



**SUPPLY CHAIN MANAGEMENT POLICY  
2023/24**

## **1. PREAMBLE**

WHEREAS Section 217 of the Constitution of the Republic of South Africa, 1996 requires the organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, when contracting for goods or services, to do that in accordance with a system which is fair, equitable, transparent, competitive and cost effective.

WHEREAS Section 111 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) requires that the Municipality adopt, maintain and implement a Supply Chain Management Policy;

And WHEREAS Municipal Supply Chain Management Regulations made in terms of Section 168 of the Local Government: Municipal Finance Management Act prescribes what such Supply Chain Management Policy must provide for:

Now THEREFORE, the Council of the Mogalakwena Municipality adopts the Supply Chain Management Policy as set out in this document.

## **PART A**

### **TABLE OF CONTENTS**

1. Definitions
2. Introduction

#### **CHAPTER 1 OBJECTIVES, PRINCIPLES AND ROLES**

3. Objectives of the Supply Chain Management Policy
4. Principles
5. Oversight role of the Council
6. Role of the Accounting Officer
7. Delegation of Supply Chain Management Powers and duties
8. Committee System for competitive bids
9. Composition of Committees
10. Functions and Purpose of Committee

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

11. Format of Supply Chain Management System

##### **Part 1: Demand Management**

12. System of Demand Management

##### **Part 2: Acquisition Management**

13. System of acquisition management
14. Range of procurement processes
15. General preconditions for consideration of written quotations or bids
16. Lists of accredited prospective providers
17. Petty cash purchases
18. Formal written price quotations
19. Procedures for procuring goods or services through formal written quotations
20. Process for competitive bidding
21. Procurement of banking services
22. Procurement of IT related goods and services
23. Procurement of goods and services under contract secured by other organs of state.
24. Procurement of goods necessitating special safety arrangements
25. Empowerment of local businesses
26. Appointment of consultants
27. Deviation from and ratification of minor breaches of procurement processes
28. Unsolicited bids
29. Combating of abuse of supply chain management system

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

30. Logistics Management
31. Disposal Management

32. Risk Management
33. Performance management
34. Contract Management and Administration

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

35. Declaration
36. Penalties
37. Prohibition on awards to persons in the service of the state
38. Prohibition on awards to person in the service of the state
39. Awards to close family members of persons in the service of the state
40. Ethical Standards
41. Inducements, rewards, gifts and favours to municipality, officials and other role players
42. Sponsorship
43. Objections and complaints
44. Resolutions of disputes, objections, complaints and queries
45. Contracts providing for comparative based on turnover
46. Empowerment target for youth, women and HDI's
47. Records keeping and reporting

#### **Part 5: Preferential Procurement Regulations, 2022**

- Identification of preference point system
- 80/20 preference point system for the acquisition of goods or services for the Rand value equal to or below R50 million
- 90/10 preference point system for acquisition of goods or services with Rand value above R50 million
- 80/20 preference points system for tenders for income-generating contracts with Rand value equal to or below R50 million
- 90/10 preference point system for tenders for income-generating contracts with Rand value above R50 million - Specific goals
- Criteria for breaking deadlock in scoring
- Cancellation of tender
- Remedies
- Circulars and guidelines

## 1. DEFINITIONS

In this Supply Chain Management Policy, unless the context otherwise indicates, a word or expression to which a meaning has assigned in the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), has the meaning so assigned, and:

**“Competitive bid”** means a written offer submitted in a prescribed or stipulated form, in response to an invitation by the Municipality for the provision of goods and services;

**“Competitive bidding process”** means a competitive bidding process referred to in paragraph 12 (1) (d) of this Policy **“Final award”**, in relation to bids or quotations submitted for a contract, means the final decision on which bid or quote to accept;

**“Council”** refers to Mogalakwena Municipality;

**“Equity Ownership”** refers to the percentage ownership and control, exercised by individuals within an enterprise.

**“Black people”** is a generic term, which means Africans, Coloureds and Indians who are South African citizens.

**“Broad-Based Black Economic Empowerment”** means the economic empowerment of all Black people through diverse but integrated socio-economic strategies that include, but not Limited to:

- (i) Increasing the number of black people that manage, own and control enterprises and productive assets;
- (ii) Facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises;
- (iii) Human resources and skills development;
- (iv) Achieving equitable representation in all occupational categories and levels in the workforce;
- (v) Preferential procurement; and
- (vi) Investment in enterprises that are owned or managed by black people.

**“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 **“Historically disadvantaged Individual (HDI)”** means a South African citizen who:

- Had no franchise in the national elections prior to the introduction of the Constitution of the Republic of South Africa 1983(act 10 of 1983) or the Constitution of the Republic, 1993(act 20 of 1993) (“the interim Constitution”) And/or
- is a female and/or - has a disability
- Provided that a person who obtained South African citizenship on or after the interim Constitution took effect, is deemed not to be an HDI.”

**“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, reality, viability and durability of a service and the technical capacity and ability of a bidder;

**“List of accredited prospective providers”** means the list of accredited prospective providers, which the Municipality entity must keep in terms of regulation 14 of the Local Government: Municipal Finance Management Act (56/2003): Municipal Supply Chain Finance Management Regulations;

**“SMMes”** (Small, medium and Micro Enterprises) refers to separate and distinct business entities, including co- operative enterprises and NGOs, managed by one owner or more, as defined in the

National Small Business (Act 102 of 1996). **“Contract”** refers to legally binding agreement between Mogalakwena Municipality and the service provider.

**“Contractor”** means any natural or legal person whose bid has been accepted by the Council.

**“Closing time”** means the date and hour specified in the bid documents for the receipt of tenders.

**“Comparative prices”** means the price after the factors of non-firm prices and all unconditional discounts that can be utilized have been taken into consideration;

**“Order”** means an official written order issued for the supply of goods or the rendering of a service in accordance of the accepted bid or price quotation. **“Written” or “in writing,”** means hand written in ink or any form of mechanical writing in printed form.

**“In the service of the state”** means to be –

- (1) A member of –
  - (i) Any municipal Council;
  - (ii) Any provincial legislature; or
  - (iii) The National Assembly or National Council of Provinces
- (2) A member of the board of directors of any municipal entity;
- (3) An official of any municipality or municipal entity;
- (4) 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);
- (5) A member of the accounting authority of any national or provincial public entity; or
- (6) An employee of Parliament or a provincial legislature;

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

**“Other applicable legislation”** means any other legislation applicable to municipal supply chain management, including

- (i) The Preferential Procurement Policy Framework Act, 2000 (Act No.5 of 2000);
- (ii) The Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and (iii) The Construction Industry Development Board Act, 2000 (Act No.38 of 2000).

**“Reputable service provider”** means a service provider which is a manufacturer, dealer, distributor, retailer, wholesaler and/or hardware stores etc that supplies the specific goods or service on a fair and reasonable amount that will be regarded as a market related price.

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

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

**“Service provider”** means a current or potential supplier, manufacturer, contractor, vendor, agent, or professional service provider.

**“Corrected Bid Sum”** means the Bid sum, corrected in terms of the bid documentation, where applicable.

**“Structures Act”** means the Local Government: Municipal Structures Act, 1998(Act No. 117 of 1998).

**“The accounting officer”** means the Municipal Manager of a Municipality

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

**“Highest acceptable tender”** means a tender that complies with all specifications and conditions of tender and that has the highest price compared to other tenders;

**“Lowest acceptable tender”** means a tender that complies with all specifications and conditions of tender and that has lowest price compared to other tenders; **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;

**“Rand value”** means the total estimated value of a contract in Rand, calculated at the time of the tender invitation;

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

**“The Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

## 2. INTRODUCTION

1. The supply chain policy of the Mogalakwena Municipality sets a frame work for meaningfully managing, monitoring and reporting of procurement activities and provides the procedures to be followed in procurement and is premised within the context of the South African legislative framework. the laws that are currently applicable include;
  - a) the Constitution of the Republic of South Africa Section 217(Act 108 of 1996)
  - b) the Preferential Procurement Policy Framework Act (Act 5 of 2000) and its regulations 2017
  - c) the Local Government: Municipal System Act (32 of 2000),
  - d) Local Government: Municipal Finance Management Act (56 of 2003)
  - e) The Broad Based Black Economic Empowerment Act 53 of 2003
  - f) The State Information Technology Agency (SITA) act 88 of 1998
  - g) Supply Chain Management – A Guide to accounting officers for municipalities and municipal entities 2005
  - h) The prevention and combating of corruption Activities Act 12 of 2004
  - i) National Treasury SCM practice notes and circulars

The principles of this policy are those set out in the legislative framework mentioned above in particular;

- a) that of realizing value for money
- b) good governance and
- c) ensuring cost effectiveness and
- d) competitive equitable,
- e) transparent and fair access to procurement opportunities to all.



The Supply Chain Policy forms part of the overall business systems of the Mogalakwena Municipality and will be supported by specific procurement systems aimed at improving both procurement and business performance to ensure the Mogalakwena Municipality obtains goods and services in support of its activities at a lowest possible cost having regard to quality and service, while acting in a socially responsible manner in developing and supporting small, micro and medium enterprise SMMEs owned by Historically Disadvantaged Individuals HDIs.

## **CHAPTER 1**

### **OBJECTIVES, PRINCIPLES AND ROLES**

#### **3. Objective of Supply Chain Management Policy**

The objective of the supply chain management policy is -

- (a) To give effect to the provisions of section 217 of the Constitution of the Republic of South Africa, 1996;
- (b) To give effect to the provisions of the Local Government: Municipal Finance Management Act, (Act No. 56 of 2003)
- (c) To give effect to the provisions of the Preferential Procurement Policy Act 5 of 2000 and regulations 2017
- (d) To give effect to the Municipal Supply Chain Management Regulations
- (e) The Broad Based Black Economic Empowerment Act 53 of 2003
- (f) The State Information Technology Agency (SITA) act 88 of 1998
- (g) Supply Chain Management – A Guide to accounting officers for Municipalities and municipal entities 2005
- (h) The prevention and combating of corruption Activities Act 12 of 2004 (i) National Treasury SCM practice notes and circulars

#### **4. Principles**

Principles of supply chain management policy are -

- (a) Accountability: Effective supply chain management system must be maintained in order to enable the Accounting Officer to discharge his/her responsibilities.
- (b) Efficiency: Procurement process must be carried out as cost-effective as possible.
- (c) Effectiveness: The Municipality must meet the socio-economic goals of the National Government and sound financial governance appropriate to procurement requirements.
- (d) Fairness: The service providers must be treated fairly. The Municipality must not impose unnecessary burdens or constraints on the service providers or potential service providers.
- (e) Legality: The Municipality must conform to all legislative requirements in terms of the procurement.
- (f) Transparency: The Municipality must ensure that there is openness and clarity on Supply Chain Management Policy and its deliverables.



- (g) Responsiveness: The Municipality must endeavour to meet the aspirations, expectations and needs of the community served by the procurement.
- (h) Informed decision-making: The Municipality needs to base decisions on accurate information and monitor requirements to ensure that they are being met.
- (i) Integrity: There must be no corruption or collusion with the service providers.
- (j) Consistency: The service providers must be able to expect the same general Supply Chain Management Policy across the Municipality.
- (k) Competitiveness: Procurement must be carried out by competition unless there are convincing reasons to the contrary.

## **5. Oversight role of the Council**

The Council must maintain oversight over the implementation of the supply chain management policy. For the purpose of such oversight, the accounting officer must -

- (a) Within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the Executive Mayor
- (b) Within thirty (30) days of the end of the financial year submit a report on the implementation of the supply chain management policy of the Municipality.
- (c) Whenever there are serious and material problems in the implementation of the Supply Chain Management Policy, immediately submit a report to the Council.
- (d) The reports of supply chain management policy must be made public in accordance with section 21A of the Municipal Systems Act.

## **6. Role of the Accounting Officer**

Accounting officer should –

- (a) At least annually review the implementation of the policy and when considers it necessary, submit proposals for the amendment of the policy to council
- (b) Implement a Supply Chain Management Policy.
- (c) Take account of the need for the uniformity in supply chain practices, particularly to promote accessibility of supply chain management systems for small businesses.
- (d) Ensure strict adherence to the guidelines provided by the National Treasury.
- (e) Develop the internal procedures and processes.
- (f) Report to Council regarding implementation of the Supply Chain Management.
- (g) Comply with the highest ethical standards.
- (h) Ensure training of supply chain practitioners.

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

- (1) The Council hereby delegate to the Accounting Officer any all powers and duties to enable the Accounting Officer –

- (a) To discharge the supply chain management responsibilities conferred on the Accounting Officer in terms of –
  - (i) Chapter 8 or 10 of the Act; and
  - (ii) The supply chain management policy
- (b) To maximise administrative and operational efficiency in the implementation of the supply chain management policy
- (c) To enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of the supply chain management policy
- (d) To comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- (2) The Accounting officer may not delegate or sub delegate any supply chain management powers or duties –
  - (a) To a person who is not an official of the municipality or
  - (b) To a committee which is not exclusively composed of officials of the municipality
- (3) The delegation to the accounting officer in terms of 3.3.1 above is subject to the following conditions:
  - (a) That a competitive bidding process will be followed for any specific procurement of a transaction value above R200 000.00 (Vat included) and the procurement of long-term contracts.
  - (b) That on recommendation from the bid adjudication committee, the Accounting Officer makes final awards on procurement of a transaction value above R 200 000.00 Vat included.
  - (c) That the final award in a competitive bidding process should be made through the committee system provided for in section 8 of this policy.
  - (d) That a written report be submitted to the accounting officer in the case of the final award of a transaction value between R200 000.00 and R5 000 000.00 within five days of the end of each month.
  - (e) No decision-making in terms of any supply chain management powers and duties may be delegated to an advisor or consultant.
  - (f) That no requirement for goods or services above an estimated transaction value of R200 000.00 (VAT included) may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

## **8. Committee Systems for Competitive Bids**

A committee system for competitive bids should consist of at least –

A bid specification committee

- (a) A bid evaluation committee
- (b) A bid adjudication committee

## 9. Composition of Committees

The Accounting Officer should appoint members of each committee based on the following considerations:

- (1) Bid Specification Committee – should have the following members:
  - (a) One or two officials/specialists from the procuring department
  - (b) An Official from Supply Chain Management
  - (c) External specialist (e.g., consultant appointed to assist or a representative from co-funding organ of state such as DWAF etc.) depending on nature of the project
  - (d) Any municipal official with expertise or skills to contribute positively in the project.

The specification of bids lower than R200 000 (inc VAT) will be compiled by the head of department or delegated official with SCM manager on the oversight role.

The specification and evaluation committees per project may preferably be composed by the same members and must be approved by the AC.

No person, advisor involved with the bid specification committee, or director of such, may bid for any resulting contracts.

- (2) Bid Evaluation Committees – this is an AD HOC committee to comprise of at least the following standing members:
  - (a) An official appointed by the Accounting Officer to serve as the chairperson
  - (b) A senior Supply Chain Officer
  - (c) Official(s)/specialists from the procuring department.
  - (d) Any co-opted external specialist with the approval of the Accounting Officer. The specialized only plays an observer status and has no voting rights in the bid evaluation.

The committee automatically dissolves at/when the final award takes place and will reconvene when the need arises on the same project.

- (3) Bid Adjudication Committee  
Bid adjudication committee must consist of at least four managers of the municipality or municipal entity, which must include;
  - (a) The Chief Financial Officer or, if the Chief Financial Officer is not available, another manager in the office of the Chief Financial Officer reporting directly to the Chief Financial Officer and designated by the Chief Financial Officer;
  - (b) Any of the three Senior Officials (Managers) from Technical, Electrical, Traffic and Emergency, Planning and Development, Corporate Services, Community and Divisional Head: Supply Chain Management.
  - (c) An SCM Official (Secretariat)

The adjudication committee to be appointed in writing and must be cleared on all level of confidentiality and must declare their interests.

