the preparation of its proposal. The TOR should be compiled in such a manner that consultants are able to propose their own methodology and staffing and be encouraged to comment on the TOR in their proposal.

Depending on the circumstances, it may be indicated that proposals should be submitted in two separate clearly marked envelopes, one containing the technical proposal and the other the cost for the assignment.

In cases where pre-qualification/short-listing is required, the TOR should indicate the basis of pre-qualification/short-listing, for instance the number of minimum points to be scored to pre-qualify.

(iv) **The proposed contract**

Accounting officers should use the appropriate Standard Form of Contract issued by the National Treasury. Any changes necessary to address specific project issues should be introduced through Contract Data Sheets or through Special Conditions of Contract and not by introducing changes in the wording of the General Conditions of Contract included in the Standard Form. When these forms are not appropriate (for example, for pre-shipment inspection, training of students in universities), accounting officers should use other acceptable contract forms.

(3) Establishment of a list of approved service providers

- (a) Where consultancy services are required on a recurring basis, a panel of consultants/list of approved service providers for the rendering of these services may be established. The panels/lists should be established through the competitive bidding process, usually for services that are of a routine or simple nature where the scope and content of the work to be done can be described in detail.
- (b) The intention to establish a panel/list of approved service providers is published in the media and on the Municipality's website and the closing time and date for inclusion in the panel/list of approved service providers should be indicated. For this purpose, a questionnaire should be made available and should make provision for the following:
 - (i) composition of the firm in terms of shareholding;
 - (ii) personnel complement;
 - (iii) representation of expertise in respect of the disciplines required, e.g. accounting, legal, educational, engineering, computer, etc;
 - (iv) national/international acceptability of experts in the various professions;
 - (v) experience as reflected in projects already dealt with;

(vi) and financial position.

Requirements for admission to the list and criteria should be linked to the numeric value in terms of which applicants will be measured, for example qualifications, experience, acceptability, facilities and resources etc. A pre-determined standard method of awarding points should be followed.

- (c) The applications received should be evaluated and any rejection of applicants should be motivated and recorded.
- (d) Once the panel/list of service providers has been approved, only the successful applicants are approached, depending on the circumstances, either by obtaining quotes on a rotation basis, or according to the bid procedure when services are required, with the exception that the requirement is not advertised again.
- (e) This list should be updated continuously, at least quarterly.

(4) Receipt of proposals

- (a) The accounting officer should allow enough time for consultants to prepare their proposals. The time allowed should depend on the assignment, but normally should not be less than four weeks or more than three months (for example, for assignments requiring establishment of a sophisticated methodology, preparation of a multidisciplinary master plan). During this interval, the firms may request clarification about the information provided in the RFP. The accounting officer should provide clarification in writing and copy them to all firms who intend to submit proposals. If necessary, the accounting officer should extend the deadline for submission of proposals. The technical and financial proposals should be submitted at the same time. No amendments to the technical or financial proposal should be accepted after the deadline. To safeguard the integrity of the process, the technical and financial proposals should be submitted in separate sealed envelopes. The technical envelopes should be opened immediately after the closing time for submission of proposals. The financial proposals should remain sealed until they are opened publicly. Any proposal received after the

closing time for submission of proposals should be returned unopened.

(b) **Consultants' role**

- (i) When consultants receive the RFP, and if they can meet the requirements of the TOR, and the commercial and contractual conditions, they should make the arrangements necessary to prepare a responsive proposal (for example, visiting the principal of the assignment, seeking associations, collecting documentation, setting up the preparation team). If the consultants find in the RFP documents – especially in the selection procedure and evaluation criteria – any ambiguity, omission or internal contradiction, or any feature that is unclear or that appears discriminatory or restrictive, they should seek clarification from the accounting officer, in writing, within the period specified in the RFP for seeking clarifications.
- (ii) The specific RFP issued by the accounting officer governs each selection. If consultants feel that any of the provisions in the RFP are inconsistent with the prescripts of the Municipal Supply Chain Management Regulations and/or the PPPFA and its regulations, they should raise this issue with the accounting officer in writing.
- (iv) Consultants should ensure that they submit a fully responsive proposal including all the supporting documents requested in the RFP. It is essential to ensure accuracy in the curricula vitae of key staff submitted with the proposals. The curricula vitae should be signed by the consultants and the individuals and dated. Non-compliance with important requirements should result in rejection of the proposal. Once technical proposals are received and opened, consultants should not be required nor permitted to change the substance, the key staff, and so forth. Similarly, once financial proposals are received, consultants should not be required or permitted to change the quoted fee and so forth, except at the time of negotiations carried out in accordance with the provisions of the RFP.

(5) Evaluation of bids/proposals

- (a) Within the ambit of the PPPFA Regulations, bids/proposals for the appointment of consultants should be evaluated on the basis of prequalification and price as well as the bidders B-BBEE status level of contribution. The evaluation should be carried out in two phases – first the prequalification and then the price. The criteria to be used to evaluate tenders on prequalification must be made known up-front in the bid documents. Score sheets should be prepared and provided to panel members to evaluate the bids on functionality. **In view of impartiality, members of bid committees should not also act as panel members if possible.**

The score sheet should contain all the criteria and the weight for each criterion as indicated in the TOR as well as the values to be applied for evaluation. Each panel member should after thorough evaluation award his/her own value to every criterion without discussing any aspect of any bid with any of the other members. Under no circumstances may additional evaluation criteria be added to those originally indicated in the bid documentation nor may the evaluation criteria be amended or omitted after closing of the bid. Score sheets should be signed by panel members and if required, written motivation could be requested from panel members in the event of vast discrepancies in the value awarded for each criterion.

- (b) The evaluation of the proposals should be carried out in two stages: first the functionality (quality) and then the price. The points scored for functionality is **not added** to the points scored for price.
- (c) The evaluation should be carried out in full conformity with the provisions of the RFP.
- (d) **Calculation of percentage for functionality**
- (i) Evaluators of technical proposals should not have access to the financial proposals until the technical evaluation is concluded in complex projects. Financial proposals should be opened only after the technical

proposals and only in respect of those proposals that achieved the minimum qualifying score for functionality. In respect of functionality, the accounting officer/authority should evaluate each technical proposal (using an evaluation panel of one or more specialists in that field of expertise) in terms of the specified evaluation criteria that may include the following:

- (aa) the consultant's relevant experience for the assignment;
 - (bb) the quality of the methodology proposed;
 - (cc) the qualifications of the key staff proposed; and
 - (dd) transfer of knowledge.
- (ii) The accounting officer should normally divide these criteria into sub-criteria, for example, the sub-criteria under methodology might be innovation and level of detail.
- (iii) More weight should be given to the methodology in the case of more complex assignments for example multidisciplinary feasibility or management studies.
- (iv) Evaluation of only "key" personnel is recommended as they ultimately determine the quality of performance. More weight should be assigned to this criterion if the proposed assignment is complex. The accounting officer should review the qualifications and experience of proposed key personnel in their curricula vitae which should be accurate, complete and signed by an authorised official of the consultant and the individual proposed. When the assignment depends critically on the performance of key staff, such as a Project Manager in a large team of specified individuals, it may be desirable to conduct interviews. The individuals can be rated, among others, in the following sub-criteria as relevant to the assignment:
- (aa) general qualifications: general education and training, length of experience, positions held,

time with the consulting firm staff, and experience in developing countries;

- (bb) adequacy for the assignment: education, training and experience in that specific sector, field or subject relevant to the particular assignment; and
- (cc) experience in the region: knowledge of the local language, culture, administrative system, government organization, etc.

(v) Accounting officers should evaluate each proposal on the basis of its response to the TOR. A proposal should be rejected at this stage if it does not respond to important aspects of the TOR or it fails to achieve the minimum qualifying score for functionality as specified in the RFP.

(vi) At the end of the process, the accounting officer should prepare an evaluation report on the quality of the proposals. The report should substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposals. All records relating to the evaluation such as individual score sheets should be retained until completion of the project and its audit.

