# ETHEKWINI MUNICIPALITY: SUPPLY CHAIN MANAGEMENT POLICY, 2025

**Adopted by Council on: 30-09-2025**

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| POLICY REVIEW MANAGEMENT INFORMATION | |
|---|---|
| **Contact Person** | **Director: Procurement and SCM Directorate** |
| **Approval Authority** | **EThekwini Municipality Council OR Executive Committee** |
| **Current date of Approval** | **30-09-2025** |
| **Anticipated date of next review** | **2026** |

## 1.1 PREAMBLE

1.1.1 Section 111 of the Municipal Finance Management Act requires the Municipality and its municipal entities to adopt and implement a Supply Chain Management Policy, which gives effect to the requirements of the Act.

1.1.2 Section 2 of the Preferential Procurement Policy Framework Act requires the Municipality to determine its own Preferential Procurement Policy and to implement it within the framework prescribed, this requirement is given effect in clause 52 of this Policy.

1.1.3 The Municipality is further committed to combating fraud, corruption, favouritism and irregular practices in Supply Chain Management by blacklisting persons who have been found to have engaged in such practices.

## 1.2 Purpose

1.2.1 The purpose of this Policy is:

(a) to implement a Supply Chain Management system in accordance with section 217 of the Constitution which is:
   (i) fair;
   (ii) equitable;
   (iii) transparent;
   (iv) competitive; and
   (v) cost effective;

(b) to provide for procedures and processes for the procuring of goods, services or works;

(c) to provide for procedures and processes for the disposal of goods no longer needed;

(d) to provide for procedures and processes for the selection of contractors to provide assistance in the provision of municipal services other than where Chapter 8 of the Municipal Systems Act applies;

(e) to provide for provision of municipal services through a service delivery agreement with a natural or juristic person which is not an organ of state;

(f) to ensure consistency with other applicable legislation and regulations thereto;

(g) to give effect to the Preferential Procurement Policy objectives of the Municipality;
(h) to ensure optimal service delivery by facilitating effective and efficient procurement;
(i) to combat fraud, corruption favouritism and irregular practices in Supply Chain Management by blacklisting persons who have been found to have engaged in such practices;
(j) to create a Blacklisting Committee to implement the provisions of this Policy;
(k) specify guidelines to prevent the municipality from doing business with persons who abuse the Supply Chain Management system by engaging in unlawful and/or irregular practice(s);
(l) to specify guidelines that will prevent the municipality from doing business with persons who default on performance wilfully or negligently;
(m) to develop uniform criteria and a fair process for blacklisting such persons;
(n) to discourage persons who are blacklisted from re-entering the procurement arena by setting up new business entities and by using the existing business entities to tender for the public sphere of work, during the period which they are blacklisted;
(o) to give the Municipality power to deregister blacklisted persons from its suppliers database;
(p) to create a database of persons who are blacklisted and to publish the list on the Municipality's website so as to expose and publicise the identity of the blacklisted person; and
(q) to deal with the conduct of officials who are found to have engaged in unlawful or irregular practices together with such persons, to be dealt with in terms of internal disciplinary procedure.

**1.3 PROBLEM STATEMENT**

1.3.1 The Municipality is committed in terms of the Constitution and its procurement policies to have a supply chain policy that is fair, equitable, transparent, competitive and cost effective and to combat irregular practices in the tendering process in order to acquire the best goods and services for the Municipality.

1.3.2 Section 217(1) of the Constitution provides that when an organ of state in the national, provincial or local sphere of government contracts for goods and services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

1.3.3 Section 111 of the Municipal Finance Management Act requires the Municipality to develop and implement this Policy in order to give effect to the provisions of the Act.

1.3.4 The Preferential Procurement Policy Framework Act, 2000 (No. 5 of 2000) provides for the framework for a procurement policy which allows for categories of preference in the allocation of contracts, together with consideration of the provisions of the Broad-Based Black Economic Empowerment Act, 2003 (No. 53 of 2003).

1.3.5 The Governments Preferential Procurement Policy objectives include increased usage of local resources; redressing the skewed employment and ownership though the BBBEE Act; the creation of job opportunities and poverty alleviation; stimulation of skills development and transferring of skills and fast-tracking the growth of and ensuring the sustainability of SMME's.