## 10. Functions and Purpose of Committees

Following are functions and purposes of the different committees

### **(1) Bid Specification committees**

- (a) A bid specification committee must compile the specifications for each procurement of goods or services for the municipality:
- (b) Specifications –
  - (i) Must be approved by the accounting officer on recommendation by the Bid Specification Committee.
  - (ii) Must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services
  - (iii) Must take account of any accepted standards such as those issued by Standards South Africa, the international Standards Organization, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply.
  - (iv) Where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design.
  - (v) May not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification
  - (vi) 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”.
  - (vii) Must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Policy Framework Act 5 of 2000(PPPFA), Preferential regulations of 2017 and supply chain management policy of the municipality,
  - (viii) Must set clear evaluation criteria to be used to evaluate the bid offers. No evaluation criteria will be set after advert or closing of the bid.

### **(2) Bid Evaluation Committees**

- (a) A bid evaluation committee must –
  - (i) Evaluate bids in accordance with –
    - The specifications for a specific procurement; and
    - The points system as must be set out in the supply chain management policy of the municipality in terms of regulation 27(2)(f) and as prescribed in terms of the Preferential Procurement Policy Framework Act and regulations 2017;
    - All the applicable policies, practice notes and circulars from CIDB (for construction works) and National Treasury should be implemented when evaluating bids.
  - (ii) Consider technical report from procuring division / Project Management Unit of the municipality.
  - (iii) Evaluate each bidder's ability to execute the contract;

- (iv) Bid evaluation members who are scoring for functionality accept responsibility for the decisions individually and must when requested to do so, motivate for their decisions.
- (v) Check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrear; and
- (vi) Request administrative documents only from shortlisted bidders or from bidders who have the potential to be awarded the bid in terms of functionality, price and functionality (i.e., Tax clearance, ID copies of shareholder, any trade certificate or any clearance, company registrations, CIDB Certificates, municipal rates and taxes statements) and provide such potential bidders to correct the administrative omission that are not material to the overall evaluation of the bid.
- (vii) The information to be requested as per item (v) above must be obtained within two working days.
- (viii) Advise the adjudication committee in cases where one service provider or contractor is to be contracted for more than two project; whether through evaluation of his capacity, capability, experience, management and/or by evaluating the current contract awarded by the municipality if they are progressing well and according to plan. This will assist the municipality not to pile up contracts to one person who will further delay service delivery due to work overload.
- (ix) Submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
- (x) Re-evaluate formal quotation/bids in cases where bid evaluation recommendations were referred back by the Bid Adjudication Committee.

### **(3) Bid Adjudication committees**

(a) A bid adjudication committee must –

- (i) Consider the report and recommendations of the bid evaluation committee; and
- (ii) Either –
  - \* Depending on its delegation, make a final award or a recommendation to the Accounting Officer to make the final award; or
  - \* Make another recommendation to the Accounting Officer how to proceed with the relevant procurement.

## **CHAPTER 2**

### **SUPPLY CHAIN MANAGEMENT SYSTEM**

Format of Supply Chain Management System

#### **11. This Policy provides systems for –**

- (i) Demand management
- (ii) Acquisition management
- (iii) Logistics management
- (iv) Disposal management
- (v) Risk management; and
- (vi) Performance management

## **Part 1: Demand Management**

### **12. System of demand management**

- (1) The Accounting Officer must establish and implement an appropriate demand management system in order to ensure that the resources required by the Municipality support its operational commitments and its strategic goals outlined in Integrated Development Plan.
- (2) The demand management system must -
  - (a) Include timely planning and management processes to ensure that all goods and services required by the municipality are quantified, budgeted for and timely and effectively delivered at the right locations and at the critical delivery dates, and are of the appropriate quality at a fair cost;
  - (b) Take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature;
  - (c) Provide for the compilation of the required specifications to ensure that its needs are met; and
  - (d) To undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.
- (3) Benefits of Demand Management  
Demand management should provide benefits such as:
  - (a) Best value for money;
  - (b) Better risk management;
  - (c) More efficient procurement;
  - (d) Improvements in procurement outcomes;
  - (e) More opportunities for innovating bidding and contract management;
  - (f) More opportunities for implementing and achieving National Government's broader policy objectives;
  - (g) Effective partnership between supply chain management practitioners and end-users.

## **Part 2: Acquisition management**

### **13. System of acquisition management**

- (1) The Accounting Officer must implement the system of acquisition management set out in this Part in order to ensure –
  - (a) That goods and services will be procured by the Municipality in accordance with authorised processes only;
  - (b) That expenditure on goods and services will be incurred in term of the approved budget in terms of section 15 of the Act;
  - (c) That the threshold values for different procurement processes will be complied with;
  - (d) That bid documentation, evaluation and adjudication criteria, and general conditions of contract, are in accordance with any applicable legislation;
  - (e) That any Treasury guidelines on acquisition management will be properly taken into account; and
  - (f) Unless the Municipality otherwise directs:
    - (i) Bids are invited in the Republic only, and

- (ii) The laws of the Republic should govern contracts arising from the acceptance of bids.
- (2) The Supply Chain Management will not apply if a municipality contracts with another organ of state for –
  - (a) The provision of goods or service to the municipality;
  - (b) The provision of a municipal service or assistance in the provision of a municipal service
  - (c) 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
- (3) If a municipality procure goods or services contemplated in 2 above, it must make public the fact that it procures such goods or services otherwise than through its supply chain management system including –
  - (a) The kind of goods or services; and
  - (b) The name of the supplier
- (4) The supply chain management system, except where provided otherwise in the regulation, will also not apply in the following:
  - (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, municipality or a municipal entity.



#### 14. Range of Procurement processes thresholds and delegations

- (1) The procurement of goods and services will be procured through the following thresholds and delegations:

RAND VALUE	TYPE OF PROCUREMENT
R0 - R2 000	Petty cash (one quote must be attached when requesting petty cash) In cases where it is impractical or impossible to finance t goods or services below R2000.00 from petty cash, one quotation must be attached to issue an order.
R 2 001 – R 30 000	<ul style="list-style-type: none"> <li>a) More than three formal written price quotations (IQUAL.NET Database).</li> <li>b) Where possible, quotations for a service(s) at a specific area of the municipality must as far as possible be requested from local companies in and around that specific area.</li> <li>c) Bidders must be given three (03) working days to prepare their quotations.</li> <li>d) Where two quotes are received, a cover memo must be signed by the inviting official indicating that only two quotes have been received from the invited providers when the document is submitted for approval.</li> <li>e) In cases where one quote is received from the invited providers and positive evidence of invitation is available, a support benchmark quote from reputable service provider must be attached to serve as a competitive market price and must be accompanied by a cover memo that only one quote was received from the normal process.</li> <li>f) Where no quotes are received from invited bidders and positive evidence of invitation is available (email transmission telephonic communication is noted), a limited bidding with, where possible with three (03) written quotations from r (manufacturer, dealer, distributor, retailers, wholesalers and/or hardware stores etc.) suppliers must be obtained and submitted for approval of the Chief Financial Officer and Municipal Manager. (where the need arises, reference to rep provider can be obtained from users of that service)</li> <li>g) Where a limited bid is followed the compliant and lowest acceptable quotation must be signed by the user division as approval of the content of the quotation and amount that is to be committed.</li> <li>h) Unless the approved quotation specifies the delivery date, the general delivery date will be 14 days from the date of o</li> <li>i) The same procurement process is followed when procuring store items and the user division must be allowed to appro the specifications before advertising and after receipt of the quotations before approval by CFO and municipal manager</li> </ul>

R 30 000 – R 200 000	<ul style="list-style-type: none"> <li>a) Publication of specification 7 days on the website and notice boards</li> <li>b) Tender notices must be checked and be authorized by the head: SCM before advertising.</li> <li>c) Notices to be deposited in the tender box and to be opened by not less than two SCM officials and by request availability of bidders; the bids may be read out in public.</li> <li>d) Bid offers must be checked against the administrative criteria and compliance to specification before submit supervisor for evaluation.</li> <li>e) The provision of the Preferential Procurement Policy Framework Act 5 of 2000 and the Preferential Procurement Policy Framework of 2017 applies.</li> <li>f) The evaluation report must be signed by the Divisional Head: SCM before signed by the user division and then Chief Financial Officer.</li> <li>g) Should the user division or CFO not recommend the evaluation by SCM, the reasons for disapproval must be and feedback must be given to SCM for advice and/or re-evaluation.</li> </ul> <p>The same procurement process is followed when procuring store items and the user division must be allowed approve the specifications before advertising and after receipt of the quotations before approval by CFO and municipal manager.</p>
R200 000 and above	<ul style="list-style-type: none"> <li>i) Competitive bidding/tender 14 days for contracts below R10 000 000 and above will be 30 days</li> <li>j) A tender register for all tenders advertised, awarded, cancelled with relevant dates must be kept and be updated</li> <li>k) Bids must be deposited in the specified tender box and must be read in public</li> <li>l) Received bids and amounts should be recorded by corporate services and submitted to Supply Chain Management for evaluation.</li> <li>m) The names and amounts (where possible) of bidders for each bid must be published on the municipal webs days after closure of that bid.</li> <li>n) User division must present the provisional technical report to the evaluation committee.</li> <li>o) A final evaluation to be held by the approved Bid Evaluation Committee members.</li> <li>p) Detailed evaluation report must be presented to the adjudication committee for recommendation to Municipal Manager.</li> <li>q) Appointment letters must be issued out to the awarded service providers. Tender awarded information must be published after the conclusion of the contract (<i>Debriefing</i>).</li> </ul>

- (2) The Accounting Officer may lower and not increase in writing the threshold values specified in 1 above.
- (3) Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirement of this policy.
- (4) When determining transaction values, a requirement for goods or services consisting of different parts or items must 7 as far as possible be treated and dealt with as a single transaction.

## 15. General preconditions for consideration of written quotations or bids

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

- (a) Has furnished that provider's –
  - Full name;
  - Valid National Treasury's Central Supplier Database report.
- (b) Has authorized the Municipality to obtain a tax clearance from the South African Revenue Services that the provider's tax matters are in order; and
- (c) Has indicated –
  - (i) Whether he or she is in the service of the State, or has been in the service of the State in the previous twelve months;
  - (ii) If the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the State, or has been in the service of the State in the previous twelve months; or
  - (iii) Whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholders referred to in subparagraph (ii) is in the service of the State, or as been in the service of the State in the previous twelve months.

*This section must be read together with the approved circular on administrative requirements as approved by council.*

## 16. Lists of accredited prospective providers

- (1) The Accounting officer must –
  - (a) Keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements through written or verbal quotations and formal written price quotation; and
  - (b) At least twice 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) Database must be advertised for opening for at least two months and close to allow listing, checking and utilization of the listed providers before others can be added.
  - (d) Specify the listing criteria for accredited prospective providers; and
    - (e) Disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.
- (2) The list must be updated at least quarterly to include any additional prospective providers who might have bought and want to submit their forms after the quarterly update and any new commodities or types of services.
  - (a) The list must be compiled per commodity and per type of service
  - (b) A supplier that's not registered on SCD will not be considered.

## 17. Petty Cash Purchases

The conditions for the procurement of goods by means of petty cash purchases referred to in paragraph 13 (1) (a) of this policy are as follows -

- (a) Employees are not authorized to approve their own petty cash transactions nor petty cash transactions be authorized by a subordinate staff member.

- (b) Petty cash purchases are limited up to R2000.00 (VAT included) per transaction.
- (c) The total amount of petty cash purchases for each manager is limited up to the maximum of R10 000.00 (VAT included) per month.
- (d) The petty cash fund cannot be used to –
  - (i) Purchase goods currently covered by term contracts;
  - (e) Receipts and appropriate documentation for each purchase must be submitted to finance: Income section.

## **18. Formal written price quotations**

The following are conditions for procurement of goods or services through formal written price quotation:

- (a) Quotations above R2000.00 must be obtained in writing from the different providers whose names appear on the list of accredited prospective providers of the municipality.
- (b) In the case of specialised plant, machinery and vehicles, quotations can be obtained from providers who are not listed, provided that such providers meet the listing criteria in the supply chain management policy in paragraph 16.1 to 16.2
- (c) If it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the Chief Financial Officer or an official designated by the Chief Financial Officer. The reasons must be recorded in a form of a cover memo drafted by the procuring official.
- (d) Section C above is only applicable where there is proof that more than three providers were invited and none responded and/or were all the received quotes are above the budget.
- (e) Exception to three quotations will only be approved in accordance to Sec 18(c) where it is practically impossible to source/ obtain quotations for the following services:
  - (i) Training
  - (ii) Workshop, conferences, seminars, and meetings
  - (iii) Emergency services
  - (iv) Maintenance or servicing of specialised vehicles or equipment.
  - (v) Accommodation
- (f) The names of the potential providers and their written quotations must be recorded.

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

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

- (a) All acquisitions in excess of R30 000 that are made by means of price quotations, must be advertised by the Supply Chain Management Unit for at least 7 (seven) calendar days on the website and official notice board, and 80/20 preference point system is applicable.
- (b) Bid offers in response to tender notice must be deposited in the tender box, opened at the time specified in the notice and may be opened in public.
- (c) Bid offers will be checked for administrative compliance and compliance to the given specifications.

- (d) The senior official in SCM will evaluate the bid offers and the Divisional Head: SCM will verify the evaluation and sign on behalf of SCM.
- (e) Where the quotations have been invited via the notice board and website of the Municipality, no additional quotations need to be obtained should the number of responses be less than three quotations.
- (f) When using the list of accredited prospective providers, the Municipality must: -
  - (i) Promote ongoing competition amongst the providers, including by inviting providers to submit quotations on a rotational basis;
  - (ii) Promote the objectives of the Broad-Based Black Economic Empowerment Act; and
  - (iii) Apply the Preferential Procurement Policy Framework 2017 and any applicable regulations
- (g) Accounting Officer must take all reasonable steps to ensure that the procurement of goods and services through formal written price quotations is not abused.
- (h) The Accounting Officer or Chief Financial Officer must on a monthly basis be notified in writing of all formal written quotations accepted by an official acting in terms of a sub delegation.
- (i) Offers below R30 000 (Vat included) must be awarded based on compliance to specifications and conditions of contract.
- (j) Acceptable offers, which are subject to the preference points system (PPPFA and associated regulations), must be awarded to the bidder who scored the highest points;
- (k) A proper record keeping of the received written quotations must be maintained.

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

Following are procedures for a competitive bidding process for each of the following stages:

- (1) Compilation of bidding documentation in addition to paragraph 5.2.3 above, the bid documentation must –
  - (a) Take into account –
    - The general conditions of contract;
    - Any Treasury guidelines on bid documentation; and
    - The requirement of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure.
  - (b) Include evaluation and adjudication criteria, including any criteria required by other applicable legislation.
  - (c) Where applicable, include the minimum functionality criteria required for bidders to achieve for functionality before they are shortlisted for further evaluation of price and preferences.
  - (d) Compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted and the exclusion of such prospective contractors from those tenders.
  - (e) Require the bidders to furnish the following if the value of the transaction is expected to exceed R10 million (VAT included):
    - If the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statement –
      - \* For the past three years; or
      - \* Since their establishment if establishment during the past three years.
    - 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 payments is overdue for more than 30 days
    - 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

- 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.
- (f) 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.