(vii) The percentage scored for functionality should be calculated as follows:

Each panel member should award values for each individual criterion on a score sheet. The value scored for each criterion should be multiplied with the specified weighting for the relevant criterion to obtain the marks scored for the various criteria. These marks should be added to obtain the total score. The following formula should then be used to convert the total score to a percentage for functionality:

$$Ps = \frac{So}{Ms} \times Ap$$

where:

Ps	=	percentage scored for functionality by bid/proposal under consideration
So	=	total score of bid/proposal under consideration
Ms	=	maximum possible score
Ap	=	percentage allocated for functionality

The percentages of each panel member should be added together and divided by the number of panel members to establish the average percentage obtained by each individual bidder for functionality.

After calculation of the percentage for functionality, the prices of all bids that obtained the minimum score for functionality should be taken into consideration.

Bids/proposals that do not score a certain specified minimum percentage for functionality, should be disqualified and not considered further.

(e) Calculation of percentage for price

- (i) For the purpose of evaluation, the price shall include all local taxes and other reimbursable expenses such as travel, translation, report printing or secretarial expenses. The proposal with the lowest price will obtain the maximum percentage for price as prescribed in RFP. Proposals with higher prices will proportionally obtain lower percentages according to the method as prescribed in the RFP.
- (ii) The percentage scored for price should be calculated as follows:

The lowest acceptable bid/proposal will obtain the maximum percentage allocated for price. The other bids/proposals with higher prices will proportionately obtain lower percentages based on the following formula:

$$P_s = \frac{P_{min}}{P_t} \times A_p$$

where:

P_s	=	percentage scored for price by under consideration
P_{min}	=	lowest acceptable bid/proposal
P_t	=	price of bid/proposal under consideration
A_p	=	percentage allocated for price

(f) Calculation of points for functionality and price

The points scored for functionality is not added to the points scored for price. Only the bidders that have scored the minimum number of points will be considered further.

Points awarded to a bidder for attaining the B-BBEE status level of contributor are added to the points scored for price in order to obtain a final point. The contract should be awarded to the bidder scoring the highest points.

Information relating to evaluation of bids and recommendations concerning awards should not be disclosed to the consultants who submitted bids or to other persons not officially concerned with the process until the successful consultant is notified.

(g) Negotiations and award of contract

(i) The Accounting Officer may negotiate the contract only with the preferred bidder identified by means of the competitive bidding process.

(ii) Negotiations should include discussions of the TOR, the methodology, staffing, accounting officer's inputs, and special conditions of the contract. These discussions should not substantially alter the original TOR or the terms of the contract, lest the quality of the final product, its cost, and the relevance of the initial evaluation be affected. Major reductions in work inputs should not be made solely to meet the budget. The

final TOR and the agreed methodology should be incorporated in "Description of Services," which should form part of the contract.

- (iii) The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. The key staff proposed for substitution should have qualifications equal to or better than the key staff initially proposed.
 - (iv) Financial negotiations should include clarification of the consultant's tax liability. Before the appointment is finalized, the consultant should submit an original tax clearance certificate to the accounting officer.
 - (v) Proposed unit rates for staff-months and reimbursables should not be negotiated, since these have already been a factor of selection in the cost of the proposal, unless there are exceptional reasons.
 - (vi) If the negotiations fail to result in an acceptable contract, the accounting officer should terminate the negotiations. The original preferred consultant should be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked firm, the accounting officer should not reopen the earlier negotiations. After negotiations are successfully completed, the accounting officer should promptly notify other firms that they were unsuccessful.
- (h) **Contract award**
- (i) According to the prescripts of the PPPFA and its Regulations, a contract may only be awarded to the bidder who scored the highest number of points, unless objective criteria justify the award to another bidder. Should this be the case, the accounting officer should

be able to defend the decision not to award the bid to the bidder who scored the highest number of points in any court of law. It should be emphasized that not offering any contributions to prescribed goals as contemplated in the Preferential Procurement Regulations, 2011, does not disqualify a bidder. Under these circumstances a bidder will score no points for the B-BBEE status level of contributor.

- (ii) The accounting officer should award the contract, within the period of the validity of bids, to the bidder who meets the appropriate standards of capability and resources and whose bid has been determined:
 - (aa) to be substantially responsive to the bidding documents; and
 - (bb) to be the highest on points.
- (iii) A bidder should not be required, as a condition of award, to undertake responsibilities for work not stipulated in the bidding documents or otherwise to modify the bid as originally submitted.

(i) **Rejection of all proposals and re-invitation**

The accounting officer will be justified in rejecting all proposals only if all proposals are non-responsive and unsuitable, either because they present major deficiencies in complying with the TOR, or because they involve costs substantially higher than the original estimate. In the latter case, the feasibility of increasing the budget, or scaling down the scope of services with the firm should be investigated. The new process may include revising the RFP and the budget.

(6) Types of contracts

- (a) The relationship between the accounting officer and the consultant should be one of purchaser/provider and not employer/employee. The work undertaken for the accounting officer by a consultant should be regulated by a contract.

- (b) When appropriate, the accounting officer may include under the special conditions of contract, the following or similar condition:

"A service provider may not recruit or shall not attempt to recruit an employee of the principal for purposes of preparation of the bid or for the duration of the execution of this contract or any part thereof".

- (c) The most common types of contract are:

- (i) **Lump Sum (Firm Fixed Price) Contract:** Lump sum contracts are used mainly for assignments in which the content and the duration of the services and the required output of the consultants are clearly defined. They are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth. Payments are linked to outputs (deliverables), such as reports, drawings, bills of quantities, bidding documents and software programmes. Lump sum contracts are easy to administer because payments are due on clearly specified outputs.
- (ii) **Time-Based Contract:** This type of contract is appropriate when it is difficult to define the scope and the length of services, either because the services are related to activities by others for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess. This type of contract is widely used for complex studies, supervision of construction, advisory services, and most training assignments. Payments are based on agreed hourly, daily, weekly or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. The rates for staff include salary, social costs, overheads, fees (or profit), and, where appropriate, special allowances. This type of contract should include a maximum amount of total payments to be made to the consultants. This ceiling amount should include a contingency allowance for unforeseen work

and duration and provision for price adjustments, where appropriate. Time-based contracts need to be closely monitored and administered by the client to ensure that the assignment is progressing satisfactorily and payments claimed by the consultants are appropriate.

- (iii) **Retainer and/or Contingency (Success) Fee Contract:** Retainer and contingency fee contracts are widely used when consultants (banks or financial firms) are preparing companies for sales or mergers of firms, notably in privatisation operations. The remuneration of the consultant includes a retainer and a success fee, the latter being normally expressed as a percentage of the sale price of the assets.
- (iv) **Percentage Contract:** These contracts are commonly used for architectural services. They may be used for procurement and inspection agents. Percentage contracts directly relate the fees paid to the consultant to the estimated or actual project construction cost, or the cost of the goods procured or inspected. The contracts are negotiated on the basis of market norms for the services and/or estimated staff-month costs for the services, or competitive bid. It should be borne in mind that in the case of architectural or engineering services, percentages implicitly lack incentive for economic design and are hence discouraged. Therefore, the use of such a contract for architectural services is recommended only if it is based on a fixed target cost and covers precisely defined services (for example, not works supervision).
- (v) **Indefinite Delivery Contract (Price Agreement):** These contracts are used when accounting officers need to have "on call" specialized services to provide advice on a particular activity. These are commonly used to retain "advisers" for implementation of complex projects (for example, dam panel), expert adjudicators for dispute resolution panels, accounting officer reforms, procurement advice, technical troubleshooting, and so forth, normally for a period of a year or more. The accounting officer and the firm agree on the unit rates to be paid for the experts and

payments are made on the basis of the time actually used.

(7) Important provisions

- (a) **Currency.** RFPs should clearly state that firms must express the price for their services in Rand. If the consultants wish to express the price as a sum of amounts in different foreign currencies, they may do so, provided that the accounting officer/authority concurs with this practice and that the proposal includes no more than three foreign currencies outside the borders of South Africa. The accounting officer should require consultants to state the portion of the price representing local costs in Rand. Payment under the contract should be made in the currency or currencies expressed in the formal contract.
- (b) **Price adjustment.** To adjust the remuneration for foreign and/or local inflation, a price adjustment provision should be included in the contract if its duration is expected to exceed 12 months. Exceptionally, contracts of shorter duration may include a provision for price adjustment when local or foreign inflation is expected to be high and unpredictable.
- (c) **Payment provisions.** Payment provisions, including amounts to be paid, schedule of payments, and payments procedure, should be agreed upon during negotiations. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump sum contracts). Payments for advances (for example, for mobilization costs) exceeding 10 percent of the contract amount should normally be backed by advance payment securities. Payments should be made promptly in accordance with the contract provisions. To that end:
 - (i) consultants can be paid by the accounting officer;
 - (ii) only disputed amounts should be withheld, with the remainder of the invoice paid in accordance with the contract; and
 - (iii) the contract should provide for the payment of financing charges if payment is delayed due to the

client's fault beyond the time allowed in the contract.
The rate of charges should be specified in the contract.