1.3.6 In establishing the Blacklisting Committee and applying its policy and guidelines, the Municipality will be in compliance with the requirements of the Municipal Finance Management Act and the Supply Chain Management Regulations.

1.3.7 In terms of the Supply Chain Management Regulation 11(1) and (2), where a municipality procures goods and services otherwise than through its supply chain management system, it must make that fact public, the name of the supplier and the kind of goods or services procured must be made public.

**1.4 Definitions**

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

**"Accounting Officer"** must mean the City Manager, or Acting City Manager, of the eThekwini Municipality as per section 60 of the MFMA. In the case of Municipal Entities-Must mean the Chief Executive Officer or Acting Chief Executive Officer as per section 93 of the MFMA;

"**ad-hoc Bid Evaluation Committee"** must mean a Bid Evaluation Committee, led by SCM; constituted by the Accounting Officer or his / her delegate, for each tender;

**"ad-hoc Bid Specification Committee"** must mean a Bid Specification Committee, led by SCM; constituted by the Accounting Officer or his/ her delegate, for each tender;

**“Amendment**” must mean a change made to the value of the contract beyond the contract authority and/or the duration of the contract beyond the contract authority and/or scope changes in the contract and/or contracting arrangements beyond the contracting allowances. An amendment may be a minor amendment or a major amendment;

**“Applicant”** must mean a Department of eThekwini Municipality;

**“Award”** must mean the acceptance of a bid or proposal;

**“B-BBEE**” must mean broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act 53 of 2003;

“**B-BBEE Status Level of Contributor**” must mean 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;

**“B-BBEE strategies”** must mean the procurement strategies that incorporate preferential procurement goals as defined in the Preferential Procurement Policy Framework Act;

**"Black People"** must mean a generic word which means Africans, Coloured and Indians:

(a) who are citizens of the Republic of South Africa by birth or descent;
(b) who became citizens of the Republic of South Africa by naturalization- before 27 April 1994; or
(c) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date.

**“Blacklisting Authority”** must mean the Blacklisting Committee;

**“Blacklisting Period”** must mean the period for which the blacklisted person is barred from participation in the procuring processes of the Municipality;

**“Blacklisting”** must mean the act of disqualifying a person or an entity from participating in or continuing to participate in the procurement process of the Municipality;

**"Capital Assets"** must mean all assets with a life cycle of greater than one year and above the capitalization threshold (where applicable). For example, this would include property, plant and equipment (infrastructure network, furniture, motor vehicles, computer equipment, etc.), intangible assets, and investment property;

**"Complaint"** must mean a written grievance, excluding an Objection, brought a person:

(a) in relation to the technical requirements contained in the bid specification or in the request for quotations;
(b) in relation the adjudication criteria set out in the bid specification or in the request for quotations;
(c) in relation to tender conditions set out in the bid specification or in the request for quotations;
(d) In relation to terms and conditions contained in bid specification documents or in the request for quotations;
(e) in relation to the implementation of a contract already awarded through the SCM process;
(f) requesting an enquiry relating to fraud or corruption during the awarding stage or during the execution of the contract; or
(g) any other matter which is not specifically mentioned arising from the implementation of the supply chain management implementation system,

**"Chief Financial Officer"** must mean the Executive Director: Treasury, or Acting Executive Directorr: Treasury, of the eThekwini Municipality. In the case of Entities must mean the Chief Financial Officer or Acting Chief Financial Officer;

**"Competitive bid"** must mean a bid in terms of a competitive bidding process;

**"Competitive bidding process"** must mean a competitive bidding process referred to in clause 12(1)(c) of this Policy;

**"Contingency"** must mean an amount included in the contract authority to cover the cost of unforeseen circumstances and must be used in line with respective industry norms and standards. This percentage must be appropriately motivated and approved at contract approval stage via the Bid Specification Committee, or Bid Adjudication Committee (where appropriate);

**"Contract"** must mean a legally binding agreement between the Municipality and the Contractor for the latter to provide goods, services, engineering and construction works, or professional services in return payment by the former;

**"Contract Authority"** must mean the total contract award value as approved, or supported, by the Bid Adjudication Committee. This is inclusive of escalations and the normal contingency allowance for variations under the general conditions of contract, and shall be taken from the amount approved at the Bid Specification Committee, or Bid Adjudication Committee;

"**Contract Manager"** must mean the delegated official to manage and oversee a contract;