(2) Issuing of bid documents

- (a) On the date that the advertisement appears in the Municipality's municipal website, and or media, prospective bidders may request copies of the tender documentation.
- (b) No bid responses from any tenderer should be accepted if sent via the Internet, e-mail or fax.
- (c) The Supply Chain Management Unit will only consider request for the extension of the closing dates of advertised bid if the postponed date can be advertised in the media used to advertise before the original closing date.
- (d) The closing time may be postponed only if all potential bidders can be advised of the postponed time, in writing, before the original closing time.
- (e) If the tender document has been revised the bidders who already purchased the bid document will be issued with a revised bid document free of charge.

(3) Public Invitation for competitive bids

The following are procedures for the invitation of competitive bids:

- (a) Invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, e-tender portal, the website of the municipality or any other appropriate ways.
- (b) Public advertisement must contain the following:  
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;
- (c) 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 justified on the grounds of urgency or emergency or an exceptional case where it is impractical or impossible to follow the official procurement process.
- (d) Bids submitted must be sealed.
- (e) The following information must appear in any advertisement:
  - Bid number;
  - Description of the requirements;
  - The place where the bid documents are obtained;
  - The date, time and venue where site inspection/briefing session will be (if applicable);
  - Closing date and time; and
  - The name and telephone numbers of the contact person for any enquiries.

(4) Site meetings of briefing sessions

- (a) A fully explanatory briefing meeting must be conducted before the close of the bids to ensure that the bidders understand the scope of the project and that they can comply with the conditions and requirements.
- (b) It should be a condition that prospective bidders attend a briefing meeting and non-attendance should invalidate a bid, where a site inspection/briefing session is applicable.



- (5) Handling of bids submitted in response to public invitation
- (a) Closing of bids
- (i) All bids will close at 12H00 on a date as stipulated on the advertisement, which must be reflected in the bid document. Bids are late if they are received at the address indicated in the tender documents after the closing date and time.
  - (ii) A late bid should not be admitted for consideration and where practical should be returned unopened to the bidder accompanied by an explanation.
- (b) Opening of bids
- (i) Bids are opened in public as soon as possible after the closure by corporate services in the presence of the SCM Official.
  - (ii) The official opening the bids should in each case read out the name of the bidder and the amount of the bid.
  - (iii) The bid should be stamped with the official stamp of the Municipality and endorsed with the signatures of the person opening it and of the person in whose presence it was opened.
  - (iv) Bids should be recorded in a register kept for that purpose and the names of all bidders and the amount must be published on the municipal website.
- (6) Validity of the bids
- (a) The validity periods should not exceed 90 (ninety) calendar days and is calculated from the date of bid closure endorsed on the front cover of the bid document. The validity period for quotations is thirty days after closure. Should the validity period expire on a Saturday, Sunday or Public holiday, the bid must remain valid and open for acceptance until the closure on the following working date.
- (b) Validity period must only be extended before the actual expiry. No bids will be considered for evaluation and/or adjudication when the validity has lapsed.
- (7) Consideration of bids
- (a) The Council takes all bids duly admitted into consideration.
  - (b) The Council reserves the right to accept the lowest or any bid received
  - (c) The decision by the Municipality regarding the awarding of a contract must be final and binding.
- (8) Evaluation of bids
- (a) After technical evaluation and price, bids will be screened for administrative compliance. Where a potential bidder has omitted such documents, the evaluation committee will request submission of such documents within two working days.
- (b) The following are criteria against which all bids responses will be evaluated:
- (i) Compliance with bid conditions;
    - Bid submitted on time
    - Bid forms signed and each page initialled
    - All essential information provided
    - Submission of a valid CSD report
    - Submission of a Joint Venture Agreement, which has been properly signed by all parties
    - Payment of the municipal fees
    - Audited financial statements, where applicable
    - Valid CIDB certificate for construction projects.



- Company registration certificate
- Any other document deemed administrative.
- (ii) Meeting technical specifications and comply with bid conditions;
- (iii) Financial ability to execute the contract

Communication with regard to clause 8 above should be in writing and sent by way of fax or email. Where not practicable, telephone will be used to notify bidders. Failure to submit the requested documents within two days will lead to disqualification.

(9) Evaluation of bids on functionality and price

- (a) Mogalakwena Municipality must in the bid documents indicate if, in respect of a particular bid invitation that bids will be evaluated on functionality and price.
- (b) The total combined points allowed for functionality and price may, in respect of bids/offers with an estimated Rand value equal to, or below R50 000 000.00, not exceed 80 points.
- (c) The total combined points allowed for functionality and price may, in respect of bids with an estimated Rand value above R50 000 000.00, not exceed 90 points.
- (d) When evaluating bids, the points for functionality must be calculated for each individual bidder against the minimum functionality points for that specific bid (if any).
- (e) The conditions of bid may stipulate that a bidder must score a specified minimum number of points for functionality to qualify for further evaluation.  
In general, not all bids should be invited on the basis of functionality as a criterion. The need to invite bids on the basis of functionality as a criterion depends on the nature of the required commodity or service taking into account quality, reliability, viability and durability of a service and the bidder's technical capacity and ability to execute the contract.
- (f) The number of points scored for achieving Government's Preferential Procurement points must be calculated separately and must be added to the points scored for functionality and price.
- (g) Only bid with the highest number of points be selected.

(10) Sub-contracting arrangement

- (a) A person awarded the contract may only enter into a subcontracting arrangement with the approval of the municipality.
- (b) A person awarded a contract in relation to a designated sector, may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- (c) A bidder must not be awarded the points claimed for B-BBEE status level of contribution if it is indicated in the bid documents that such a bidder intends to sub-contracting more than 25% of the contract value to any other enterprise that does not qualify for at least the same number of points that the bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- (d) All the applicable legislations and contract the CIDB, SARS, GBCC, GCC and other evaluation methods subjected to the main contractor must be complied with by the sub-contractor to avoid associated risks.

(11) Acceptance of bids

- (a) Successful bidders must be notified at least by registered post, or facsimile of the acceptance of their bids, but that acceptance however, will only take effect after

completion of the prescribed contract form. Unsuccessful bids should not be returned to bidders, but should be placed on record for audit purposes.

- (b) A register or records should be kept of all bids accepted

(12) Publication of bid information

- (a) The particulars of the successful bidders should be published in the Municipality's notice boards as well as the website.

(13) Cancellation and re-invitation of bids

(a)

- (i) 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 R50 000 000,00 the bid invitation must be cancelled.
- (ii) 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 R50 000 000.00, the bid must be cancelled.
- (iii) In the event that the Municipality has cancelled a bid invitation as contemplated in sub regulations (i) and (ii) must re-invite bids and, must, in the bid documents stipulate the correct preference point system to be applied.

(b) A bid may be cancelled before award if:

- (i) Due to changed circumstances, there is no longer a need for the goods, works or services offered, or
- (ii) Funds are no longer available to cover the total envisaged expenditure, or
- (iii) No acceptable bids were received.

(c) When a tender is cancelled by the municipality and re- advertised, bidders who already purchased that tender document should be issued with the new tender document free of charge on submission of proof of payment for the cancelled tender.

(14) Negotiations with preferred bidders

- (i) It is allowed under this Policy that the Accounting Officer should negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation -
  - Does not allow any preferred bidder a second or unfair opportunity;
  - Is not to the detriment of any other bidder; and \* Does not lead to a higher price than the bid as submitted.
- (ii) Minutes of such negotiations must be kept for record and audit purposes

(15) Limited bidding

- (a) It is allowed under this policy that the accounting office may use limited bidding to procure goods and services but approval must only be granted where there is sufficient motivation / reasons and after a careful and thorough analysis of the market.
  - (i) "Multiple source"- There is a limited competition, hence only a few prospective bidders are allowed to make proposal. This should be based on a thorough analysis of the market.
  - (ii) "Single Source"- This should be based on a thorough analysis of the market and use a transparent and equitable pre-selection process, to request only one amongst a few prospective bidders to make a proposal.

(iii) "Sole source"- There is no competition and it has been proven through careful and transparent market analysis that only one bidder exists (for example, sole distribution rights etc)

(16) Two-stage bidding process

- (a) A two-stage bidding process may be allowed for –
  - (i) Large complex projects;
  - (ii) Projects where it may be undesirable to prepare complete detailed technical specifications; or
  - (iii) Long-term projects with a duration period exceeding three years.
- (b) 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.
- (c) In second stage final technical proposals and priced bids should be invited.

(17) Cession of payments

- (a) A contractor may, subject to clause 17(b), only cede his right to payment in terms of a contract to a third party. A contractor may not by means of cession, cede any of his responsibility or obligations to perform in terms of a contract to any third party.
- (b)
  - (i) when a contractor chooses to cede his or her right(s) to payment in terms of the contract to a third party, such contractor must request the AO in writing.
  - (ii) the request referred to in sub clause 17(b)(i) must be –
    - on the official letterhead of the contractor;
    - (ii) signed; and
    - (iii) dated
- (c) When the Municipality receives a request in terms of clause 17 from the contractor's bank, financier or attorney, written confirmation must be obtained from the contractor to verify the details of the transfer of payment.

## **21. Procurement of banking services**

- (a) A contract for banking services
  - (i) Must be procured through competitive bids.
  - (ii) Should not be procured abroad.
  - (iii) Should not be procured from institutions not registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990).
  - (iv) Must not be for a period of more than five years at a time.
  - (v) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.
  - (vi) The closure date of the submission of bids must not be less than 60 days from the date on which the advertisement is placed in a newspaper.

## **22. Procurement of IT related goods and services**

- (a) The Accounting Officer must request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.
- (b) Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.
- (c) The Accounting Officer must notify SITA together with a motivation of the IT needs if–

- (i) The transaction value of IT related goods or services required in any financial year will exceed R50 million (VAT included); or
- (ii) The transaction value of a contract to be procured whether for one or more years exceeds R50 million (VAT included).
- (d) If SITA comments on the submission and the Municipality disagree 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.

### **23. Procurement of goods and services under contract secured by other organs of state**

- (a) The Accounting Officer may procure goods and services under a contract secured by another organ of State, but only if -
  - (i) The contract has been secured by that other organ of State by means of a competitive bidding process applicable to that organ of State;
  - (ii) There is no reason to believe that such contract was not validly procured;
  - (iii) There are demonstrable discounts or benefits to do so; and
  - (iv) That other organ of State and the provider has consented to such procurement in writing.
- (b) Subparagraph (a)(iii) and (iv) do not apply if –
  - (i) A municipality procures goods and services through a contract secured by a Municipal entity of which it is the parent municipality Procurement of goods necessitating special safety arrangements
- (c) The accounting officer must on a quarterly basis report to council in respect of all/any goods and services procured under this clause

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

- (a) The acquisition and storage of goods in bulk (other than water) which necessitate special safety arrangements, including gasses and fuel, should be avoided wherever possible.
- (b) 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.

### **25. Empowerment of local businesses**

- (a) The Municipality supports the local businesses to the extent that, all things being equal, preference is given to procuring local goods and services from;
  - (i) Firstly – supplier and businesses within the municipality;
  - (ii) Secondly – suppliers and businesses within the district;
  - (iii) Thirdly – suppliers and businesses within the relevant province;
  - (iv) Fourthly- suppliers and businesses within the Republic
- (b) Services such as catering must be awarded to suppliers which reside in and around the area of service; in an event where a large number of people are expected to attend the event, the quantities may be split to empower small businesses within the village.
- (c) The successful bidder for a construction contract to the value of between R10 000 000.00 and R15 000 000.00 must subcontract 10% of his total value of the project to an EME within Mogalakwena Jurisdiction.
- (d) The successful bidder for a construction contract to the value of between R15 000 001.00 and R30 000 000.00 must subcontract 20% of his total value of the project to an EME within Mogalakwena Jurisdiction.
- (e) The successful bidder for a construction contract to the value of above R30 000 000.00 must subcontract 30% of his total value of the project to an EME within Mogalakwena Jurisdiction.

## **26. Appointment of Consultants**

- (a) When procuring for consulting services, the Accounting Officer should take into account any Treasury guidelines.
- (b) Consultancy services must be procured through competitive bids if –
  - (i) The value of the contract exceeds R200 000 (VAT included); or
  - (ii) The duration period of the contract exceeds one year.
- (c) In addition to any requirements prescribed by this Policy for competitive bids, bidders must furnish particulars of –
  - (i) All consultancy services provided to an organ of State in the last five years;
  - (ii) Any similar consultancy services provided to an organ of State in the last five years.
- (d) The Municipality may develop and use the database or panel of consultants on rotation basis provided that the database is developed in consideration of the broader market, taking account applicable legislations and that the utilization of such database of consultant will be fair, equity, transparent, competitive, cost effective. i.e. on a fair and reasonable rotation process.
- (e) 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.

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

- (1) The Accounting Officer may –
  - (a) Dispense with the official procurement processes established by this Policy and procure any required goods or services through any convenient process, which may include direct negotiations, but only –
    - (i) In the event of an urgent or emergency, one written quotation is to be obtained;
      - Urgent cases are cases where early delivery is of critical importance and the invitation of competitive bids is either impossible or impractical. (However, lack of proper planning is not a reason for deviation)
      - Emergency cases are cases where immediate action is necessary in order to avoid a dangerous or risky situation or misery.
    - (ii) If the required goods or services are available from a single provider only, one written quotation is to be obtained;
    - (iii) In respect of repairs to motor vehicles, machinery and equipment that need to be stripped to quote, only one written quotation is to be obtained;
    - (iv) Where three or more suppliers have been invited to quote but no quotation was received;
    - (v) For the acquisition of special works of art or historical objects where specifications are difficult to compile; or (vi) Acquisition of animals for game reserves.
  - (b) Ratify any minor breaches of the procurement processes by official or committee acting in terms of delegated powers or duties, which are purely of a technical nature.
- (2) The Accounting Officer must record the reasons for any deviations in terms of subparagraph (i) and (ii) of this Policy and report them to the next meeting of the Council and include as a note to the annual financial statements.
  - (a) Deviations should be used as a measure of last resort and must be avoided at all costs. Sound and sufficient motivation detailing the circumstances should accompany the requisition.

## **28. Unsolicited bids**

- (1) The Municipality is not obliged to consider unsolicited bid received outside the normal competitive bidding process in terms of section 113 of the Act.
- (2) The Accounting Officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if –
  - (a) The product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
  - (b) The product or service will be exceptionally beneficial to, or have exceptional cost advantages;
  - (c) The person who made the bid is the sole provider of the product or service;
  - (d) The reasons for not going through the normal bidding processes are found to be sound by the Accounting Officer.
- (3) If the Accounting Officer decides to consider an unsolicited bid that complies with subparagraph (b) of this Policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with –
  - (a) Reasons as to why the bid should not be open to other competitors;
  - (b) An explanation of the potential benefits if the unsolicited bid were accepted; and
  - (c) An invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) All written comments received pursuant to subparagraph (c), including any responses from the unsolicited bidder, must be submitted to the National Treasury and Provincial Treasury for comment.
- (5) The adjudication committee must consider the unsolicited bid and may award the bid or make recommendation to the Accounting Officer, depending on its delegations.
- (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (7) When considering the matter, the adjudication committee must take into account –
  - (a) Any comments submitted by the public; and
  - (b) Any written comments and recommendations of the National Treasury or the Provincial Treasury.
- (8) If any recommendations of the National Treasury or Provincial Treasury are rejected or not followed, the Accounting Officer must submit to the Auditor General, the Provincial Treasury and the National Treasury the reasons for rejecting or not following those recommendations.
- (9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the Municipality to the bid may be entered into or signed within 30 days of the submission.