- (d) **Bid and performance securities.** Bid and performance securities are not recommended for consultants' services. Their enforcement is often subject to judgment calls, they can be easily abused and they tend to increase the costs to the consulting industry without evident benefits, which are eventually passed on to the accounting officer.
- (e) **Accounting officer contribution.** The accounting officer normally assigns members of his or her own professional staff to the assignment in different capacities. The contract between the accounting officer and the consultant should give the details governing such staff, known as counterpart staff, as well as facilities that should be provided by the accounting officer, such as housing, office space, secretarial support, utilities, materials and vehicles. The contract should indicate measures the consultant can take if some of the items cannot be provided or have to be withdrawn during the assignment and the compensation of the consultant will receive in such a case.
- (f) **Conflict of interest.** The consultant should not receive any remuneration in connection with the assignment except as provided in the contract. The consultant and its affiliates should not engage in consulting activities that conflict with the interests of the client under the contract, and should be excluded from downstream supply of goods or construction of works or purchases of any asset or provision of any other service related to the assignment other than a continuation of the "Services" under the ongoing contract.
- (g) **Professional liability.** The consultant is expected to carry out its assignment with due diligence and in accordance with prevailing standards of the profession. As the consultant's liability to the accounting officer will be governed by the applicable law, the contract need not deal with this matter unless the parties wish to limit this liability. If they do so, they should ensure that:
 - (i) there should be no such limitation in case of the consultant's gross negligence or willful misconduct;

- (ii) the consultant's liability to the accounting officer in no case be limited to less than the total payments expected to be made under the consultant's contract, or the proceeds the consultant is entitled to receive under its insurance, whichever is higher; and
 - (iii) any such limitation may deal only with the consultant's liability toward the client and not with the consultant's liability toward third parties.
- (h) **Staff substitution.** During an assignment, if substitution is necessary (for example, because of ill health or because a staff member proves to be unsuitable), the consultant should propose other staff of at least the same level of qualifications for approval by the accounting officer.
- (i) **Applicable law and settlement of disputes.** The contract should include provisions dealing with the applicable law and the forum for the settlement of disputes. Should it not be possible to settle a dispute by means of mediation, the dispute may be settled in a South African court of law.

(8) Evaluation of the performance of consultants

- (a) Consultants should observe due diligence and prevailing standards in the performance of the assignment. The accounting officer should evaluate the performance of consultants appointed in a fair and confidential process. In the case of repeated poor performance, the firm should be notified and provided an opportunity to explain the reasons for it and the remedial action proposed.
- (b) Consultants should be responsible for the accuracy and suitability of their work. Although accounting officers supervise and review the consultants' work, no modifications should be made in the final documents prepared by the consultants without mutual agreement. In the case of supervision of works, consultants may have more or less authority to supervise, from full responsibility as an independent engineer, to that of advisor to the client with little authority to make decisions, as determined by the accounting officer and captured in the contract agreement between the accounting officer and the consultant.

- (c) Any granting of a substantial extension of the stipulated time for performance of a contract, agreeing to any substantial modification of the scope of the services, substituting key staff, waiving the conditions of a contract, or making any changes in the contract that would in aggregate increase the original amount of the contract by more than 15 percent, will be subject to the approval of the accounting officer or his/her delegate, and the provisions of this policy.

(9) Disbursements

The responsibility for the implementation of the project and therefore for the payment of consulting services under the project rests solely with the accounting officer.

(10) Confidentiality

- (a) The process of proposal evaluation is to be confidential until the contract award is notified to the successful firm. Confidentiality enables the accounting to avoid either the reality or perception of improper interference. If, during the evaluation process, consultants wish to bring additional information to the notice of the accounting officer, they should do so in writing.
- (b) If consultants wish to raise issues or questions about the selection process, they should communicate directly in writing with the accounting officer in this regard. All such communications should be addressed to the chief of the division for the relevant sector for the accounting officer.
- (c) Communications that the accounting officer receives from consultants after the opening of the technical proposals should be handled as follows:
 - (i) in the case of contracts any communication should be sent to the accounting officer for due consideration and appropriate action; and
 - (ii) if additional information or clarification is required from the consultant, the accounting officer should obtain it and comment on or incorporate it, as appropriate, in the evaluation report.

(11) Debriefing

If after notification of award, a consultant wishes to ascertain the grounds on which its proposal was not selected, it should address its request in writing to the accounting officer. If the consultant is not satisfied with the explanation given by the accounting officer, the consultant may refer this matter to the relevant treasury, Public Protector or court of law.

(12) Conclusion

Selecting a consultant requires a logical and systematic approach to enable the appointment of the most effective and efficient consultants. Selecting the right consultant is essential to be successful in a variety of objectives to be achieved by an institution. The consultant's performance has to be monitored and evaluated in an equally, logical, systematic and objective manner to ensure that the correct decision is made when the consultant is to be utilised in future. The general culture throughout the supply chain management process and specific appointment of consultants should be one of trust, honesty, professionalism and willingness to serve.

System of appointing consultants

- 76.** (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.

CHAPTER 7

LOGISTICS MANAGEMENT

System of Logistics Management

77. 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.

The Logistics management process

- 78.** (1) For stock or inventory items the following functions will amongst others be performed :
- (a) coding of items;
 - (b) setting of inventory levels;
 - (c) placing of orders;
 - (d) receiving and distribution of material;
 - (e) stores or warehouse management
 - (f) transport management; and
 - (g) vendor performance.
- (2) For fixed capital items (construction and road projects, immovable property) a similar process must be adopted, *mutatis mutandis*, viz ensuring appropriate classification, recording additions to asset and property registers, valuation, main use, etc.
- (3) The financial system necessary to generate payments must be implemented in a manner which is consistent with the principles attached to the logistics management process.

Setting of inventory levels

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

Stores and warehouse management

- 80.** (1) The stores and warehousing function shall operate under the jurisdiction of the Budget and Treasury Office (BTO).
- (2) The BTO must uphold the principles of effective administration, property stock holding and control, product standardization, quality of products and high standards of service levels.

CHAPTER 8 DISPOSAL MANAGEMENT

System of Disposal management

- 81.** (1) The accounting officer must establish an effective system of disposal management for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act.
- (2) Assets must be disposed of by, inter alia -
- (a) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
 - (b) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
 - (c) selling the asset; or
 - (d) destroying the asset.
- (3) With regard to the disposal of assets in general -
- (a) immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
 - (b) 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;
 - (c) 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
 - (d) 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;
- (4) In connection with the letting of immovable property -
- (a) immovable property must be let at market related rates except when the public interest or the plight of the poor demands otherwise; and
 - (b) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property must be annually reviewed; and

- (5) Where assets are traded in for other assets, the highest possible trade-in price must be negotiated.

The Disposal Management Process

- 82.** (1) For purposes of the disposal management process, the accounting officer must ensure that the following steps are undertaken in respect of movable assets:
- (a) Obsolescence planning must be effected, alternatively depreciation rates per item must be calculated;
 - (b) A data base of all redundant assets must be compiled and maintained;
 - (c) Assets identified for disposal must first be inspected for potential re-use;
 - (d) A strategy must be determined for the disposal of assets; and,
 - (e) The actual disposal of assets must be effected in compliance with this chapter.
- (2) Similar steps to those set out in terms of subsection (1) must be undertaken in respect of immovable assets.

CHAPTER 9

SUPPLY CHAIN PERFORMANCE

The performance management process

- 83.** (1) The accounting officer must establish an effective internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes are being followed and whether the desired objectives are being achieved.
- (2) Performance management shall accordingly be characterized by a monitoring process and retrospective analysis to determine whether:
- (a) proper processes have been followed;
 - (b) value for money has been attained;
 - (c) desired objectives have been achieved;
 - (d) there is an opportunity to improve the processes;
 - (e) suppliers have been assessed and what that assessment is;
 - (f) there has been a deviation from procedures and, if so, what the reasons for that deviation are.