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

- (1) The Accounting Officer must provide measures for combating abuse of the Supply chain management system by providing the following:
  - (a) To take all reasonable steps to prevent such abuse.
  - (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 supply chain management policy and when justified -
    - (i) Take appropriate steps against such official or other role player or
    - (ii) Report any alleged criminal conduct to the South African Police Service



- (c) 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 municipal entity, 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 systems of the municipality or has omitted 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
  - (iv) Has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No.12 of 2004).
- (2) The Accounting Officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) of this policy.

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

#### **30. Logistics Management**

- (1) The Accounting Officer must establish and implement an effective system of logistics management, which must include the following –
  - (a) Stock-holding
 

Stores is only to hold stock complying with the following criteria:

    - (i) Essential Goods – Only items whose immediate availability is considered essential to maintain a municipal service.
    - (ii) Bulk Purchased supplies – Items of sufficient demand in common use which offer a reduction in cost over direct supply taking into account stock-holding costs.
  - (b) Internal Requisitions
 

Where stocks are held in stores, items must be requested internally as the sole source of supply with an original requisition form signed by the delegated official.



(c) Stores Procedures

To be operated for the regulation of stock levels and movement to provide adequate management information numerically and financially in accordance with any procedural notes which must be issued by the Head: Supply Chain Management Unit.

(d) Warehouse Management

(i) Receiving of stock items

Stock items received should be verified with the purchase order and inspected for proper quantities to ensure receipt of what was ordered. The delivery note is then signed indicating acceptance of goods received.

(ii) Issuing of stock items

Stock items should be issued only on the authority of a properly approved, pre-numbered requisition, signed by the relevant Business Unit's Manager, which should give the following information: □ Source and date of the requisition;

□ Account(s) to be charged; □ On each item: Quantity, Unit stock number, description, unit price, and total rand value.

Processing should be done online in all the times prior to the issuing of any stock item.

(iii) Shelving

Stores personnel should categorise and organise storage areas for efficient, logical, and safe storage of all supplies.

(iv) Purchase requisitions for stock items

All purchase requisitions for stock items must be original and to have the signature of the Head: Supply Chain Management Unit, prior to acquisitions.

(v) Expediting of orders

Unless the delivery period is specified on the approved quotation; the general delivery date is 14 day. If the delivery conditions reflected on the purchase order form are not complied with, it should be followed up with the supplier immediately.

Order must be issued within three days of receiving requisition or earlier unless there are reasons why the order is issued late.

(vi) Damaged Goods

Damaged goods from suppliers must be returned to the supplier for credit or replacement.

(e) Stock Reviews

In order to manage the stores operations effectively, all departments should continually review their stock holding based on information such as number of issues, levels of service achieved, total value of stock held and stock turnover. Redundant and obsolete stock should be identified and cleared regularly by the relevant departments

(f) Stock Levels

The following should be determined to maintain the optimum stock levels:

(i) Minimum, maximum and re-order levels;

(ii) Slow moving or obsolete stock.

(g) Annual Stock taking Procedures

(i) Monthly random stock check, counts and investigations to be conducted and evidence be available.

(ii) Mid year provisional stock takes to be conducted.

(iii) The last working days in May the Stores closes for year-end inventory. No requisitions are filled, and no stock items are received four (04) days before the stock count date.

(iv) Invite the provincial auditor general for observation.

- (v) After the computer system has been updated, a queue batch is run providing Stores with updated printouts for actual inventory. A separate sheet is provided for each stores section. The sheet will contain stock number – complete description, quantity on hand and a column for actual count and a column for any discrepancy.
- (vi) The person conducting the inventory counts all items and makes appropriate notations on the inventory sheet. At the conclusion of each section, the person dates and signs the inventory sheet.
- (vii) At the conclusion of all inventory sections, all discrepancies will be double-checked. The Head: Expenditure and together with The Head: SCM Unit will make appropriate adjustments and the Chief Financial Officer will approve all such adjustments to correct inventory records to actual count.
- (viii) All printouts, original documents, work papers, adjustments, and corrected inventory printouts are placed on file in Stores Office.

### **31. Disposal Management**

- (1) The Municipal Council will dispose assets using the following ways –
  - (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 at market related price or auction
  - (d) Destroying the asset if obsolete
- (2) A municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal service
- (3) A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection 7.2 but only after the municipal council, in a meeting open to the public (a) Has decided on a reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services
- (4) A decision by a municipal council that a specific capital asset is not needed to provide the minimum level of basic municipal service, may not be reversed by the municipality after that asset has been sold, transferred or otherwise disposed of.
- (5) Any transfer of ownership of a capital asset in terms of subsection 7.2 must be fair, equitable, transparent, and competitive.
- (6) Section 7.1 to 7.4 above does not apply to the transfer of a capital asset to another municipality or to a municipal entity or to a national or provincial organ of state in circumstances and in respect of categories of assets approved by the National Treasury, provided that such transfers are in accordance with the prescribed framework.
- (7) Following are conditions under which the capital assets may be sold
  - (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) Only the executive committee or executive mayor will recommend to Council Decision to expropriate immovable property or rights in or to immovable property.
  - (c) Movable assets may be sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous to the municipality
  - (d) In the case of the free disposal of computer equipment, the local department of education must first be approached to indicate within 30 days whether any of the local schools are interested in the equipment; and

- (e) 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.
- (8) Immovable property will be let under the following conditions:
  - (a) Market related rates should be used except when the public interest or the plight of the poor demands otherwise
  - (b) All fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property must be annually reviewed
- (9) Where assets are traded in for other assets, the highest possible trade-in price should be negotiated.
- (10) The 80/20 or 90/10 point system will apply to competitive bidding, which relate to the sale or letting of assets respectively, depending on the value of the asset.

## 32. Risk Management

- (1) Accounting officer should in the implementation of this policy develop a risk Management plan in order to address the following factors:
  - (a) Risk Identification: Identify risks associated with the project on a case-by-case basis (ii) Risk Assessment: The likelihood and magnitude of the risks.
  - (b) Risk Mitigation: Strategies for pre-empting and treating the occurrence of risk.
  - (c) Risk Allocation: detailing responsibility for managing a risk to the party best suited to manage such risks.
  - (d) Acceptance of the cost of the risk: Acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it
  - (e) Management of risks: In a pro-active manner and the provision of adequate cover for residual risks
  - (f) Monitor and Control: Identify new risks as they emerge
- (2) In order to reduce the risk on contract, the accounting officer must include the provision of sureties for the due performance on a contract and retention of a portion of moneys due to a contract.
- (3) The following sureties, guarantees, insurance, retention and penalties are applicable:

CATEGORY	VALUE	SU RET Y	CONSTRUCTION GUARANTEE	ALL RISK INSURANCE	RETENTION & PERIOD	PENALTIES PER DAY
MICRO PROJECTS	200 000 - 500 000	5%	FIRST 3 CERTIFICATES OR BANK GUARANTEE	CONTRACTOR	5% REDUCED TO 2,5% FOR 12 MONTHS	0,2%
SMALL PROJECTS	500 001- 2 000 000	10%	FIRST 3 CERTIFICATES OR BANK GUARANTEE	CONTRACTOR	10% REDUCED TO 5% FOR 12 MONTHS	0,04%
MEDIUM PROJECTS	2 000 001 - 10 000 000	10%	FIRST 3 CERTIFICATES OR BANK GUARANTEE	CONTRACTOR	10% REDUCED TO 5% FOR 12 MONTHS	0,06%
LARGE PROJECTS	ABOVE 10 000 000	10%	FIRST 5 CERTIFICATES OR BANK GUARANTEE	CONTRACTOR	10% REDUCED TO 5% FOR 12 MONTHS	0,1%

- (4) Service providers should be subject to disqualification if there is sufficient evidence of consistent failure to meet the standards specified by the Municipality.
- (5) Service providers should be evaluated based on contract adherence and performance. Upon reasonable notice in writing to the service provider involved, and after a reasonable opportunity for response, a service provider should be disqualified for a period not exceeding five years from participation in a solicitation for goods and services. Service provider should be disqualified if:
  - (i) Serious breach of contract indicating unwillingness to perform a contract in accordance with the terms and conditions.
  - (ii) An indication of lack of business integrity or honesty which directly and serious effects the responsibility of the contractor.

### **33. Performance Management**

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

#### **Contract Management.**

- (1) Service Level Agreements
 

Contracts concluded for the procurement of goods and services should be made subject to the conclusion of a Service Level Agreements.
- (2) Contract agreement of the municipality must - be in writing;
  - (a) stipulate the terms and conditions of the contract which must include provisions providing for -
    - (i) Termination of the contract or agreement in a case of non or under performance
    - (ii) Dispute resolution mechanism to settle disputes between parties
    - (iii) a periodic review of the contract.
- (3) Contracts having future budgetary implications
 

1 A municipality may enter into a contract which will impose financial obligations on the municipality beyond a financial year, but if the contract will impose financial obligations on the municipality beyond the three years covered in the annual budget for that financial year, it may do so only if—

  - (a) the municipal manager, at least 60 days before the meeting of the municipal council at which the contract is to be approved—
  - (i) has, in accordance with section 21A of the Municipal Systems Act—
    - (aa) made public the draft contract and an information statement summarising the municipality's obligations in terms of the proposed contract; and
    - (bb) invited the local community and other interested persons to submit to the municipality comments or representations in respect of the proposed contract; and
  - (ii) has solicited the views and recommendations of—
    - (aa) the National Treasury and the relevant provincial treasury;
    - (bb) the national department responsible for local government; and

(cc) if the contract involves the provision of water, sanitation, electricity, or any other service as may be prescribed, the responsible national department;

(b) the municipal council has taken into account—

- (i) the municipality's projected financial obligations in terms of the proposed contract for each financial year covered by the contract;
- (ii) the impact of those financial obligations on the municipality's future municipal tariffs and revenue;
- (iii) any comments or representations on the proposed contract received from the local community and other interested persons; and

(4) Extension/Expansion of Contracts

4.1 It is recognized that, in exceptional cases, an accounting officer may deem it necessary to expand or vary order against the original contract.

4.2 Contract(s) may be expanded or varied by not more than 20% or R20 million (including all applicable taxes) for construction related goods, works and/or services of the original value of the contract, whichever is the lower amount.

4.3 any deviation in excess of these thresholds will only be allowed subject to prior approval of relevant treasury. Whilst provision is made for deviations, it is imperative to note that requests for such deviations may only be submitted to the relevant treasury where good reasons exist.

(5) Orders

Supplies should be delivered and services rendered only upon a written official order from the Municipality, and accounts should be rendered as indicated on the official order or in the contract, as the case may be.

(6) Guarantees

Unless the contract stipulates otherwise, the contractor should guarantee for a period of twelve months that no faulty material or workmanship was used in the manufacture of goods or in the execution of services and that the finish product is not defective. Should the guarantee not be complied with, the Municipality must, without prejudice to any other rights it may have, demand that the supplies are replaced and the services repaired without cost to the Municipality.

(7) Payment for Supplies and Services

(1) Subject to any instructions issued with a contract or order, a contractor should be paid for supplies delivered and services rendered in accordance with the under-mentioned provisions:

- (a) On the basis of delivery into store or to another nominated destination, only after receipt of a detailed account and after delivery has been effected.
- (b) On the basis of delivered and erected, installed, etc., only after receipt of a detailed account supported by a certificate of satisfactory execution issued by a Municipality agent.
- (c) Payment should normally be effected within 30 days of receipt of all the required documentation, which should be correct in every respect. Should a contractor indicate

a special discount on his/her account provided payment is made within a certain time, every effort should be made to take advantage of such discount.

- (d) As a rule, payment is made to the contractor only. When payment is claimed by another party the latter must produce a written transfer, power of attorney or authorisation and, before payment is made, the contractor must confirm that the transfer, power of attorney or authorisation has been given by him/her and that payment may be claimed in terms thereof.

(8) Remedies in case of death, sequestration, liquidation or judicial management .

- (a) In the event of the death of a contractor or the provision or final sequestration of his/her estate or of his/her cession or transfer of a contract without the approval of the Council or of the surrender of his/her estate or of his/her reaching a compromise with his/her creditors or of the provisional or final liquidation of a contractor's company or the placing of its affairs under judicial management, the Council must, without prejudice to any other rights it may have, exercise any of the following:
  - (b) Cancel the contract and accept any of the bids, which were submitted originally with that of the contractor or any offer subsequently received to complete the contract. In such a case the estate of the contractor shall not be relieved from liability for any claim which has risen or may arise against the contractor in respect of supplies not delivered or work not carried out by him/her under the contract, and the Council shall have the right to hold and retain all or any of the securities and retention moneys held by it at the date of the aforesaid occurrences until such claim has been satisfied; or
  - (c) Allow the executor, trustee, liquidator or judicial manager, as the case may be, for and on behalf of and at the cost and expenses of the estate of the contractor to carry on with and complete the contract.

(9) Contractor's Liability

- (a) In the event of the contract being cancelled by the Council in the exercise of its rights in terms of these conditions, the contractor should be liable to pay to Council any losses sustained and/or additional costs or expenditure incurred as a result of such cancellation and Council should have the right to recover such losses, damages or additional costs by means of set-off from moneys due or which may become due in terms of the contract or any other contract, or from a guarantee provided for the due fulfillment of the contract and, until such time as the amount of such losses, damages or additional costs have been determined, to retain such moneys or guarantee or any deposit as security for any loss which the Council may suffer or have suffered.

The contractor must be held responsible for any consequential damages and loss sustained which may be caused by any defect, latent or otherwise, in the supply or service rendered or if the supply or service as a result of such defect, latent, otherwise, does not conform to any condition or requirement of the contract.

(10) Transfer of Contracts

The contractor must not abandon, transfer, assign or sublet a contract or part thereof without the written permission of the Council.



## **Part 4: Other Matters**

### **35. Declarations**

- (1) a bidder must, in the stipulated manner, declare that
  - (a) The information regarding any claim from preference points provided is true and correct;
  - (b) The signatory to the bid document is duly authorised; and
  - (c) Documentary proof regarding any bidding issue will, when required, be submitted to the satisfaction of the Municipality.

### **36. Penalties**

- (1) where a contract has been awarded on the strength of preference information furnished by the contractor, which, after the conclusion of the relevant contract, is proved to have been incorrect, the Municipality may, in addition to any other legal remedy it may have to –
  - (a) Recover from the contractor all costs, losses or damages incurred or sustained by the Municipality as a result of the award of the contract; and/or
  - (b) Cancel the contract and claim damages which the Municipality may suffer as a result of having to make less favourable arrangements; and/or
  - (c) Impose on the contractor a penalty not exceeding five per cent of the value of the contract.
- (2) Where an award has been made and a contractor fails to make arrangement with the municipality and further delays or fails to deliver the services; the following will be applicable:
  - (a) The order will be cancelled and where time allows a re- evaluation will be made,
  - (b) The provider will be listed in the municipality's book of defaulters and will be restricted to do business with the municipality for six (06) months.

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

- (1) The Municipality should not award a contract above to a person whose tax matters has not been declared by the South African Revenue Services to be in order.
- (2) No contract should be awarded to a person who failed to submit a valid tax clearance certificate from the South African Revenue Services (SARS) certifying that the taxes of that person is in order or that suitable arrangements have been made with SARS.

### **38. Prohibition on awards to persons in the service of the State**

- (1) No award must be given to a person irrespective of the procurement process followed in terms of this Policy-
  - (a) Who is in the service of the state; or
  - (b) If that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
  - (c) A person who is an advisor or consultant contracted with the Municipality

### **39. Awards to close family members of persons in the service of the State**



The notes to the annual financial statements must disclose particulars of any award of more than R2000.00 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

#### **40. Ethical Standards**

- (1) A code of ethical standards is hereby established, in accordance with subparagraph (2), for officials and other role players in the supply chain management system in order to promote –
  - (a) Mutual trust and respect; and
  - (b) An environment where business can be conducted with integrity and in a fair and reasonable manner.

(2) An official or other role player involved in the implementation of the supply chain management policy –

- (a) Must treat all providers and potential providers equitably;
  - (b) Must not use his/her position for private gain or to improperly benefit another person;
- (c) May not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350.00;
- (d) Notwithstanding subparagraph (2)(c), must declare to the Accounting Officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or 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 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, unfair and irregular practices in the supply chain management system;
- (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 –
  - (ii) Any alleged fraud, corruption, unfair conduct;
  - (iii) Any alleged contravention of paragraph (5)(1) of this policy; or
  - (iv) Any alleged breach of this code of ethical standards.

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

- (a) Must be recorded in a register, which the Accounting Officer must keep for this purpose;
  - (b) By the Accounting Officer must be made to the Executive Mayor of the Municipality who must ensure that such declarations are recorded in the register.

- (4) The National Treasury's code of conduct must be adopted and also be taken into account by supply chain management practitioners and other role players involved in supply chain management.
- (5) A breach of the code of ethics must be dealt with as follows –
  - (a) In the case of an employee, in terms of the disciplinary procedures of the municipality envisaged in section 67 (1) (h) of the Municipal Systems Act;
  - (b) In the case a role player who is not an employee, through other appropriate means in recognition of the severity of the breach.
  - (c) In all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act.

#### **41. Inducements, rewards, gifts and favours to municipality, officials and other role players**

- (1) No person who is a provider or prospective provider of goods or services, or a recipient of goods disposed or to be disposed of must either directly or through a representative or intermediary promise, offer or grant –
  - (a) Any inducement or reward to the Municipality for or in connection with the award of a contract; or
  - (b) Any reward, gift, favour or hospitality to –
    - (i) Any official; or
    - (ii) Any other role player involved in the implementation of the supply chain management policy.
- (2) The Accounting Officer must promptly report any alleged contravention of subparagraph (1) to the National Treasury for consideration whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
- (3) Subparagraph (1) does not apply to gifts less than R350.00 in value.
- (4) All gifts to SCM officials must be declared in the gift register available in supply chain management unit.

#### **42. Sponsorships**

- 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 and services; or
  - (b) A recipient or prospective recipient of goods disposed or to be disposed.

#### **43. Objections and complaints**

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.

#### **44. Resolution of disputes, objection, complaints and queries**

- (1) the accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes-
  - (a) To assist in the resolution of disputes between the municipality and other Persons regarding –
    - (i) Any decisions or actions taken in the implementation of the supply chain management systems; or
    - (ii) Any matter arising from a contract awarded in the course of the supply chain Management system; or
  - (b) To deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.
- (2) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.
- (3) The person appointed must -
  - (a) Strive to resolve promptly all disputes, objections, complaints or queries received; and
  - (b) Submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.
- (4) A dispute, objection, complaint or query may be referred to the relevant provincial treasury if:
  - (a) The dispute, objection, complaint or query is not resolved within 60 days; or
  - (b) No response is forthcoming within 60 days,
- (5) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.
- (6) This paragraph must not be read as affecting a person's rights to approach a court at any time.

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

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

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

#### **46. Empowerment for youth, women, HDI's and local business**

Preference points in municipal tenders will be appropriated according to the Preferential Policy Framework 2017 wherein points will be given in accordance with the specific goals described in this policy

#### **47. Records keeping and reporting**

- (1) Record of all goods and services procured must be kept.
- (2) SCM will be held responsible for the recording of the following Information / documents:

- a) List of bids received per bids number,
  - b) Formal written quotation and their status,
  - c) Formal complaints register
  - d) All cases of fraud or corruption reported
  - e) Gifts register for SCM
  - f) Stock take reports
- (3) (a) All formal quotations / bids awarded above R100 000.00(Vat incl) must be reported to National treasury on monthly basis.
- (b) All deviations with supporting approved memo should be reported quarterly to the accounting officer.
- (4) Clear reporting templates should be used and correctly populated with accurate data to be a true reflection of the content of awards.

## **PART 5: PREFERENTIAL PROCUREMENT REGULATIONS, 2022**

### **1. Identification of preference point system**

- (1) A municipality must, in the tender documents, stipulate—
- (a) the applicable preference point system as envisaged in regulations 4, 5, 6 or 7 of PPPFA;
  - (b) the specific goal in the invitation to submit the tender for which a point may be awarded, and the number of points that will be awarded to each goal, and proof of the claim for such goal.
- (2) If it is unclear whether the 80/20 or 90/10 preference point system applies, A municipality must, in the tender documents, stipulate in the case of—
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
  - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system.

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

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

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

Where –

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

Pt = Price of tender under consideration; and

Pmin = Price of lowest acceptable tender

- (2) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.
- (3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.
- (4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

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

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

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

Where –

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of lowest acceptable tender.

- (2) A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.
- (3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.
- (4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

#### **4. 80/20 preference points system for tenders for income-generating contracts with Rand value equal to or below R50 million**

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

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

Where –

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

$P_t$  = Price of tender under consideration; and

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

- (2) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.
- (3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.
- (4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

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

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

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

Where –

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

$P_t$  = Price of tender under consideration; and

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

- (2) A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.
- (3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.
- (4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

## 6. Specific

The points scored for the specific goal must be added to the points scored for price and the total must

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

The table below depicts how specific goals will be awarded as amended in the SCM policy:

Historically Disadvantaged Individuals - HDI	80/20 Preferential Point System	90/10 Preferential Point System	Means of Verification
	20	10	
Race – people who are Black, Coloured or Indian	6	3	CSD report and Certified Copy of Identification Documentation
Local Economic Development	4	2	Company head office residence within Mogalakwena Municipal Jurisdiction as per CSD and proof of residence
Gender - Women	3	1	CSD report and Certified Copy of Identification Documentation
Youth	4	2	CSD report and Certified Copy of Identification Documentation
Disability	3	2	Certified copy of Doctor's Certificate with medical practice number



### **Criteria for breaking deadlock in scoring**

- 1) If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest points for specific goals.
- (2) If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

### **An organ of state may, before the award of a tender, cancel a tender –**

- (1) Due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;
- (2) Funds are no longer available to cover the total envisaged expenditure;
- (3) No acceptable tender is received; or
- (4) There is a material irregularity in the tender process

### **Remedies**

- (1) If an organ of state is of the view that a tenderer submitted false information regarding a specific goal, it must —
  - (a) inform the tenderer accordingly; and
  - (b) give the tenderer an opportunity to make representations within 14 days as to why the tender may not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part.
- (2) After considering the representations referred to in sub-regulation (1)(b), the organ of state may, if it concludes that such information is false—
  - (a) disqualify the tenderer or terminate the contract in whole or in part; and
  - (b) if applicable, claim damages from the tenderer.

### **Policy Review**

This policy will be reviewed annually or during changes in legislation, Circulars and guidelines

The National Treasury may issue –

- (a) A circular to inform organs of state of any matter pertaining to the policy; or
- (b) A guideline to assist organs of state with the implementation of any provision of the policy

**Part B**  
**Supply Chain Management**  
**Infrastructure Procurement Policy**

**Contents**

1	Scope
2	Terms, definitions and abbreviations
2.1	Terms and definitions
2.2	Abbreviations
3	General requirements
3.1	Delegations
3.2	Implementation of the Standard for Infrastructure Procurement and Delivery Management
3.3	Supervision of the infrastructure delivery management unit
3.4	Objections and complaints
3.5	Resolution of disputes, objections, complaints and queries
4	Control framework for infrastructure delivery management
4.1	Assignment of responsibilities for approving or accepting end of stage deliverables
4.2	Additional gates
4.3	Additional requirements
4.4	Gateway reviews
4.4.1	Gateway reviews for major capital projects above a threshold
4.4.2	Elective gateway reviews
5	Control framework for infrastructure procurement
6	Infrastructure delivery management requirements

- 6.1 Institutional arrangements
  - 6.1.1 Committee system for procurement
  - 6.1.2 Actions of an authorised person relating to the award of a contract or an order
  - 6.1.3 Conduct of those engaged in infrastructure delivery
  - 6.1.4 Measures to prevent abuse of the infrastructure delivery system
  - 6.1.5 Awards to persons in the service of the state
  - 6.1.6 Collusive tendering
  - 6.1.7 Placing of contractors under restrictions
  - 6.1.8 Complaints
- 6.2 Acquisition management
  - 6.2.1 Unsolicited proposal
  - 6.2.2 Tax and rates compliance
  - 6.2.3 Declarations of interest
  - 6.2.4 Invitations to submit expressions of interest or tender offers
  - 6.2.5 Publication of submissions received and the award of contracts
  - 6.2.6 Disposal committee
- 6.3 Reporting of infrastructure delivery management information
- 7 Infrastructure procurement
  - 7.1 Usage of procurement procedures
  - 7.2 Procurement documents
  - 7.3 Developmental procurement policy
  - 7.4 Payment of contractors
  - 7.5 Approval to utilise specific procurement procedures
  - 7.6 Receipt and safeguarding of submissions
  - 7.7 Opening of submissions
  - 7.8 Use of another organ of state's framework agreement
  - 7.9 Insurances
    - Contractors shall be required to take out all insurances required in terms of the contract.
  - 7.9.1
  - 7.10 Written reasons for actions taken

## Scope

This policy establishes Mogalakwena Local Municipality's policy for infrastructure procurement and delivery management in accordance with the provisions of the regulatory frameworks for procurement and supply chain management. It includes the procurement of goods and services necessary for a new facility to be occupied and used as a functional entity but excludes:

- a) the storage of goods and equipment following their delivery to *Mogalakwena Local Municipality* which are stored and issued to contractors or to employees;
- b) the disposal or letting of land;
- c) the conclusion of any form of land availability agreement;
- d) the leasing or rental of moveable assets; and
- e) Public private partnerships.

## Terms, definitions and abbreviations

### 2.1 Terms and definitions

For the purposes of this document, the definitions and terms given in the standard and the following apply:

**Agent:** person or organization that is not an employee of Mogalakwena Local Municipality that acts on Municipality's behalf in the application of this document

**Authorised person:** the Accounting officer or the appropriately delegated authority to award, cancel, amend, extend or transfer a contract or order

**Conflict of interest:** any situation in which:

- a) Someone in a position of trust has competing professional or personal interests which make it difficult for him to fulfil his duties impartially,
- b) An individual or organization is in a position to exploit a professional or official capacity in some way for his personal or for corporate benefit, or
- c) Incompatibility or contradictory interests exist between an employee and the organization which employs that employee

**Contract manager:** person responsible for administering a package on behalf of the employer and performing duties relating to the overall management of such contract from the implementer's point of view

**Family member:** a person's spouse, whether in a marriage or in a customary union according to indigenous law, domestic partner in a civil union, or child, parent, brother, sister, whether such a relationship results from birth, marriage or adoption

**Framework agreement:** an agreement between an organ of state and one or more contractors, the purpose of which is to establish the terms governing orders to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged

**gate:** a control point at the end of a process where a decision is required before proceeding to the next process or activity

**Gateway review:** an independent review of the available information at a gate upon which a decision to proceed or not to the next process is based **Gratification:** an inducement to perform an improper act

**Infrastructure delivery:** the combination of all planning, technical, administrative and managerial actions associated with the construction, supply, renovation, rehabilitation, alteration, maintenance, operation or disposal of infrastructure

**Infrastructure procurement:** the procurement of goods or services including any combination thereof associated with the acquisition, renovation, rehabilitation, alteration, maintenance, operation or disposal of infrastructure

**Maintenance:** the combination of all technical and associated administrative actions during an item's service life to retain it in a state in which it can satisfactorily perform its required function

**Operation:** combination of all technical, administrative and managerial actions, other than maintenance actions, that results in the item being in use

**Order:** an instruction to provide goods, services or any combination thereof under a framework agreement

**Organ of state:** an organ of state as defined in section 239 of the Constitution of the Republic of South Africa

**Procurement document:** documentation used to initiate or conclude (or both) a contract or the issuing of an order

**Principal:** a natural person who is a partner in a partnership, a sole proprietor, a director a company established in terms of the Companies Act of 2008 (Act No. 71 of 2008) or a member of a close corporation registered in terms of the Close Corporation Act, 1984, (Act No. 69 of 1984)

**Standard:** the latest edition of the Standard for Infrastructure Procurement and Delivery Management as published by National Treasury

**Working day:** any day of a week on which is not a Sunday, Saturday or public holiday

## **2.2 Abbreviations**

For the purposes of this document, the following abbreviations apply

CIDB: Construction Industry Development Board

SARS: South African Revenue Services

## **General requirements<sup>1</sup>**

### **3.1 Delegations**

**3.1.1** The Council of Mogalakwena Local Municipality hereby delegates all powers and duties to the Accounting officer which are necessary to enable the Accounting officer to:

- a) discharge the supply chain management responsibilities conferred on accounting officers in terms of Chapter 8 or 10 of the Local Government Municipal Finance Management Act of 2003 and this document;
- b) Maximise administrative and operational efficiency in the implementation of this document;
- c) Enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this document; and
- d) Comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Local Government Municipal Finance Management Act of 2003 Act.

**3.1.2** No departure shall be made from the provisions of this policy without the approval of the Accounting officer of Mogalakwena Local Municipality<sup>2</sup>

**3.1.3** The Accounting officer shall for oversight purposes:

- a) within 30 days of the end of each financial year, submit a report on the implementation of this policy and the equivalent policy of any municipal entity under the sole or shared control of the Mogalakwena Local Municipality, to the council of the Municipality within 20 days at the end of each financial year, submit a report on the implementation of this policy to the board of directors, who must then submit the report to the municipal manager of Mogalakwena Local Municipality for submission to the council;

---

<sup>1</sup> This clause is required to ensure that the standard is linked to the policy and aligned with the MFMA SCM Regulations.

<sup>2</sup> SCM Regulation 36 of the MFMA permits deviations from, and ratification of minor breaches or procurement processes.

- b) Whenever there are serious and material problems in the implementation of this policy, immediately submit a report to the board of directors, who must then submit the report to the municipal manager of Mogalakwena Local Municipality for submission to the council;
- c) within 10 days of the end of each quarter, submit a report on the implementation of the policy to the *mayor*, and
- d) Make the reports public in accordance with section 21A of the Municipal Systems Act of 2000.

### **3.2 Implementation of the Standard for Infrastructure Procurement and Delivery Management**

**3.2.1** Infrastructure procurement and delivery management shall be undertaken in accordance with all the applicable legislation and the relevant requirements of the latest edition of the National Treasury Standard for Infrastructure Procurement and Delivery Management.<sup>3</sup>

**3.2.2** Pre-feasibility and feasibility reports are required on . . . . .<sup>4</sup>

**3.2.3** Stages 3 to 7 are required for . . . . .<sup>5</sup>

### **3.3 Supervision of the infrastructure delivery management unit<sup>6</sup>**

The Infrastructure Delivery Management Unit shall be directly supervised by the chief financial officer.

### **3.4 Objections and complaints<sup>7</sup>**

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

### **3.5 Resolution of disputes, objections, complaints and queries<sup>8</sup>**

**3.5.1** The accounting officer shall appoint an independent and impartial person, not directly involved in the infrastructure delivery management processes to assist in the resolution of disputes between the municipality and other persons regarding:

---

<sup>3</sup> Any deviation to the provisions of this standard must be reported to National Treasury and the relevant treasury.