System of supply chain performance

- 84.** For purposes of internal monitoring, at least the following may be considered:
- (a) achievement of objectives;
 - (b) compliance with norms and standards;
 - (c) savings generated;
 - (d) stores efficiency;
 - (e) cost variance per item;
 - (f) possible breaches of contract;

- (g) cost of the procurement process itself;
- (h) whether supply chain objectives are consistent with national government's policies;
- (i) increasingly alignment of material construction standards with international best practice;
- (j) observance of principles of co-operative governance; and
- (k) reduction of regional economic disparities are promoted.

Performance evaluation of the services provided by a contractor / service provider / supplier contracted by the Municipality

- 85.** (1) Performance targets are identified as part of the initial planning for a contract, and set out in the business case and request for bid documentation. Targets are generally associated with cost, timeliness and the quality of products and services to be purchased as the outputs of the contract.
- (2) Officials are expected to monitor and evaluate the contractor's performance. This is essential in determining whether the requirements are being met and to avoid any future conflicts over unsatisfactory performance.
- (3) Contractors should be required to report to the project manager on progress in accordance with the agreed timeframes and review schedules. The project manager must inform the contractor in writing where there is evidence that the contractor's performance is inadequate or behind schedule. If there is continuing concern that obligations are not being met, advice should be sought immediately from the Bid Adjudication Committee.
- (4) Disputes must be resolved promptly and not be allowed to escalate into costly legal battles.
- (5) A copy of all performance reports and reports on contract outcomes should be forwarded to the SCM Unit. The SCM Unit must ensure that these reports are available for reference purposes to staff inquiring about a contractor's performance.

Unsatisfactory performance

- 86.** (1) Unsatisfactory performance occurs when performance is not in accordance with the contract. Subject at all times to the terms and conditions of such contract, the contractor must be warned in writing (with a registered letter) that action will be taken against him/her unless he/she complies with the contract and delivers satisfactorily within a specified reasonable period. If the contractor still does not perform satisfactorily despite the warning, a recommendation may be made to the Bid Adjudication Committee to cancel the contract.
- (2) If during the guarantee period, a supplier does not comply with the requirements due to faulty material or otherwise, the contractor must be requested to repair or replace the faulty material at his or her cost without delay, and that it must be guaranteed for the same period as the original supplies.
- (3) Continuously communicate unsatisfactory performance to contractors in writing compelling the contractor to perform according to the contract and thus to rectify or to restrain from unacceptable actions.
- (4) If the performance is not rectified, the Project Manager must inform the SCM Unit of this fact.
- (5) Before action is taken in terms of the general conditions of contract or any other special contract condition applicable, the Municipality must warn the contractor by registered mail that action will be taken in accordance with the contract conditions unless the contractor complies with the contract conditions and delivers satisfactory supplies or services within a specified reasonable time. If the contractor still does not perform satisfactorily despite a final warning, the SCM Unit may make a recommendation to the Accounting Officer or the delegate for the appropriate penalties to be introduced or make a recommendation to the Accounting Officer for the cancellation of the contract concerned.
- (6) When correspondence is addressed to the contractor, reference must be made to the contract number, the item number and the number and date of any relevant invoice, statement or letter received from the contractor. Otherwise the number and date of the order, a short description of the supply or service and details of the destination if applicable, must be supplied.

- (7) When the Municipality has to satisfy its need through another provider (for the contractor's expense), the loss to AM must always be restricted to the minimum since it is difficult to justify the recovery of unreasonable additional costs from the contractor.
- (8) Record must be kept by the SCM Unit of details of all cases of non-performance by contractors. If rejected supplies are in the possession of the AM, the contractor must be requested to collect the supplies at his/her own expense, failing which the goods will be sent back and the cost will be for the contractor's account.

CHAPTER 10 RISK MANAGEMENT

System of risk management

- 87.** (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) Managing risk must be part of the Municipality's philosophy, practices and business plans and should not be viewed or practiced as a separate activity in isolation from line managers.
- (3) Risk management shall be an integral part of effective supply chain management practice.
- (4) 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.

The risk management process

- 88.** (1) The risk management process shall be applied to all stages of supply chain management, be it the conceptual stage, project definition, specification preparation, acquisition approval or implementation to completion.
- (2) Risk management is an integral part of good management of acquisition activities and cannot be effectively performed in isolation from other aspects of acquisition management.

- (3) Appropriate risk management conditions should therefore be incorporated in contracts.

Key principles

89. The key principles of managing risk in supply chain management include:

- (1) early and systematic identification of risk on a case-by-case basis, analysis and assessment of risk, including conflicts of interest and the development of plans for handling them;
- (2) allocation and acceptance of responsibility to the party best placed to manage such risk;
- (3) management of risk in a pro-active manner and the provision of adequate cover for residual risks;
- (4) assignment of relative risks to the contracting parties through clear and unambiguous contract documentation;
- (5) acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it; and
- (6) ensuring that the costs incurred in managing risks are commensurate with the importance of the purchase and the risks to the Municipality's operations.

Guidelines

90. The Municipality shall demonstrate that in its supply chain management:

- (1) there exists a systematic approach to identifying risks including potential conflicts of interest, analyzing their possible likelihood, impacts and consequences and managing those risks as the project proceeds through the phases of pre-bid, post-bid and contract management;
- (2) the integrity and correctness of the process of risk identification analysis, assessment and treatment is such that the relevant municipal department can demonstrate the scope of the risk analysis is appropriate for the stated objectives;

- (3) all pertinent matters and assumptions have been tested adequately and that appropriate risk treatment techniques have been implemented;
- (4) the causes of risk are clearly identified;
- (5) the means of treating the identified risks are apparent;
- (6) the party who accepts the risks also accepts responsibility for management of those risks, except where informed, and objective decisions are taken to share risks;
- (7) alternatives have been evaluated; and
- (8) appropriate conditions are to be incorporated in contracts to avoid or minimize risk including warranties and penalties where appropriate.

Steps in risk management

91. There are six steps in the risk management process, namely:

- (1) establish a framework;
- (2) risk identification;
- (3) risk analysis;
- (4) risk assessment;
- (5) risk treatment; and
- (6) implementation, monitoring and review.

Combating of abuse of supply chain management system

- 92.**
- (1) The accounting officer must provide measures for the combating of abuse of the supply chain management system.
 - (2) For purposes of subsection (1), the aforestated measures must enable the accounting officer:
 - (a) to take all reasonable steps to prevent abuse of the supply chain management system;

- (b) to 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) to 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) to 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) to 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) to 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) to 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) or has been listed on National Treasury's database as a person prohibited from doing business with the public sector.
- (3) The accounting officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subsections (1)(b)(ii), (e) or (f) of this policy.

Penalties

- 93.** (1) The Municipality must, upon detecting that a preference in terms of the Preferential Procurement Policy Framework Act, 2000, its regulations and the MFMA, as defined, has been obtained on a fraudulent basis, or any specified goals are not attained in the performance of the contract, act against the person awarded the contract.
- (2) The Municipality may in addition to any other remedy it may have against the person contemplated in subsection (1):
- (a) recover all costs, losses and damages it has incurred or suffered as a result of that person's conduct;

- (b) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (c) impose a financial penalty more severe than the theoretical financial preference associated with the claim which was made in the bid; and
- (d) restrict the contractor, its shareholders and directors from obtaining business from any organ of state for a period not exceeding 10 years.

Insurance

- 94.** (1) The accounting officer must ensure that steps are taken to:
- (a) insure the Municipality against procurement related risks;
 - (b) establish risk management programmes; and
 - (c) make advance provision for losses associated with such risks.
- (2) The accounting officer shall further ensure that insurance related excesses do not cause the failure of emerging small and micro enterprises.

Guarantees

- 95.** (1) The Municipality must adhere to the following general principles with regard to performance guarantees:
- (a) the aforesated performance guarantees must be commensurate with the degree of contractual risk to which the Municipality will be exposed;
 - (b) in the case of large and complex contracts, performance guarantees must be requested in order to discourage the submission of irresponsible bids; and,
 - (c) the risk of failure must be distributed between the contracting parties and should be managed so that the Municipality's costs resulting from any such failure are recoverable.