<sup>4</sup> Sub-clause 4.1.1.4 c) of the standard permits an organ of states' policy to require that pre-feasibility and feasibility reports are required, notwithstanding the test provided for in this sub-clause to determine if such reports are required. The compiler of the policy needs to delete this sub-clause if it is not required.

<sup>5</sup> Sub-clause 4.1.1.1 of the standard permits stages 3 to 9 where the work does not involve the provision of new infrastructure or the rehabilitation, refurbishment, alteration of existing infrastructure. Stages 5 and 6 to be omitted where there is sufficient information to proceed to stage 7 is contained in the stage 4 deliverable. The policy may require that certain types of work (e.g. specific types of maintenance) need to pass through all the stages. If this is the case, the policy may require the application of all the stages for specific types of projects. The compiler of the policy needs to delete this sub-clause if it is not required.

<sup>6</sup> SCM Regulation 7 which is issued in terms of the MFMA requires each municipality to establish a supply chain management unit to implement its supply chain management policy, which where possible, should operate under the direct supervision of the chief financial officer or an official to whom this duty has been delegated in terms of Section 82 of the MFMA. There are benefits in establishing SCM units for general goods and services and infrastructure and to delegate the supervision to a person other than the chief financial officer.

<sup>7</sup> This clause aligns with SCM Regulation 49 issued in terms of the MFMA.

<sup>8</sup> This clause aligns with SCM Regulation 50 issued in terms of the MFMA.



- a) any decisions or actions taken in the implementation of the supply chain management system;
- b) any matter arising from a contract awarded within the municipality infrastructure delivery management system; or
- c) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.

**3.5.2** The Director Corporate shall assist the person appointed in terms of 3.5.1 to perform his or her functions effectively.

**3.5.3** The person appointed in terms of 3.5.1 shall:

- 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.

**3.5.4** 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.

**3.5.5** 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.

## **Control framework for infrastructure delivery management<sup>9</sup>**

### **4.1 Assignment of responsibilities for approving or accepting end of stage deliverables<sup>10</sup>**

The responsibilities for approving or accepting end of stage deliverables shall be as stated in Table 1.

### **4.2 Additional gates<sup>11</sup>**

The following additional gates shall apply:

.....

<sup>9</sup> This clause is required to ensure compliance with the requirements of the standard.

<sup>10</sup> The terms “approve” and “accept” have the meanings “officially agree to” and “receive as adequate, valid, or suitable give an affirmative answer to a proposal”, respectively. Approvals will typically take place at a senior management level whilst acceptances can be made at a lower level. Approvals and acceptances can be granted by individuals or committees.

Where a municipality or municipal entity implements a project on behalf of an organ of state, acceptance / approval of end of stage deliverables may have to be granted in consultation with such an organisation. Alternatively it may be assigned to a party to an agency agreement developed in accordance with the provisions of clauses 5.2 of the standard. As a result, Table 1 may have to differentiate between own infrastructure and client institution’s infrastructure. It may also have to differentiate between the value and type of projects.

<sup>11</sup> Clause 4.1.1.7 of the standard permits the inclusion of additional gates, if deemed necessary. This is an optional provision. The compiler of the policy should either delete this provision or describe the additional gates that are required, what their end of stage deliverable and any requirements associated with deliverables, who approves / accepts the deliverable etc..

### 4.3 Additional requirements<sup>12</sup>

The following additional requirements apply:

.....

### 4.4 Gateway reviews

#### 4.4.1 Gateway reviews for major capital projects above a threshold

**4.4.1.1** Accounting officer shall appoint a gateway review team in accordance with the provisions of clause 4.1.13.1.2 of the standard to undertake gateway reviews for major capital projects.

**4.4.1.2** The requirements for a gateway review in addition to those contained in section 4.1.13 of the standard are as follows:<sup>13</sup>

#### 4.4.2 Elective gateway reviews<sup>14</sup>

Gateway reviews shall be undertaken .....

---

<sup>12</sup> State additional requirements for any of the stages, as necessary. Sub clause 4.1.1.4 permits a municipality or municipal entity to insist that pre-feasibility and feasibility reports be provided irrespective of the test contained in the standard for determining if such reports contained in the standard suggests otherwise.

<sup>13</sup> Delete or add in any additional requirements.

<sup>14</sup> State optional requirements or delete clause. Gateway reviews may be undertaken by a gateway review team of the deliverables associated with any of the gates in the control framework. Such reviews should preferably take place at gates 4, 5 or 8. They can also be conducted on a random sample basis after the end of stage deliverable has been accepted. Such reviews can capture lessons learned and in so doing improve the quality of future deliverables.

**Table 1: Responsibilities for approving or accepting end of stage deliverables in the control framework for the management of infrastructure delivery**

Stage		Person assigned the responsibility for approving and accepting end stage deliverables
No	Name	
0	Project initiation	<i>[Designated person]</i> accepts the initiation report
1	Infrastructure Planning	<i>[Designated person]</i> approves the infrastructure plan
2	Strategic resourcing	<i>[Designated person]</i> approves the delivery and / or procurement strategy
3	Pre-feasibility	<i>[Designated person]</i> accepts the pre-feasibility report
	Preparation and briefing	<i>[Designated person]</i> accepts the strategic brief
4	Feasibility	<i>[Designated person]</i> accepts the feasibility report
5	Concept and viability	<i>[Designated person]</i> accepts the concept report
6	Design development	<i>[Designated person]</i> accepts the design development report
7	Design documentation – 6A Production information	<i>[Designated person]</i> accepts the parts of the production information which are identified when the design development report is accepted as requiring acceptance
	Design documentation – 6B Manufacture, fabrication and construction information	The contract manager accepts the manufacture, fabrication and construction information
8	Works	The contract manager certifies completion of the works or the delivery of goods and associated services
9	Handover	The owner or end user accepts liability for the works
10	Package completion	The contract manager or supervising agent certifies the defects certificate in accordance with the provisions of the contract The contract manager certifies final completion in accordance with the provisions of the contract <i>[Designated person]</i> accepts the close out report

## **Control framework for infrastructure procurement<sup>15</sup>**

**5.1** The responsibilities for taking the key actions associated with the formation and conclusion of contracts including framework agreements above the quotation threshold shall be as stated in Table 2.

**5.2** The responsibilities for taking the key actions associated with the quotation procedure and the negotiation procedure where the value of the contract is less than the threshold set for the quotation procedure shall be as follows: 16

..... shall grant approval for the issuing of the procurement documents, based on the contents of a documentation review report developed in accordance with the provisions of the standard;

- a) the authorised person may award the contract if satisfied with the recommendations contained in the evaluation report prepared in accordance with the provisions of the standard.

**5.3** The responsibilities for taking the key actions associated with the issuing of an order in terms of a framework agreement shall be as stated in Table 3.

## **Infrastructure delivery management requirements**

### **6.1 Institutional arrangements**

#### **6.1.1 Committee system for procurement<sup>17</sup>**

##### **6.1.1.1 General**

**6.1.1.1.1** A committee system comprising the documentation committee, evaluation committee and tender committee shall be applied to all procurement procedures where the estimated value

---

<sup>15</sup> This clause is required to ensure compliance with the requirements of the standard.

<sup>16</sup> SCM Regulation 26 of the MFMA requires that a committee system be established for procurement above the threshold for quotations. It is not, however, a requirement for such a committee to deal with quotations.

<sup>17</sup> SCM Regulation 26 of the MFMA requires that a committee system be established for procurement above the threshold for quotations. A municipality of a municipal entity may require that the tender committee (bid adjudication committee) also deal with quotations. The principle of segregation (an internal control designed to prevent error and fraud by ensuring that at least two individuals are responsible for the separate parts of any task) is dealt with the committee system in the standard as follows:

- procurement gate 3: a technical evaluation of procurement documents and an approval of such documentation;
- procurement gate 5: a technical evaluation of submissions and an authorization to proceed with the next phase of a procurement process; and
- procurement gate 6: a tender evaluation and a recommendation to award a contract.

of the procurement exceeds the financial threshold for quotations and to the putting in place of framework agreements.

**6.1.1.1.2** The evaluation committee shall, where competition for the issuing of an order amongst framework contractors takes place and the value of the order exceeds the financial threshold for quotations, evaluate the quotations received.

**6.1.1.1.3** The persons appoint in writing as technical advisors and subject matter experts may attend any committee meeting.

**6.1.1.1.4** No person who is a political officer bearer, a public office bearer including any councilor of a municipality, a political advisor or a person appointed in terms of section 12A of the Public Service Act of 1994 or who has a conflict of interest shall be appointed to a procurement documentation, evaluation or tender committee.

**6.1.1.1.5** Committee decisions shall as far as possible be based on the consensus principle i.e. the general agreement characterised by the lack of sustained opposition to substantial issues. Committees shall record their decisions in writing. Such decisions shall be kept in a secured environment for a period of not less than five years after the completion or cancellation of the contract unless otherwise determined in terms of the National Archives and Record Services Act of 1996.

**6.1.1.1.6** Committees may make decisions at meetings or, subject to the committee chairperson's approval, on the basis of responses to documents circulated to committee members provided that not less than sixty percent of the members are present or respond to the request for responses. Where the committee chairperson is absent from the meeting, the members of the committee who are present shall elect a chairperson from one of them to preside at the meeting.

#### **6.1.1.2 Procurement documentation committee**

**6.1.1.2.1** The Accounting officer shall appoint in writing on a procurement by procurement basis:

- a) the persons to review the procurement documents and to develop a procurement documentation review report in accordance with clause 4.2.2.1 of the standard; and
- b) the members of the procurement documentation committee.

**6.1.1.2.2** The procurement documentation committee shall comprise one or more persons. The chairperson shall be the municipality with requisite skills. Other members shall, where relevant, include a representative of the end user or the department requiring infrastructure delivery.

**6.1.1.2.3** No member of, or technical adviser or subject matter expert who participates in the work of the any of the procurement committees or a family member or associate of such a member, may tender for any work associated with the tender which is considered by these committees.

**Table 2: Procurement activities and gates associated with the formation and conclusion of contracts above the quotation threshold**

Activity		Sub-Activity (see Table 3 of the standard)		Key action	Person assigned responsibility to perform key action
1*	Establish what is to be procured	1.3 <b>PG1</b>	Obtain permission to start with the procurement process	Make a decision to proceed / not to proceed with the procurement based on the broad scope of work and the financial estimates.	.....
2*	Decide on procurement strategy	2.5 <b>PG2</b>	Obtain approval for procurement strategies that are to be adopted including specific approvals to approach a confined market or the use of the negotiation procedure	Confirm selection of strategies so that tender offers can be solicited	.....
3	Solicit tender offers	3.2 <b>PG3</b>	Obtain approval for procurement documents	Grant approval for the issuing of the procurement documents	Procurement documentation committee
		3.3 <b>PG4</b>	Confirm that budgets are in place	Confirm that finance is available for the procurement to take place	<i>[designated person e.g. programme or financial manager]</i>
4	Evaluate tender offers	4.2 <b>PG5</b>	Obtain authorisation to proceed with next phase of tender process in the qualified, proposal or competitive negotiations procedure	Review evaluation report, ratify recommendations and authorise progression to the next stage of the tender process	.....
		4.7 <b>PG6</b>	Confirm recommendations contained in the tender evaluation report	Review recommendations of the evaluation committee and refer back to evaluation committee for reconsideration or make recommendation for award	Tender committee .....
5	Award contract	5.3 <b>PG7</b>	Award contract	Formally accept the tender offer in writing and issue the contractor with a signed copy of the contract	.....
		5.5 <b>GF1</b>	Upload data in financial management and payment system	Verify data and upload contractor's particulars and data associated with the contract or order	.....

\* Applies only to goods and services not addressed in a procurement strategy developed during stage 2 (strategic resourcing) of the control framework for infrastructure delivery management



**Table 2** (concluded)

Activity		Sub-Activity		Key action	Person assigned responsibility to perform key action
6	Administer contracts and confirm compliance with requirements	6.4 <b>PG8A</b>	Obtain approval to waive penalties or low performance damages.	Approve waiver of penalties or low performance damages	Accounting officers
		6.5 <b>PG8B</b>	Obtain approval to notify and refer a dispute to an adjudicator	Grant permission for the referral of a dispute to an adjudicator or for final settlement to an arbitrator or court of law	Accounting officers
		6.6 <b>PG8C</b>	Obtain approval to increase the total of prices, excluding contingencies and price adjustment for inflation, or the time for completion at the award of a contract or the issuing of an order up to a specified percentage <sup>16</sup>	Approve amount of time and cost overruns up to the threshold	Accounting officers
		6.7 <b>PG8D</b>	Obtain approval to exceed the total of prices, excluding contingencies and price adjustment for inflation, or the time for completion at award of a contract or the issuing of an order by more than 20% and 30%, respectively	Approve amount of time and cost overruns above a the threshold	Accounting officers
		6.8 <b>PG8E</b>	Obtain approval to cancel or terminate a contract	Approve amount	Accounting officers
		6.9 <b>PG8F</b>	Obtain approval to amend a contract	Approve proposed amendment to contract	Accounting officers

<sup>16</sup> Stepped thresholds leading up to the 20% and 30% values given in PG8D may be necessary to manage cost and time overruns, respectively, the principle being that approval to exceed these percentages needs to be granted at a more senior level with each increase. For example, the increases for cost overruns could be as follows:

- ≤ 2,5 % - contract manager;
- 2,5 to 10% - project director
- > 10% - appropriately delegated authority

**Table 3: Procurement activities and gates associated with the issuing of an order above the quotation threshold in terms of a framework agreement**

Activity		Key action	Person assigned responsibility to perform key action
1 FG 1	Confirm justifiable reasons for selecting a framework contactor where there is more than one framework agreement covering the same scope of work	Confirm reasons submitted for not requiring competition amongst framework contractors or instruct that quotations be invited	..... .....
3 FG 2	Obtain approval for procurement documents	Grant approval for the issuing of the procurement documents	..... .....
4 FG 3	Confirm that budgets are in place	Confirm that finance is available so that the order may be issued	..... .....
6 FG 4	Authorise the issuing of the order	If applicable, review evaluation report and confirm or reject recommendations. Formally accept the offer in writing and issue the contractor with a signed copy of the order	..... .....

### 6.1.1.3 Evaluation committee

**6.1.1.3.1** The Accounting officer shall appoint on a procurement by procurement basis in writing:

- a) the persons to prepare the evaluation and, where applicable, the quality evaluations, in accordance with clauses 4.2.3.2 and 4.2.3.4 of the standard, respectively; and
- b) the members of the evaluation committee.

**6.1.1.3.2** The evaluation committee shall comprise not less than three people. The chairperson shall be an employee of the Municipality with requisite skills. Other members shall include a supply chain management practitioner<sup>17</sup> and, where relevant, include an official from the department requiring infrastructure delivery.

**6.1.1.3.3** The evaluation committee shall review the evaluation reports prepared in accordance with sub clause 4.2.3 of the standard and as a minimum verify the following in respect of the recommended tenderer:

- a) the capability and capacity of a tenderer to perform the contract;
- b) the tenderer's tax and municipal rates and taxes compliance status;
- c) confirm that the tenderer's municipal rates and taxes and municipal service charges are not in arrears;
- d) the Compulsory Declaration has been completed; and
- e) the tenderer is not listed in the National Treasury's Register for Tender Defaulters or the List of Restricted Suppliers.

**6.1.1.3.4** No tender submitted by a member of, or technical adviser or subject matter expert who participates in the work of the procurement documentation committee or a family member or associate of such a member, may be considered by the evaluation committee.

**6.1.1.3.5** The chairperson of the evaluation committee shall promptly notify the accounting officer of any respondent or tenderer who is disqualified for having engaged in fraudulent or corrupt practices during the tender process.

### 6.1.1.4 Tender committee<sup>18</sup>

**6.1.1.4.1** The tender committee shall comprise the following persons or their mandated delegate:<sup>19</sup>

- a) *[title of post]* who shall be the chairperson:
- b) *[title of post]* .....

<sup>17</sup> A supply chain management practitioner in the context of infrastructure delivery includes a built environment professional

<sup>18</sup> Where no separate tender committee is established, this section should simply refer to the bid adjudication committee which is set up to deal with tenders with both the supply chain for general goods and services and for infrastructure

<sup>19</sup> The chairperson needs to be an employee of the municipality or the municipal entity with requisite skills. Other members should be employees of the municipality or the municipal entity and include at least four senior managers including the chief financial officer, a supply chain management practitioner and a technical expert in the relevant field, if such municipality or municipal entity has such an expert.

c) *[title of post]* .....

d) etc.....

**6.1.1.4.2** No member of the evaluation committee may serve on the tender committee. A member of an evaluation committee may, however, participate in the deliberations of a tender committee as a technical advisor or a subject matter expert.

**6.1.1.4.3** The tender committee shall:

- a) consider the report and recommendations of the evaluation committee and:
  - 1) verify that the procurement process which was followed complies with the provisions of this document;
  - 2) confirm that the report is complete and addresses all considerations necessary to make a recommendation;
  - 3) confirm the validity and reasonableness of reasons provided for the elimination of tenderers; and
  - 4) consider commercial risks and identify any risks that have been overlooked or fall outside of the scope of the report which warrant investigation prior to taking a final decision; and
- b) refer the report back to the evaluation committee for their reconsideration or make a recommendation to the authorised person on the award of a tender, with or without conditions, together with reasons for such recommendation.

**6.1.1.4.4** The tender committee shall consider proposals regarding the cancellation, amendment, extension or transfer of contracts that have been awarded and make a recommendation to the authorised person on the course of action which should be taken.

**6.1.1.4.5** The tender committee shall consider the merits of an unsolicited offer and make a recommendation to the accounting officer.

**6.1.1.4.6** The tender committee shall report to the accounting officer any recommendation made to award a contract to a tenderer other than the tenderer recommended by the evaluation committee, giving reasons for making such a recommendation.

**6.1.1.4.7** The tender committee shall not make a recommendation for an award of a contract or order if the recommended tenderer or framework contractor has:

- a) made a misrepresentation or submitted false documents in competing for the contract or order; or
- b) been convicted of a corrupt or fraudulent act in competing for any contract during the past five years.

**6.1.1.4.8** The tender committee may on justifiable grounds and after following due process, disregard the submission of any tenderer if that tenderer or any of its directors, members or trustees or partners has abused the delivery management system or has committed fraud, corruption or any

other improper conduct in relation to such system. The National Treasury and the Provincial treasury shall be informed where such tenderers are disregarded.

## **6.1.2 Actions of an authorised person relating to the award of a contract or an order**

### **6.1.2.1 Award of a contract**

**6.1.2.1** The authorised person shall, if the value of the contract inclusive of VAT is within his or her delegation, consider the report(s) and recommendations of the tender committee, or in the case of the awards for contracts below the quotation threshold, the recommendation of the tender committee, and either:

- a) award the contract after confirming that the report is complete and addresses all considerations necessary to make a recommendation and budgetary provisions are in place; or
- b) decide not to proceed or to start afresh with the process.

**6.1.2.2** The authorised person shall immediately notify the .....if a tender other than the recommended tender is awarded, save where the recommendation is changed to rectify an irregularity. Such person shall, within 10 working days, notify in writing the Auditor-General, the National Treasury and provincial treasury, of the reasons for deviating from such recommendation.

### **6.1.2.3 Issuing of an order**

The authorised person shall, if the value of an order issued in terms of a framework contract, is within his or her delegation, consider the recommendation of the evaluation committee or the *designated person* as relevant, and either:

- a) authorise the issuing of an order in accordance with the provisions of clause 4.25 of the standard; or
- b) decide not to proceed or to start afresh with the process.

## **6.1.3 Conduct of those engaged in infrastructure delivery<sup>20</sup>**

### **6.1.3.1 General requirements**

**6.1.3.1.1** All personnel and agents of the Municipality shall comply with the requirements of the CIDB Code of Conduct for all Parties engaged in Construction Procurement. They shall:

- a) behave equitably, honestly and transparently;
- b) discharge duties and obligations timeously and with integrity;

---

<sup>20</sup> Sub clause 5.1 d) of the standard requires that the municipality's or municipal entity's policy establish ethical standards for those involved in the procurement and delivery of infrastructure. This clause is aligned with the provisions of SCM Regulation 46 (Ethical standards) issued in terms of the MFMA and National Treasury's Code of Conduct for Supply Chain Management Practitioners

- c) comply with all applicable legislation and associated regulations;
- d) satisfy all relevant requirements established in procurement documents;
- e) avoid conflicts of interest; and
- f) not maliciously or recklessly injure or attempt to injure the reputation of another party.

**6.1.3.1.2** All personnel and agents engaged in the municipality's infrastructure delivery management system shall:

- a) not perform any duties to unlawfully gain any form of compensation, payment or gratification from any person for themselves or a family member or an associate;
- b) perform their duties efficiently, effectively and with integrity and may not use their position for private gain or to improperly benefit another person;
- c) strive to be familiar with and abide by all statutory and other instructions applicable to their duties;
- d) furnish information in the course of their duties that is complete, true and fair and not intended to mislead;
- e) ensure that resources are administered responsibly;
- f) be fair and impartial in the performance of their functions;
- g) at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual;
- h) not abuse the power vested in them;
- i) not place themselves under any financial or other obligation to external individuals or firms that might seek to influence them in the performance of their duties;
- j) assist the Municipality in combating corruption and fraud within the infrastructure procurement and delivery management system;
- k) not disclose information obtained in connection with a project except when necessary to carry out assigned duties;
- l) not make false or misleading entries in reports or accounting systems; and
- m) keep matters of a confidential nature in their possession confidential unless legislation, the performance of duty or the provision of the law require otherwise. **6.1.3.1.2** An employee or agent may not amend or tamper with any submission, tender or contract in any manner whatsoever.



### **6.1.3.2 Conflicts of interest**

**6.1.3.2.1** The employees and agents of the Municipality who are connected in any way to procurement and delivery management activities which are subject to this policy, shall:

- a) disclose in writing to the employee of the Municipality to whom they report, or to the person responsible for managing their contract, if they have, or a family member or associate has, any conflicts of interest; and
- b) not participate in any activities that might lead to the disclosure of the municipality proprietary information.

**6.1.3.2.2** The employees and agents of the Municipality shall declare and address any perceived or known conflict of interest, indicating the nature of such conflict to whoever is responsible for overseeing the procurement process at the start of any deliberations relating to a procurement process or as soon as they become aware of such conflict, and abstain from any decisions where such conflict exists or recuse themselves from the procurement process, as appropriate.

**6.1.3.2.3** Agents who prepare a part of a procurement document may in exceptional circumstances, where it is in *the Municipality's* interest to do so, submit a tender for work associated with such documents provided that:

- a) The Municipality states in the tender data that such an agent is a potential tenderer;
- b) all the information which was made available to, and the advice provided by that agent which is relevant to the tender, is equally made available to all potential tenderers upon request, if not already included in the scope of work; and
- c) the procurement documentation committee is satisfied that the procurement document is objective and unbiased having regard to the role and recommendations of that agent.

### **6.1.3.3 Evaluation of submissions received from respondents and tenderers**

**6.1.3.3.1** The confidentiality of the outcome of the processes associated with the calling for expressions of interest, quotations or tenders shall be preserved. Those engaged in the evaluation process shall:

- a) not have any conflict between their duties as an employee or an agent and their private interest;
- b) may not be influenced by a gift or consideration (including acceptance of hospitality) to show favour or disfavour to any person;
- c) deal with respondents and tenderers in an equitable and even-handed manner at all times; and
- d) not use any confidential information obtained for personal gain and may not discuss with, or disclose to outsiders, prices which have been quoted or charged to the Municipality.

**6.1.3.3.2** The evaluation process shall be free of conflicts of interest and any perception of bias. Any connections between the employees and agents of the Municipality and a tenderer or respondent shall be disclosed and recorded in the tender evaluation report.

**6.1.3.3.3** The Municipality personnel and their agents shall immediately withdraw from participating in any manner whatsoever in a procurement process in which they, or any close family member, partner or associate, has any private or business interest.

#### **6.1.3.4 Non-disclosure agreements**

Confidentiality agreements in the form of non-disclosure agreements shall, where appropriate, be entered into with agents and potential contractors to protect the Municipality's confidential information and interests.

#### **6.1.3.5 Gratifications, hospitality and gifts**

**6.1.3.5.1** The employees and agents of the Municipality shall not, directly or indirectly, accept or agree or offer to accept any gratification from any other person including a commission, whether for the benefit of themselves or for the benefit of another person, as an inducement to improperly influence in any way a procurement process, procedure or decision.

**6.1.3.5.2** The employees and agents of the *Municipality* as well as their family members of associates shall not receive any of the following from any tenderer, respondent or contractor or any potential contractor:

- a) money, loans, equity, personal favours, benefits or services;
- b) overseas trips; or
- c) any gifts or hospitality irrespective of value from tenderers or respondents prior to the conclusion of the processes associated with a call for an expression of interest or a tender.

**6.1.3.5.3** The employees and agents of the municipality shall not purchase any items at artificially low prices from any tenderer, respondent or contractor or any potential contractor at artificially low prices which are not available to the public.

**6.1.3.5.4** All employees and agents of the municipality may for the purpose of fostering inter-personal business relations accept the following:

- a) meals and entertainment, but excluding the cost of transport and accommodation;
- b) promotional material of small intrinsic value such as pens, paper-knives, diaries, calendars, etc;
- c) incidental business hospitality such as business lunches or dinners, which the employee is prepared to reciprocate;
- d) complimentary tickets to sports meetings and other public events, but excluding the cost of transport and accommodation, provided that such tickets are not of a recurrent nature; and

- e) gifts in kind other than those listed in a) to d) which have an intrinsic value greater than R350 unless they have declared them to the Accounting officer.

**6.1.3.5.5** Under no circumstances shall gifts be accepted from prospective contractors during the evaluation of calls for expressions of interest, quotations or tenders that could be perceived as undue and improper influence of such processes.

**6.1.3.5.6** Employees and agents of the municipality shall without delay report to the Accounting officer any incidences of a respondent, tenderer or contractor who directly or indirectly offers a gratification to them or any other person to improperly influence in any way a procurement process, procedure or decision.

#### **6.1.3.6 Reporting of breaches**

Employees and agents of the municipality shall promptly report to the Accounting officer any alleged improper conduct which they may become aware of, including any alleged fraud or corruption.

#### **6.1.4 Measures to prevent abuse of the infrastructure delivery system<sup>21</sup>**

The Accounting officer shall investigate all allegations of corruption, improper conduct or failure to comply with the requirements of this policy against an employee or an agent, a contractor or other role player and, where justified:

- a) take steps against an employee or role player and inform the National Treasury and Provincial treasury of those steps;
- b) report to the South African Police Service any conduct that may constitute a criminal offence;
- c) lodge complaints with the Construction Industry Development Board or any other relevant statutory council where a breach of such council's code of conduct or rules of conduct are considered to have been breached;
- d) cancel a contract if:
  - 1) it comes to light that the contractor has made a misrepresentation, submitted falsified documents or has been convicted of a corrupt or fraudulent act in competing for a particular contract or during the execution of that contract; or
  - 2) an employee or other role player committed any corrupt or fraudulent act during the tender process or during the execution of that contract.

#### **6.1.5 Awards to persons in the service of the state<sup>22</sup>**

**6.1.5.1** Any submissions made by a respondent or tenderer who declares in the Compulsory Declaration that a principal is one of the following shall be rejected:

---

<sup>21</sup> The requirement to prevent abuse of the supply chain management system is aligned with the provisions of SCM Regulation 38 issued in terms of the MFMA.

<sup>22</sup> The clause aligns with SCM Regulation 44 issued in terms of the MFMA.

- a) a member of any municipal council, any provincial legislature, or 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.

**6.1.5.2** The notes to the annual financial statements of the municipality shall disclose particulars of an award of more than R 2000 to a person who is a family member of a person identified in 6.1.5.1 or who has been in the previous 12 months. Such notes shall include the name of the person, the capacity in which such person served and the amount of the award.

#### **6.1.6 Collusive tendering<sup>23</sup>**

Any submissions made by a respondent or tenderer who fails to declare in the Compulsory Declaration that the tendering entity:

- a) is not associated, linked or involved with any other tendering entity submitting tender offers; or
- b) has not engaged in any prohibited restrictive horizontal practices including consultation, communication, agreement, or arrangement with any competing or potential tendering entity regarding prices, geographical areas in which goods and services will be rendered, approaches to determining prices or pricing parameters, intentions to submit a tender or not, the content of the submission (specification, timing, conditions of contract etc.) or intention to not win a tender

shall be rejected.

#### **6.1.7 Placing of contractors under restrictions<sup>24</sup>**

**6.1.7.1** If any tenderer which has submitted a tender offer or a contractor which has concluded a contract has, as relevant:

- a) withdrawn such tender or quotation after the advertised closing date and time for the receipt of submissions;
- b) after having been notified of the acceptance of his tender, failed or refused to commence the contract;
- c) had their contract terminated for reasons within their control without reasonable cause;

<sup>23</sup> The standard requires the inclusion of the Compulsory Declaration in all procurement documents. This sub-clause aligns with SCM Regulation 44 issued in terms of the MFMA and SANS 10845-3 which is incorporated by reference in the standard.

<sup>24</sup> This sub-clause is aligned with the requirements of SCM Regulation 38 issued in terms of the MFMA.

- d) offered, promised or given a bribe in relation to the obtaining or the execution of such contract;
- e) acted in a fraudulent, collusive or anti-competitive or improper manner or in bad faith towards the Municipality; or
- f) made any incorrect statement in any affidavit or declaration with regard to a preference claimed and is unable to prove to the satisfaction of the Municipality that the statement was made in good faith or reasonable steps were taken to confirm the correctness of the statements,

a Chief accounting officer shall prepare a report on the matter and make a recommendation to the Accounting officer for placing the contractor or any of its principals under restrictions from doing business with the Municipality.

**6.1.7.2** The [Accounting officer] may, as appropriate, upon the receipt of a recommendation made in terms of 6.1.7.1 and after notifying the contractor of such intention in writing and giving written reasons for such action, suspend a contractor or any principal of that contractor from submitting a tender offer to the Municipality for a period of time.

**6.1.7.3** The supply chain management shall:

- a) record the names of those placed under restrictions in an internal register which shall be accessible to employees and agents of the Municipality who are engaged in procurement processes; and
- b) notify the National Treasury and provincial treasury and , if relevant, the Construction Industry Development Board, of such decision and provide them with the details associated therewith.

## **6.1.8 Complaints**

**6.1.8.1** All complaints regarding the Municipality's infrastructure delivery management system shall be addressed to the accounting officer. Such complaints shall be in writing.

**6.1.8.2** The Director *Corporate department* shall investigate all complaints regarding the infrastructure procurement and delivery management system and report on actions taken to the *Accounting officer* who will decide on what action to take.