- (2) With regard to contracts pertaining to engineering and construction works:
 - (a) adequate provision should be made by the Municipality to ensure that funds are available to rectify defects; and,
 - (b) performance guarantees may be waived in the case of low value and low risk contracts or where a third party bears the risk of failure.

96. Declaration

For purposes of establishing control measures to eliminate fraud and corruption:

- (a) a declaration schedule must form an integral part of all the Municipality's bid documents;
- (b) bidders must be required to complete the schedule as a prerequisite to submission of any bid; and
- (c) employees of any organ of state will be required to complete the schedule as a pre-requisite to the bid.

97. Declaration of interest by officials, suppliers, service providers and consultants

- (1) In order to obtain the disclosure of any interests that an official, supplier, service provider or consultant may have with regard to a bid, the declaration of interest schedule must be completed prior to the award of a bid.
- (2) The declaration of interest must be completed by the following persons:
 - (a) all officials involved in the evaluation or approval of a bid;
 - (b) all suppliers, service providers or consultants who are involved in the preparation of bid documentation and bid reporting; and,
 - (c) any other person who played a role in the preparation, specification, evaluation and approval of a bid and who has an interest in the award thereof.

98. General risk management

For purposes of establishing general risk management measures, the Municipality must apply the following principles:

- (a) business plans, where applicable, will be required for approval prior to the commencement of all projects;
- (b) feasibility or design reports will be required by the AM before bids for projects are called;
- (c) bid documents will be specific and detailed;
- (d) applicable project standards must be made available for public perusal;
- (e) officials must ensure time, cost and quality control while projects are being implemented;
- (f) where applicable, bidders must obtain public liability insurance to cover the AM; and,
- (g) variation orders will only be approved by the accounting officer or a duly delegated AM official, subject to the provisions of Chapter 16 of this policy.

99. Surety

- (1) Sureties must be obtained in respect of construction projects, classified as follows:

AMOUNT	PERCENTAGE
R300 000	Nil
R300 001-R1 000 000	2.5%
R1 000 001-R3 000 000	5%
R3 000 001-R5 000 000	7.5%
R5 000 001- and above	10%

- (2) In the event that a contractor is unable to raise the required surety, the Municipality may allow such surety to be deducted in full or part from monies that are to become due to the contractor, in which event this shall be effected by way of deductions from the first three [3] payment certificates issued in favour of the contractor.

- (3) The Municipality may waive the requirement for a surety on construction contracts that are estimated to be equal to or lower than R1 000 000.
- (4) With regard to the waiving of sureties:
 - (a) this may be permitted to assist emerging and HDI entrepreneurs in the small works sector of the construction industry;
 - (b) it may further be permitted where a surety, a performance guarantee or funds cannot be obtained with the assistance of the Eastern Cape Development Corporation (ECDC) or a similar institution, provided that a written indication thereof is submitted to the Municipality; and,
 - (c) the Municipality may bear the risks associated with such waiver in order to promote emerging and HDI entrepreneurs.
- (5) No contractor, supplier or service provider may be permitted to undertake more than two contracts simultaneously where sureties have been waived.
- (6) Sureties will be released from their obligations upon their application to the Municipality and provided that the Municipality is satisfied that the contract has been completed satisfactorily.

Retention

- 100.** (1) A percentage of the costs in respect of construction contracts must be set aside as retention funds.
- (2) No more than 10% of the value of the construction contract must be set aside for purposes of subsection (1).
 - (3) With regard to the release of retention funds:
 - (a) half of the retention funds shall be released upon the issue of a completion certificate; and,
 - (b) the balance of the retention funds shall be released upon completion of the defects liability period.

Cessions

- 101.** (1) A cession agreement may be concluded by the Municipality, a contractor, supplier, service provider or financial institution and any other third party in order to assist emerging contractors and entrepreneurs.
- (2) The municipality will allow a financial institution to assist a contractor, supplier or service provider to implement projects on behalf of the employer.
- (3) When entering into a cession agreement for bridging finance, bridging finance will be restricted to a maximum of 80% of the total contract value.
- (4) The conclusion of a cession agreement shall be approved at the discretion of the accounting officer.

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

- 102.** (1) The accounting officer must ensure that, irrespective of the procurement process followed, no award 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 officer must first check with SARS whether that person's tax matters are in order.
- (3) If SARS does not respond within seven (7) days such person's tax matters may for purposes of subsection (1) be presumed to be in order.

Prohibition on awards to persons in the service of the state

- 103.** The accounting officer must ensure that irrespective of the procurement process followed, no award may be given to a person –
- (a) who is in the service of the state;
- (b) if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
- (c) who is an advisor or consultant contracted with the Municipality.

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

- 104.** 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.

Compliance with ethical standards

- 105.** (1) In order to create an environment where business can be conducted with integrity and in a fair and reasonable manner, the AM will strive to ensure that the accounting officer and all representatives of the Municipality involved in supply chain management activities shall act with integrity and in accordance with the highest ethical standards.
- (2) All municipal representatives shall adhere to the code of conduct for municipal staff contained in Schedule 2 of the Municipal Systems Act and the AM's Code of Ethical Standards.
- (3) A Code of Ethical Standards is hereby established, in accordance with subsection (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.
- (4) 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;
 - (d) notwithstanding subsection (4)(c), must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
 - (e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the Municipality;
 - (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
 - (g) must be scrupulous in his or her use of property belonging to the Municipality;
 - (h) must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
 - (i) must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –
 - (i) any alleged fraud, corruption, favouritism or unfair conduct;
 - (ii) any alleged contravention of subsection 103(1) of this policy; or
 - (iii) any alleged breach of this Code of Ethical Standards.
- (5) The Municipality shall ensure that:

- (a) all declarations in terms of subsections (4)(d) and (e) must be recorded in a register which the accounting officer must keep for this purpose;
- (b) all declarations 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; and
- (c) appropriate action is taken against any official or other role player who commits a breach of the code of ethical standards.

Inducements, rewards, gifts and favours to the Municipality, officials and other role players

- 106.** (1) No person who is a provider or prospective provider of goods or services to the Municipality, or a recipient or prospective recipient of goods disposed or to be disposed of by the Municipality, 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 subsection (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) Subsection (1) does not apply to gifts less than R350 in value.

Sponsorships

- 107.** The accounting officer must promptly disclose to the National Treasury and the 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 to the Municipality; or
 - (b) a recipient or prospective recipient of goods disposed or to be disposed of by the Municipality.

Objections and complaints

- 108.** 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

- 109.** (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 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 section must not be read as affecting a person's rights to approach a court at any time.

Contracts providing for compensation based on turnover

- 110.** 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.

CHAPTER 11

CONTRACT MANAGEMENT

The contract management process

- 111.** The accounting officer must develop and implement mechanisms to effectively manage important aspects relating to contracts awarded through the supply chain management system of Council. A Municipality cannot operate at all without entering into contracts on a regular basis and the obligations and rights created by the conclusion of these contracts should be managed in order to protect the interests of both the Municipality and the other contracting party.

The concept of contract management

- 112.** Contract management consists of the process that enables the Municipality, as a party to a contract, to protect its own interests and to ensure that it complies with its duties, as agreed upon in the contract. Non-performance or inadequate performance of these will compromise the municipality's legal position and will have a detrimental impact on the effectiveness of the Municipality, with related financial losses.

The process to manage contracts properly involves the following distinct aspects: the administration process, and the delivery or performance process.

(1) The administration process

This process encompasses the totality of the administrative management of contracts, which includes the following:

The co-ordination of all activities relating to contracts

(a) Centralised control point

This is normally performed by the Corporate Services Department, which takes full responsibility as main contact point between the parties to the contract, on the one hand, and as contact point between the functionaries of the Municipality, on the other. All the following matters will thus be handled at the central point, namely:

- enquiries;
- liaison; and

- correspondence.

(b) Centralised registering point

All contracts concluded must be recorded in a register. The contract register should preferably contain the following information:

- [i] name of party;
- [ii] type of contract (lease, loan, encroachment, etc);
- [iii] date concluded (this refers to the date on which the contract comes into operation and not the date of signing of the contract);
- [iv] date of expiry; and
- [v] action date (this indicates the ideal date on which action must be taken in order to either renew the existing contract or to implement appropriate action prior to termination of the contract).

The contract register must be kept electronically and in alphabetical order. All new contracts that have been entered into must immediately be recorded in the register. Contracts that have expired or no longer exist for whatever reason must be removed from the register and be recorded on a register or list for canceled or terminated agreements.

(c) Reproduction and distribution of contracts

Once a contract is signed copies must be made and:

- [i] be placed in the relevant file;
- [ii] be furnished to relevant departments under cover of a memorandum. If, for example, the contract places a duty on the Budget and Treasury Office and the Engineering Services Department, copies must be furnished to those departments;
- [iii] the original document must be dealt with as indicated in subsection (1)(d) below; and

- [iv] an original contract must be furnished to the other party.

(d) Safekeeping of contracts

- [i] The original contract must always be archived centrally.
- [ii] It must be placed in a special file separate from other documents, which must be stored in a locked cabinet that is situated in a strong room.
- [iii] Only one official must exercise control over original contracts.
- [iv] Original contracts should preferably not be made available to persons other than the parties to the contract. If a third party is authorized to have sight of the contract, such third party must sign for receipt of the contract.

(e) Contract formalisation

- (1) This process includes the preparation of contracts to be entered into by the Municipality. Either the Municipality or the other party will have to prepare the prospective contract. It is normally the lessor, seller, principal, etc. who prepares the contract, but not necessarily. Circumstances will dictate who will ultimately prepare the contract.
- (2) Should the responsibility lie with the Municipality to draft the contract, the following shall be decided:
 - (a) whether or not the user department will be responsible to perform the task; or
 - (b) whether the task will be outsourced in accordance with the Municipality's policy.
- (3) The contract should be written in English or in any other language chosen by the parties, and proper contract documents should be used.

- (4) Contracts should be signed, after mutual consensus, by all parties to the contract.
- (5) All agreements regarding the supply of goods and services to the Municipality must be concluded in writing.
- (6) Copies of the original contract must be made and must be kept in a secure place, as indicated in subsection (1)(d) above.
- (7) The end user should notify the contract management section of the award of the contract. This will enable them to update the contract register.
- (8) The following factors should be taken into consideration when a decision is to be taken on the possible outsourcing of the drafting of a contract:
 - (i) nature of the contract;
 - (ii) complexity
 - (iii) capacity of human resources;
 - (iv) whether it is a familiar type of contract;
 - (v) importance of the contract; and
 - (vi) costs involved if it is outsourced.

(f) Approval of contracts

All contracts to be concluded by the Municipality must be approved by the accounting officer or the delegated official. All contracts must indicate the name of the responsible person delegated by the accounting officer to sign on his or her behalf. The full name and signature of the accounting officer or responsible person in question must be added in the space provided. No official can sign on behalf of someone else unless properly authorized to do so.

(g) Signing of contracts

The signing of a contract takes place as soon as possible after the approval thereof. The following must be prudently adhered to when a contract is signed:

- (i) the representative of the Municipality must have the required authority to sign the contract;
- (ii) if the other party is a company, a close corporation, partnership or other form of legal entity, then a written resolution must be produced and attached to the contract, authorizing the signatory to sign on behalf of the other party;
- (iii) that the committee resolution, in terms whereof the contract was approved, is recorded in the contract;
- (iv) that the contract is signed with a pen using indelible ink;
- (v) that the contract is signed in the presence of two witnesses; and
- (vi) that a sufficient number of copies of the original contract are made for the parties involved.

(h) Expiry or termination of contracts

The following action is required when a contract is terminated:

- (i) The Municipality must ensure that it notifies the other contracting party, in writing, of the imminent expiry of the contract.
- (ii) The notification referred to above must contain the information required in terms of the contract.
- (iii) When an option to renew has been granted to the other contracting party, such party must be notified of such option in writing, and well in advance of the date on which he, she or it is required to exercise the option.

- (iv) The termination of a contract prior to its expiry date can take place in any of the following ways:
 - (aa) in accordance with a termination clause;
 - (bb) as a consequence of the breach of contract by either party;
 - (cc) death of a party;
 - (dd) destruction of the object of the contract;
 - (ee) where the parties become one party, e.g. when two or more municipalities amalgamate;
 - (ff) by operation of law; and
 - (gg) where the cause of the relationship in terms of the contract ceases to exist, for whatever reason.
- (v) Termination of a contract must be done strictly in accordance with the terms and conditions set out in the termination clause.
- (vi) Termination of a contract, for whatever reason, must be dealt with judiciously and in consultation with the AM's legal advisor.
- (vii) As indicated in subsection (1)(b) above, all terminated contracts must be clearly indicated as such in a separate register.

(2) Delivery or performance process

This process commences as soon as a contract is concluded. The parties are entitled to exercise their respective rights and are obliged to fulfill the duties stipulated in the contract. The nature of management required will ultimately depend upon the type of each individual contract. In some cases, contracts can be managed adequately with little involvement, whilst in other cases proper management without a competent project team is impossible. A good example of the latter is capital projects or service delivery agreements of considerable extent.

The nature of a contract will also indicate which department of the Municipality will be required to accept responsibility for the successful implementation of the project.

Circumstances will dictate the responsibility of the various departments involved and what level of management will be required.

Managing contracts

- 113.** (a) The Municipality must ensure that contracts are administered in terms of the specifications and conditions contained in the contract, as well as any applicable legal provisions of a general nature.
- (b) The contract must be implemented according to proposed strategy, with reference to the budget, strategic and procurement plan.
- (c) The contract register for the Municipality should be checked on a regular basis to ensure that it is up to date and accurate.
- (d) The outcomes of a contract must be monitored with reference to any documented expectations to ensure that the benefits realized by the Municipality are in line with such expectations.
- (e) The lifespan of the project must be monitored in line with the available budget approved.
- (f) Delivery must be assessed on the basis of the signed contract.
- (g) Orders are to be monitored continuously to ensure proper supply and delivery in accordance with the terms and conditions of the contract.
- (h) The Municipality must ensure that all parties to the contract observe acceptable ethical standards.
- (i) Necessary approval from the accounting officer and the bid adjudication committee, for non-contractual price adjustments, must be obtained, provided that such adjustments are lawful and not in contravention of the principles contained in this policy.

- (j) Contractual price adjustments may be considered, provided that these are in line with the terms and conditions of the contract and the supplier provides documentary proof or an audited certificate of price adjustments claimed to warrant such an adjustment.
- (k) Subject to the terms and conditions of the contract, the supplier or successful bidder must, within 30 days of the formation of the contract, provide security in the amount specified. Similarly, the supplier or successful bidder must provide a warranty for the goods and services to be provided.
- (l) If it was a condition of the bid invitation that the bidder or contractor must allow the Municipality to carry out inspections, tests and analysis, then the bidder must be open, at all reasonable hours, for such inspection, tests or analysis by the Municipality. The inspection, testing and analysis of any contract for supplies is recommended and may be rejected for non-compliance.
- (m) The Municipality must ensure that payment to a service provider is made in accordance with contract terms and conditions, and only after proper delivery of the goods or services and upon receipt of an invoice.
- (n) Goods and services should be provided by a service provider in accordance with the time schedule and quality specifications stipulated in the contract. A delay should be explained by the service provider in writing and may result in the imposition of penalties by the institution. The implementation of penalties for non-delivery must be adhered to.
- (o) Once a contract has been concluded, a close out report must be compiled.
- (p) The Municipality must ensure that the service provider does not assign or sub-contract a portion or the whole contract to another party without the approval of the Municipality.
- (q) Subject to the terms and conditions of the contract, the Municipal Manager and Bid Adjudication Committee may terminate the contract for non-performance.

- (r) Any breach of contract must be clearly documented and reported to SCM and the Municipal Manager.

Application

- 114.** The contract management provisions above are applicable only to contracts for the provision of goods and services.

CHAPTER 12

SUPPORT TO BIDDERS

115. (1) INTRODUCTION

The AM will provide all necessary support, within its powers, to ensure that bidders, especially HDIs and/or emerging firms, are provided with an opportunity to provide goods and services to the Municipality where possible, provided that such support does not contravene the principles of public procurement.