## **6.2 Acquisition management**

### **6.2.1 Unsolicited proposal<sup>25</sup>**

**6.2.1.1** The Municipality is not obliged to consider unsolicited offers received outside a normal procurement process but may consider such an offer only if:

- a) the goods, services or any combination thereof that is offered is a demonstrably or proven unique innovative concept;
- b) proof of ownership of design, manufacturing, intellectual property, copyright or any other proprietary right of ownership or entitlement is vested in the person who made the offer;

---

<sup>25</sup> The clause aligns with SCM Regulation 37 issued in terms of the MFMA.

- c) the offer presents a value proposition which demonstrates a clear, measurable and foreseeable benefit for the Municipality;
- d) the offer is in writing and clearly sets out the proposed cost;
- e) the person who made the offer is the sole provider of the goods or service; and
- f) the accounting officer finds the reasons for not going through a normal tender processes to be sound.

**6.2.1.2** The accounting officer may only accept an unsolicited offer and enter into a contract after considering the recommendations of the tender committee if:

- a) the intention to consider an unsolicited proposal has been made known in accordance with Section 21A of the Municipal Systems Act of 2000 together with the reasons why such a proposal should not be open to other competitors, an explanation of the potential benefits for the municipality and an invitation to the public or other potential suppliers and providers to submit their comments within 30 days after the notice;
- b) the municipality' has obtained comments and recommendations on the offer from the National Treasury and provincial treasury;
- c) the tender committee meeting which makes recommendations to accept an unsolicited proposal was open to the public and took into account any public comments that were received and any comments and recommendations received from the National Treasury and provincial treasury; and
- d) the provisions of 6.2.1.3 are complied with.

**6.2.1.3** The accounting officer shall, within 7 working days after the decision to award the unsolicited offer is taken, submit the reasons for rejecting or not following the recommendations to the National Treasury, the provincial treasury and Auditor General. A contract shall in such circumstances not be entered into or signed within 30 days of such submission.

## **6.2.2 Tax and rates compliance<sup>26</sup>**

### **6.2.2.1 SARS tax clearance**

No contract may be awarded or an order issued where the value of such transaction exceeds R 15 000, unless a tenderer or contractor is in possession of an original valid Tax Clearance Certificate issued by SARS or if not domiciled in the Republic of South Africa, SARS has confirmed that such a person is not required to prove their tax compliance status.

### **6.2.2.2 Municipal rates and taxes<sup>27</sup>**

---

<sup>26</sup> This sub-clause aligns with the provisions of SCM Regulation 43 issued in terms of the MFMA. .

<sup>27</sup> This subclause aligns with the provisions of SCM Regulation 38 issued in terms of the MFMA.

No contract may be awarded to a tenderer who, or the principals of that tenderer, owes municipal rates and taxes or municipal service charges to any municipality or a municipal entity and are in arrears for more than 3 months.

### **6.2.3 Declarations of interest**

Tenders and respondents making submissions in response to an invitation to submit a tender or a call for an expression of interest, respectively shall declare in the Compulsory Declaration whether or not any of the principals:

- a) are an employee of the municipality or in the employ of the state; or
- b) have a family member or a business relation with a person who is in the employ of the state.

### **6.2.4 Invitations to submit expressions of interest or tender offers**

**6.2.4.1** All invitations to submit tenders where the estimated value of the contract exceeds R200 000 including VAT, except where a confined tender process is followed, and expressions of interest shall be advertised on the municipality's website and on the National Treasury eTender Publication Portal.<sup>28</sup> Advertisements shall be placed by

.....

**6.2.4.2** Advertisements relating to construction works which are subject to the Construction Industry Development Regulations issued in terms of the Construction Industry Development Act of 2000 shall in addition to the requirements of 6.2.4.1 be advertised on the CIDB website. Advertisements shall be placed by

.....

**6.2.4.3** Where deemed appropriate by ..... an invitation to tender and a call for an expression of interest shall be advertised in suitable local and national newspapers and the Government Tender Bulletin as directed by such person. Advertisements shall be placed by *[name of designated person]*.

**6.2.4.4** Such advertisements shall be advertised for a period of at least 30 days before closure, except in urgent cases when the advertisement period may be shortened as determined by the [Accounting officer.

**6.2.4.5** Invitations to submit expressions of interest or tender offers shall be issued not less than 10 working days before the closing date for tenders and at least 5 working days before any compulsory clarification meeting. Procurement documents shall be made available not less than 7 days before the closing time for submissions.

### **6.2.5 Publication of submissions received and the award of contracts<sup>29</sup>**

---

<sup>28</sup> This subclause aligns with National Treasury Instruction No 1 of 2015/2016 – Advertisement of bids and the publication of awards on the eTender Publication Portal.

<sup>29</sup> This subclause aligns with National Treasury Instruction No 1 of 2015/2016 – Advertisement of bids and the publication of awards on the eTender Publication Portal.



**6.2.5.1** The accounting officer shall publish within 10 working days of the closure of any advertised call for an expression of interest or an invitation to tender where the estimated value of the contract exceeds R200 000 including VAT on the municipality's or municipal entity's website, the names of all tenderers that made submissions to that advertisement, and if practical or applicable, the total of the prices and the preferences claimed. Such information shall remain on the website for at least 30 days.

**6.2.5.2** The chief financial officer shall publish within 7 working days of the award of a contract the following on the municipality's website

- a) the contract number;
- b) contract title;
- c) brief description of the goods, services or works;
- d) the total of the prices, if practical;
- e) the names of successful tenderers and their B-BBEE status level of contribution;
- f) duration of the contract; and
- g) brand names, if applicable.

**6.2.5.3** The chief financial officer shall submit within 7 working days of the award of a contract the information required by National Treasury on the National Treasury eTender Publication Portal regarding the successful and unsuccessful tenders. Submissions shall be made by chief financial officer

**6.2.5.4** The award of contracts relating to construction works which are subject to the Construction Industry Development Regulations issued in terms of the Construction Industry Development Act of 2000 shall in addition to the requirements of 6.2.5.3 be notified on the CIDB website. The notification shall be made by placed by chief financial officer.

## **6.2.6 Disposal committee**

**6.2.6.1** The accounting officer shall appoint on a disposal by disposal basis in writing the members of the disposal committee to decide on how best to undertake disposals in accordance with the provisions of clause 10 of the standard.

**6.2.6.2** The disposal panel shall comprise not less than three people. The chairperson shall be an employee of the municipality.

**6.2.6.3** The disposal committee shall make recommendations to accounting officer who shall approve the recommendations, refer the disposal strategy back to the disposal committee for their reconsideration, and decide not to proceed or to start afresh with the process.

## **6.3 Reporting of infrastructure delivery management information**

Accounting officer shall submit any reports required in terms of the standard to the National Treasury or provincial treasury.

## Infrastructure procurement

### 7.1 Usage of procurement procedures<sup>3031</sup>

### 7.2 Procurement documents

**7.2.1** The forms of contract that may be used are as follows:

Form of contract <sup>32</sup>	Code	Usage

**7.2.2** The municipality's preapproved templates for Part C1 (Agreements and contract data) of procurement documents shall be utilised to obviate the need for legal review prior to the awarding of a contract. All modifications to the standard templates shall be approved by accounting officer prior to being issued for tender purposes.

**7.2.3** Disputes arising from the performance of a contract shall be finally settled in a South African court of law.<sup>33</sup>

#### 7.2.4

.....  
.....

**7.2.5** The Municipal Declaration and returnable documents contained in the standard shall be included in all tenders for:

- a) consultancy services;<sup>34</sup> and
- b) goods and services or any combination thereof where the total of the prices is expected to exceed R10 m including VAT.<sup>36</sup>

### 7.3 Developmental procurement policy<sup>37</sup>

The<sup>35</sup> following specific goals shall be proposed:

---

<sup>30</sup> Delete this clause if there are no restriction. Amend if there are specific circumstance under which a procurement procedure is to be used.

<sup>31</sup> Reproduce from Table 11 of the standard the forms of contract which the municipality or municipal entity wishes to make use of.

<sup>32</sup> Reproduce from Table 11 of the standard the forms of contract which the municipality or municipal entity wishes to make use of.

<sup>33</sup> This sub-clause aligns with SCM Regulation 21 issued in terms of the PFMA.

<sup>34</sup> The clause aligns with SCM Regulation 35(3) issued in terms of the MFMA. <sup>36</sup> The clause aligns with SCM Regulation 35(3) issued in terms of the MFMA.

<sup>35</sup> State specific goals that may be promoted.

## 7.4 Payment of contractors<sup>36</sup>

The municipality shall settle all accounts within 30 days of invoice or statement as provided for in the contract.

## 7.5 Approval to utilise specific procurement procedures<sup>37</sup>

7.5.1 Prior approval shall be obtained for the following procurement procedures from the following persons, unless such a procedure is already provided for in the approved procurement strategy:

- a) Accounting officer shall authorise the use of the negotiated procedure above the thresholds provided in the standard.
- b) Accounting officer shall authorise the approaching of a confined market except where a rapid response is required in the presence of, or the imminent risk of, an extreme or emergency situation arising from the conditions set out in the standard and which can be dealt with or the risks relating thereto arrested within 48 hours; and
- c) the proposal procedure using the two-envelope system, the proposal procedure using the two-stage system or the competitive negotiations procedure<sup>36</sup>.

7.5.2 The person authorised to pursue a negotiated procedure in an emergency is accounting officer.

## 7.6 Receipt and safeguarding of submissions<sup>37</sup>

7.6.1 A dedicated and clearly marked tender box shall be made available to receive all submissions made.<sup>42</sup>

7.6.2 The tender box shall be fitted with two locks and the keys kept separately by two supply chain manager. Such personnel shall be present when the box is opened on the stipulated closing date for submissions.

## 7.7 Opening of submissions<sup>38</sup>

7.7.1 Submissions shall be opened by an opening panel comprising two people nominated by *[designated persons]* who have declared their interest or confirmed that they have no interest in the submissions that are to be opened.

7.7.2 The opening panel shall open the tender box at the stipulated closing time and:

---

<sup>36</sup> The Section 65 of the MFMA requires Accounting officers to settle all contractual obligations and pay all money owing within 30 days of receiving the relevant statement or invoice.

<sup>37</sup> This clause is necessary to enable the standard to be implemented.

- a) sort through the submissions and return those submissions to the box that are not yet due to be opened including those whose closing date has been extended;
- b) return submissions unopened and suitably annotated where:
  - 1) submissions are received late, unless otherwise permitted in terms of the submission data;
  - 2) submissions were submitted by a method other than the stated method,
  - 3) submissions were withdrawn in accordance with the procedures contained in SANS 10845-3; and.
  - 4) only one tender submission is received and it is decided not to open it and to call for fresh tender submissions;
- c) record in the register submissions that were returned unopened;
- d) open submissions if received in sealed envelopes and annotated with the required particulars and read out the name of and record in the register the name of the tenderer or respondent and, if relevant, the total of prices including VAT where this is possible;
- e) record in the register the name of any submissions that is returned with the reasons for doing so;
- f) record the names of the tenderer's representatives that attend the public opening;
- g) sign the entries into the register; and
- h) stamp each returnable document in each tender submission.

36 7.5.1 c) is an optional statement and needs to be deleted if this control is not required.

37 This section may not be necessary if the policy for general goods and services already covers these requirements. <sup>42</sup> Modify as necessary. Preferably describe the location and accessibility of the box.

38 This section may not be necessary if the policy for general goods and services already covers these requirements.

- 7.7.3 Each member of the opening panel shall initial the front cover of the submission and all pages that are stamped in accordance with the requirements of 7.7.3h).
- 7.7.4 Respondents and tenderers whose submissions are to be returned shall be afforded the opportunity to collect their submissions.
- 7.7.5 Submissions shall be safeguarded from the time of receipt until the conclusion of the procurement process.

## 7.8 Use of another organ of state's framework agreement<sup>38</sup>

The municipality may make use of another organ of state's framework contract which has been put in place by means of a competitive tender process and there are demonstrable benefits for doing so. The [Accounting officer shall make the necessary application to that organ of state to do so.

## 7.9 Insurances<sup>39</sup>

- 7.9.1 Contractors shall be required to take out all insurances required in terms of the contract.<sup>40</sup>
- 7.9.2 The insurance cover in engineering and construction contracts for loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with a contract shall in general not be less than the value stated in Table 4, unless otherwise directed by accounting officer.
- 7.9.3 Lateral earth support insurance in addition to such insurance shall be take out on a case by case basis.

**Table 4: Minimum insurance cover<sup>41</sup>**

Type of insurance	Value
Engineering and construction contracts - loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with a contract	Not less than R20 million
Professional services and service contracts - death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with a contract or damage to property	Not less than R10 million
Professional indemnity insurance	geotechnical, civil and structural engineering: R5,0 million electrical, mechanical and engineering: R3,0 million architectural: R5,0 million other R3,0 million

<sup>38</sup> This clause aligns with SCM Regulation 32 issued in terms of the MFMA and clause 7.3 of the Standard.

<sup>39</sup> Align with the manner in which the municipality or municipal entity wishes to manage risk.

<sup>40</sup> Alternatively state that the insurances shall be principal or employer controlled.

<sup>41</sup> Modify as necessary

**7.9.4** The insurance cover in professional services and service contracts for damage to property or death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with a contract shall not be less than the value stated in Table 4 for any one event unless otherwise directed by accounting officer.

**7.9.5** SASRIA Special Risk Insurance in respect of riot and associated risk of damage to the works, Plant and Materials shall be taken out on all engineering and construction works.

**7.9.5** Professional service appointments shall as a general rule be subject to proof of current professional indemnity insurance being submitted by the contractor in an amount not less than the value stated in Table 4 in respect of each claim, without limit to the number of claims, unless otherwise directed by the accounting officer in relation to the nature of the service that they provide.

**7.9.6** Municipality shall take out professional indemnity insurance cover where it is deemed necessary to have such insurance at a level higher than the levels of insurance commonly carried by contractors.

**7.9.7** Where payment is to be made in multiple currencies, either the contractor or the municipality should be required to take out forward cover. Alternatively, the prices for the imported content should be fixed as soon as possible after the starting date for the contract.

**7.10 Written reasons for actions taken**

**7.10.1** Written reasons for actions taken shall be provided by a .....

**7.10.2** The written reasons for actions taken shall be as brief as possible and shall as far as is possible, and where relevant, be framed around the clauses in the:

- a) SANS 10845-3, *Construction procurement - Part 3: Standard conditions of tender*, and, giving rise to the reason why a respondent was not short listed, prequalified or admitted to a data base; or
- b) SANS 10845-4, *Construction procurement - Part 4: Standard conditions for the calling for expressions of interest*; as to why a tenderer was not considered for the award of a contract or not awarded a contract.

**7.10.3** Requests for written reasons for actions taken need to be brief and to the point and may not divulge information which is not in the public interest or any information which is considered to prejudice the legitimate commercial interests of others or might prejudice fair competition between tenderers.

**7.11 Request for access to information<sup>42</sup>**

**7.11.1** Should an application be received in terms of Promotion of Access to Information Act of 2000 (Act 2 of 2000), the “requestor” should be referred to the municipality’s Information Manual which establishes the procedures to be followed and the criteria that

---

<sup>42</sup> Amend as necessary

have to be met for the “requester” to request access to records in the possession or under the control of the municipality’s.

**7.11.2** Access to technical and commercial information such as a comprehensive programme which links resources and prices to such programme should be refused as such information provides the order and timing of operations, provisions for time risk allowances and statements as to how the contractor plans to do the work which identifies principal equipment and other resources which he plans to use. Access to a bill of quantities and rates should be provided in terms of the Act.