(2) STRATEGY

- (i) Bid information must be simplified to enable wider participation and advice must be available to ensure that bidders stand a fair chance of success upon the submission of their bids.
- (ii) Easy access to information must be ensured with regard to the provision of goods and services for purposes of encouraging wider participation.

(3) PROCESS

- (i) Pre-bid meetings may be a standard requirement of the bid process in order to obtain details for the bid requirements and answer questions from prospective bidders.
- (ii) A dedicated telephone number is available to bidders who require assistance when completing bid documentation or require information with regard to bids. The telephone number is contained within the bid document.
- (iii) Bid information, support and registration as a service provider or supplier will be available from the AM's SCM Unit.
- (iv) The Municipality must hold regular workshops with service providers and suppliers to provide advice which will assist them to build capacity in their organizations and provide information on how suppliers and service providers can engage the Municipality.

CHAPTER 13

OCCUPATIONAL HEALTH AND SAFETY ISSUES

116. INTRODUCTION

- (1) In terms of the Construction Regulations, 2003 (GNR 1010, Government Gazette No. 25207, 18 July 2003) promulgated under section 43 of the Occupational Health and Safety Act 85 of 1993, any person for whom construction work is performed is defined as the "client". The client's duties, as laid down under Construction Regulation 4, are applicable to the Municipality.
- (2) The Municipality shall comply with all occupational health and safety standards and establish best practice on construction projects commissioned by the Municipality.
- (3) Contractors shall comply with all applicable standards and contract specifications when undertaking any construction project, regardless of the size or nature of the works.

117. LEGAL REQUIREMENTS

All contractors entering into a contract with the Municipality shall, as a set of minimum requirements, comply with the following:

- (a) Occupational Health and Safety Act, 1993(Act No. 85 of 1993) (as amended) and applicable regulations;
- (b) Compensation for Occupational Injuries & Diseases Act, 1993 (Act No. 130 of 1993) (as amended); and
- (c) Mine Health and Safety Act, 1996(Act No. 29 of 1996), where work is carried out on a mine.

118. IMPLEMENTATION

Bidders are required to familiarize themselves with the provisions of the Municipality's Construction Health and Safety Specifications when compiling bids for construction work.

119. SPECIFIC REQUIREMENTS

Bidders shall furnish the following:

- (a) an original copy of a letter of good standing from the compensation fund established in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993; and
- (b) a pre-bid occupational health and safety plan as contemplated in terms of the Construction Regulations, 2003.

CHAPTER 14

PUBLIC PRIVATE PARTNERSHIPS

Conditions and process for public-private partnerships

- 120.** (1) The Municipality may enter into a public-private partnership agreement, but only if the Municipality can demonstrate that the agreement will:
- (a) provide value for money to the Municipality;
 - (b) be affordable for the Municipality; and
 - (c) transfer appropriate technical, operational and financial risk to the private party.
- (2) A public-private partnership agreement must comply with any prescribed regulatory framework for public-private partnerships.
- (3) If the public-private partnership involves the provision of a municipal service, Chapter 8 of the Municipal Systems Act must also be complied with.
- (4) Before a public-private partnership is concluded, the Municipality must conduct a feasibility study that:
- (a) explains the strategic and operational benefits of the public-private partnership for the Municipality in terms of its objectives;
 - (b) describes in specific terms:
 - (i) the nature of the private party's role in the public-private partnership;
 - (ii) the extent to which this role, both legally and by nature, can be performed by a private party; and
 - (iii) how the proposed agreement will:
 - (aa) provide value for money to the Municipality;
 - (bb) be affordable for the Municipality;

- (cc) transfer appropriate technical, operational and financial risks to the private party; and
 - (dd) impact on the Municipality's revenue flows and its current and future budgets;
 - (c) takes into account all relevant information; and
 - (d) explains the capacity of the Municipality to effectively monitor, manage and enforce the agreement.
- (5) The national government may assist the Municipality in carrying out and assessing feasibility studies referred to in subsection (4).
- (6) When a feasibility study has been completed, the accounting officer of the Municipality must:
 - (a) submit the report on the feasibility study together with all other relevant documents to the Council for a decision, in principle, on whether the Municipality should continue with the proposed public-private partnership;
 - (b) at least 60 days prior to the meeting of the Council at which the matter is to be considered, in accordance with section 21A of the Municipal Systems Act:
 - (i) make public particulars of the proposed public-private partnership, including the report on the feasibility study; and
 - (ii) invite the local community and other interested persons to submit to the Municipality comments or representations in respect of the proposed public-private partnership; and
 - (c) solicit the views and recommendations of:
 - (i) the National Treasury;
 - (ii) the national department responsible for local government;
 - (iii) if the public-private partnership involves the provision of water, sanitation, electricity or any

other service as may be prescribed, the responsible national department; and

(iv) any other national or provincial organ of state as may be prescribed.

(7) Chapter 5 of this policy applies to the procurement of public-private partnership agreements. Section 33 of the MFMA also applies if the agreement will have multi-year budgetary implications for the Municipality within the meaning of that section.

CHAPTER 15

EXPANDED PUBLIC WORKS PROGRAMME (EPWP)

General

- 121.** (1) The Expanded Public Works Program (EPWP) is founded on the principle that the Implementing Agent (National or Provincial Department, state owned enterprise, Municipality or municipal entity) is responsible for identifying and implementing suitable projects in accordance with the published EPWP Guidelines.
- (2) The EPWP is a program that cuts across all departments and spheres of government. Work opportunities will be provided in the following ways:

(a) Infrastructure sector

Increasing the labour intensity of government-funded infrastructure projects. The infrastructure sector incorporates a large-scale initiative to use labour-intensive methods to upgrade rural and municipal roads, municipal pipelines, and storm-water drains. People living in the vicinity of these infrastructure projects are employed by contractors to carry out the work. In addition, emerging contractors will participate in Construction Education and Training Authority (CETA)-registered learnerships to gain the necessary skills to build this infrastructure labour-intensively. The Municipality shall arrange for access to finance for learner contractors.

Labour-intensive construction methods involve the use of an appropriate mix of labour and machines, with a preference for labour where technically and economically feasible, without compromising the quality of the product. International and local experience has shown that, with well-trained supervisory staff and an appropriate employment framework, labour-intensive methods can be used successfully for certain types of infrastructure projects. Labour-intensive infrastructure projects under the EPWP involve:

- (i) using labour intensive construction methods to provide employment opportunities to local unemployed people;

- (ii) providing training or skills development to those locally employed workers; and
- (iii) building cost-effective and quality assets.

(b) Environmental sector

Creating work opportunities in public environmental programmes (e.g. Working for Water).

The environmental sector's contribution to the EPWP involves employing people to work on projects to improve their local environments, under programmes such as the Department of Agriculture's Land Care program; the Department of Environmental Affairs and Tourism's People and Parks, Coastal Care, Sustainable Land-based Livelihoods, Cleaning up SA, and Growing a Tourism Economy programmes; and the Department of Water Affairs and Forestry's Working for Water, Working for Wetlands, and Working on Fire programmes.

(c) Social sector

Creating work opportunities in public social programmes (e.g. community-based health and social welfare care and early childhood development).

The social sector contributes to the EPWP by employing people, through NGOs and CBOs, to work on home-based care and early childhood development programmes. These programmes will be coordinated by the Departments of Social Development, Health and Education.

(d) Economic sector:

Developing small businesses and cooperatives, including utilising general government expenditure on goods and services to provide the work experience component of small enterprise learnership / incubation programmes.

The EPWP process

- 122.** (1) The AM will develop an EPWP Strategy Document.
- (2) The AM will identify specific infrastructure projects to ensure that it implements the EPWP within the organization. The projects targeted for this program will be in line with the EPWP program.
- (3) The Municipality will provide guidance on the:
- (a) identification of suitable projects;
 - (b) appropriate design for labour-intensive construction;
 - (c) the specification of labour-intensive works; and
 - (d) the compilation of contract documentation for labour-intensive projects.
- (4) The monitoring and reporting of the AM's EPWP by the EPWP Unit on a quarterly basis will be supported by an efficient and effective information management system. The type of information that will be monitored on an ongoing basis will include the following six key indicators:
- (a) job opportunity;
 - (b) person years of employment, with segregated data for youth, women, disabled (YWD) in format of benchmark, actual to date and projections;
 - (c) project budgets, actual expenditure, expenditure projections (cash-flows);
 - (d) demographic data;
 - (e) project wage rate; and
 - (f) cluster budgets, actual expenditure, project across all sectors.
- (5) The employment of locally employed temporary workers on all EPWP labour-intensive infrastructure projects must be in accordance with the Code of Good Practice for Employment and Conditions of Work for Special Public Works Programmes issued in terms of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) and

promulgated in Government Gazette Notice No. P64 of 25 January 2002.

Contractor Development Program

123. Allocation of projects to:

- (a) Incubator Programme
- (b) Cooperatives Programme
- (c) Emerging Contractor Development Programme
- (d) EPWP
- (e) Designated Groups Allocation (Youth, Women, Disables, etc.)

CHAPTER 16

VARIATION ORDERS

Introduction

124. Variation orders (VO's), also called Contract Instructions, are regularly issued to contractors or service providers. Examples of circumstances that can lead to a variation are listed below:

- (a) An extension of time needs to be given to a contractor for the completion of a project as a result of circumstances outside his or her control, such as excessive rainfall. Such an extension of time will have a cost implication because the contractor's overhead costs will increase. The contract amount must therefore be increased to compensate the contractor for the additional unforeseen costs.
- (b) During the excavation of the foundations for a community hall it was found that more rock needed to be excavated than allowed for when the quantities for the different work items were calculated and included in the project tender. This sort of situation is not uncommon because it is impossible to determine the exact quantities for all excavation due to uncertainty on ground conditions. In this instance the contractor will have to be compensated for his increased costs, and a variation to the contract must be issued.
- (c) During the construction of a clinic it was found that the type of ceiling described in the project specifications, and on which the contractor has based his prices, is unavailable due to a fire at the plant of the manufacturer. To resolve the situation and avoid delays to the construction of the clinic, the architect has recommended an alternative type of ceiling which costs more and the contractor has to be compensated for these additional costs in the form of a variation to his contract.

Process to get variation orders (VO) approved

- 125.**
- (1) Project managers must prepare a report reflecting comprehensive detail for the VO.
 - (2) Project managers must sign off the VO and send it in both hard copy and email to the relevant head of department.

- (3) VOs to the value of R200 000 must be approved in terms of the AM's Delegation Policy.
- (4) Should the VO exceed R200 000, the variation order must be considered by the head of department and referred to the Bid Adjudication Committee for approval.
- (5) At all times, the approval of a VO shall not be done so as to contravene this policy or the principles of public procurement.

Documentation and record keeping

- 126.**
- (1) The project manager (either a person at the principal agent or an AM project manager) responsible for the implementation of a project must keep complete records of all VO's issued on a project. Each individual VO to be approved must be accompanied with a summary of all other VO's issued on a project.
 - (2) Upon approval of a VO to the value of R200 000, the original VO must be filed in Registry and one copy must be kept by the author/project manager as well as a copy to be provided to the SCM Unit for tabling at the next Bid Adjudication Committee meeting for noting and ratification.
 - (3) Should the variation order exceed R200 000, and once it is approved by the Bid Adjudication Committee, the original VO must be filed in Registry and one copy must be kept by the author/project manager.
 - (4) At project close out, all records pertaining to VO's must be filed with all the other project documentation.

CHAPTER 17

PROCUREMENT REGIME FOR CONTRACTOR INCUBATOR PROGRAMME

Introduction

This Chapter focuses on regulatory issues impacting on the allocation of construction works contracts for developmental objectives, and specifically on allocating work opportunities to contractors enrolled within contractor development programmes.

In addressing the allocation of construction works contracts for developmental objectives, this Chapter highlights key elements of the Framework of the National Contractor Development Programme (NCDP), within which the allocation of work opportunities to CDPs is a key element to support contractor development.

This Chapter also highlights elements of the NCDP Guidelines for CDPs, which includes fair, equitable and transparent practices for the enrolment of contractors into CDPs, and for the development of contractors. This Chapter then reviews the legislative framework for allocating construction works contracts for developmental objectives. The Chapter then highlights that allocation of construction works contracts for developmental objectives is provided for within the legislative framework, provided that sustainable, fair, equitable and transparent practices are provided for – such as that provided for within the NCDP Framework and Guidelines.

The National Contractor Development Programme (NCDP) is a government framework comprising of a partnership between the CIDB, national and provincial public works and other willing clients and stakeholders, in which the participating stakeholders:

- commit their resources to develop previously disadvantaged contractors; and
- align their individual contractor development programmes or initiatives with the principles set out in the NCDP framework (and guidelines), towards meeting the objectives of the NCDP through their own pre-set development and service delivery targets.

The objective of the NCDP is to increase the capacity, equity ownership, sustainability, quality and performance of CIDB registered contractors, as well as improving skills and performance in the delivery and maintenance of capital works across the public sector.

In addition to specific contractor development instruments (including both direct and indirect targeting), the NCDP also addresses an enabling environment required for contractor development.

Key principles for establishing and operating CDPs are given in the CIDB *Guidelines for Implementing Contractor Development Programmes*, which provide for sustainable, fair, equitable and transparent practices, including:

- work opportunities are typically provided through direct contracts with the developing contractors within the CDP; and
- contractors will enter the programme based on predefined criteria and will receive support to enable contractors to exit the programme on the basis of achieving predefined criteria relating to skills, qualifications, certification, sustainability, quality, etc.

In understanding the regulatory issues impacting on the allocation of financial resources through construction works contracts to contractors enrolled within Contractor Development Programmes (CDPs), it is necessary to separate:

- the allocation of projects or work opportunities to CDPs for developmental objectives; and
- the procurement regime for awarding such work opportunities which have been allocated to a CDP.

Section 217 of the Constitution requires that a procurement system must be fair, equitable, transparent, cost-effective and competitive – which governs the procurement regime for awarding such work opportunities. Section 217 allows for the deviation from these principles with the aim to develop previously disadvantaged individuals. This deviation is implemented through the Preferential Procurement Policy Framework Act (PPPFA), Act No. 5 of 2000.

In addition, Section 195 of the Constitution requires that public administration must be development-oriented. A Legal opinion obtained by the CIDB confirms that organs of state can:

- identify projects which by their nature have the ability to assist in the development of a contractor;

- allocate a portion of their budget for these developmental projects for the exclusive expenditure only to contractors within their predetermined development programmes
- the budget must be reasonable in relation to the delivery standard required from government; and
- award individual projects to contractors enrolled in the CDP's through a competitive tendering process within the CDP.

In line with the above legal opinion obtained by the CIDB, it is the CIDB's view that the allocation of such projects for developmental purposes should be to development programmes with **clearly defined developmental criteria and objectives** – such as that provided for in the National Contractor Development Programme (NCDP).

The following criteria within the NCDP Framework and the CIDB *Guidelines for Implementing Contractor Development Programmes* are aligned to the requirements of fair and transparent development of contractors within the CIDB Register of Contractors, namely:

- The process for contractors to enter the programme must be through open competition. Contractors that wish to enter the programme must be registered with the CIDB on the Register of Contractors, and are evaluated based on a demonstration of a minimum level of contracting and financial capacity.
- Contractors that have qualified for entry into the programme (CDP) are subjected to a developmental programme which must be attained within a prescribed period eg. 3 years.
- All contractors must exit within the prescribed period. Graduation criteria apply to those that have attained the necessary qualification within the period. The protection and advancement of those that have qualified into the individual CDP's that comply with the CIDB *Guidelines for Implementing Contractor Development Programmes* is therefore provided for in terms of the legislative framework. This therefore allows for the selection and allocation of projects to the individual CDP's, provided that competitive tendering amongst contractors enrolled in the CDP's, takes place for the award of the individual projects.

The CIDB Regulations stipulates that within the framework of the targeted development programme promoted by the AM may accept for evaluation tender offers or expressions of interest by a contractor who is registered as a potentially emerging enterprise in terms of the Regulations at a contractor grading designation, one level higher than the contractor's registered grading designation, if that client or employer-

- is satisfied that such a contractor has the potential to develop and qualify to be registered in that higher grade; and
- ensures that financial, management or other support is provided to that contractor to enable the contractor to successfully execute that contract.