**"Contract Period"** must mean the duration of the contract as set out in the contract;

***"*Contract Value"** must mean the total value that is exclusive of allowances such as contingencies and escalations.

**"Contractor"** must mean any person, body, or legal entity that is under contract to the Municipality for the performance of the contract. A Tenderer whose tender has been accepted becomes a Contractor;

**"Control"** must mean the possession and exercise of legal authority and power to manage the assets**,** goodwill and daily operations of a business and the active and continuous exercise of appropriate managerial authority and power in determining the policies and directing the operations of the business;

**"Co-Operatives"** must mean an autonomous association of persons united voluntarily to meet their common economic and social or cultural needs and aspiration through a jointly owned and democratically controlled enterprise organized and operated on co-operative principles or is a social enterprise that applies commercial strategies to maximize improvements in financial, social and environmental well-being.

**"Day(s)"** must mean, unless otherwise specified, calendar days. Days must be calculated by excluding the first day and including the last day;

**"Delisting"** must mean the removal of a person from the eThekwini Municipality database of blacklisted persons after the period of blacklisting has expired;

**"Demand Management"** must mean ensuring that the resources required to fulfil the needs identified in the strategic plan of the Municipality are delivered at the correct time, price and place and that the quantity and quality satisfies those needs, as part of this element of SCM, a total needs assessment should be undertaken, this analysis should be included as part of the strategic planning process of the institution and hence will incorporate the future needs;

**"Disabled"** must mean in respect of a natural person, a permanent impairment of a physical, intellectual, or sensory function which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being;

**"Eligibility Documents"** must mean:

(a) A valid Tax Clearance certificate or Tax Compliance Status with a PIN number issued by the South African Revenue Service and Municipal Fee Declarations and certificates certifying that the bidder has no undisputed commitments for municipal fees due to any municipality or overdue for a prescribed period;
(b) declarations by tenderers certifying the correctness of information and certifying validity of authority to act (Regulation 14 of the Preferential Procurement Policy Framework Act 5 of 2000);
(c) certificates declaring details of Private or business interests in terms of Regulation 46(e) of the Supply Chain Management Regulations;
(d) proof of registration with the CIDB (Construction Industry and Development Board), where applicable;
(e) proof of Registration of a Company, close Corporation, Co-operative or any other document requiring formal registration;
(f) any partnership agreement, or agreement of Joint Venture, Memorandum of Articles of A Company, Association Agreement or any other agreement establishing a business entity;
(g) a statement setting out details of work undertaken in the Government/public sector/ organs of state in the past five years, including particulars of persons who assessed the work and who can be contacted to verify completion/ non completion of the contract;
(h) audited financial statements where applicable, or books of account; and
(i) any other document prescribed by law or specifically requested by the eThekwini Municipality,

"**emergency**" must mean a serious or unexpected situation that poses an immediate risk to health, life, property or environment which calls the Municipality to action and there is insufficient time to invite competitive bids;

**"Executive Director"** must mean a partner in a partnership, a director of a company established in terms of the Companies Act, 1973 (Act 61 of 1973) and the new Companies Act. 2008 (No. 66 of 2008) or a member of a close corporation registered in terms of the Close Corporation Act, 1984 (No. 69 of 1984) who, jointly and severally with their other partners, co-directors or co-members, as the case may be, bears the risk of business and takes responsibility for the management and liabilities of the partnership, company, or close corporation;

**"Exempted Micro Enterprise"** must mean a bidder with an annual total revenue of R10 million or less (in terms of the Broad-Based Black Economic Empowerment Act);

**"Final award"** must mean in relation to bids or quotations submitted for a contract, means the final decision on which bid or quote to accept;

**"Formal written price quotation"** must mean quotations referred to in clause 12(1)(b) of this Policy and shall include any offer to purchase immovable property;

**"Fronting"** must mean claiming preference points, status or goals of any of the target groups listed in the eThekwini Municipality's Targeted Procurement Policy and/or tendering documents where such claim is false;

**"Goods"** must mean both movable and immovable property and real rights therein;

***"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;

"**Improper Practice**" shall include, but not be limited to:

(a) fronting;
(b) misrepresentation on eligibility documents or Application forms or any other returnable document which contains information which will have a material bearing on the award;
(c) attempting to bribe /influence an official or a political office bearer of this municipality , whether by monetary inducement or non- monetary inducement , whether such official or political office

bearer is directly or indirectly involved with the procurement process, or may exert influence over any decision maker / decision making structure / SCM practitioner /Consultant, or any official in order to ensure that such entity/person obtains an unfair advantage in the procurement process and/or is awarded a tender as a result of such conduct, or retains a tender despite such conduct;

(d) deliberately omitting information, or misrepresenting information which could have a bearing on the award of a tender;

(e) committing of fraud or extortion in relation to the bidding process;

(f) abuses the Procurement System by obtaining insider information in relation to the assessment or evaluation of a bid not yet awarded by engaging with supply chain management officials and/or any other official and/or politician/s, as communications on bids under evaluation, is prohibited and that the evaluation is confidential until an award/ non award is made. It shall be presumed that a person in possession of insider information has engaged with officials or politicians, where such information is not obtained via a Promotion of Access to Information Act application or is not in the public domain or not released in writing by a duly authorized official;

(g) collusive tendering;

(h) Restrictive horizontal and vertical Practices as defined by the Competition Act, 1998 (No. 89 of 1998);

(i) committing an exclusionary act as defined by the Competition Act, 1998 (No. 89 of 1998); and

(j) any other activity which is not specifically set out in this definition, but constitutes an unlawful or unfair/ improper business practice;

**"In the service of the state"** must mean:

(a) a member of any municipal council, any provincial legislature or the National Assembly of the National Council of Provinces;

(b) a member of the board of directors of any Municipal Entity, excluding non-executive board members of a Municipal Entity but only in relation to supply chain awards by a Municipal Entity that they do not serve on;

(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;

(e) a member of the accounting authority of any national or provincial public entity; and

(f) an employee of Parliament or a provincial legislature,

**"Infrastructure"** must mean:

(a) immovable assets which are acquired, constructed or which results from construction operations or
(b) movable assets which cannot function independently from purpose built immovable assets.

**"Large Entities"** must mean a bidder with an annual total revenue in excess of R50 million (in terms of the Broad-Based Black Economic Empowerment Act);

**"Long term contract"** must mean a contract with a duration period exceeding one year;

**"List of accredited prospective providers"** must mean the list of accredited prospective providers which a municipality or Municipal Entity must keep in terms of clause 14 of this Policy;

**"Local Content/Resources"** must mean where preference points shall be allocated in terms of the location of the enterprise where applicable in the following order of preference: eThekwini Municipality Area (EMA); KwaZulu-Natal (KZN); South Africa (SA);

***"Lowest acceptable tender"*** means a tender that complies with all specifications and conditions of tender and that has lowest price compared to other tenders;

**"Major Amendment"** must mean an amendment to a contract which is not a minor amendment;

**"Manufacturer"** must mean a firm that operates or maintains a factory or establishment that produces on its premises materials or supplies required by the Prime Contractor for the performance of the Contract;

**"Military Veteran"** must mean any South African Citizen who:

(a) rendered military service to any military organisations, statutory and non-statutory, which were involved on sides of South Africa's Liberation war from 1960 to 1994;
(b) served in the Union Defence Force before 1960; or

(c) became a member of the new South African National Defence Force after 1994,

**"Minor Amendment"** must mean a change made to the value of the contract beyond the contract authority and where the change is up to 20% of the original contract authority for construction related goods, services and/or infrastructure projects. A change of only up to 15% of the original contract authority relating to goods and/or services is allowed to be considered a minor amendment";

**"Municipality"** must mean the eThekwini Municipality or any municipal Entity, whichever is applicable;

**"Non-Performance"** must mean default on a contract in the public sector by wilfully or negligently but not limited to:

(a) Failing to perform at all;
(b) Failing to complete work timeously without good reason;
(c) Delivering defective performance, i.e. poor workmanship or substandard materials;
(d) Being in breach of a material term of the contract;
(e) Failing to achieve a specified sub-contracting or performance target as set out in the tender document/s; and
(f) despite being given written notice to remedy non-performance.

**"Objection"** must mean a written grievance brought by an unsuccessful bidder against the award of a bid to another/other tendering entities, this includes awards via the quotation management system and the bid committee system;

**"Objection Authority"** must mean an independent and impartial person appointed by the Accounting Officer in terms of Regulation 50 of the Local Government: Municipal Supply Chain Regulations;

**"Official"** must mean a full-time employee, and excludes any person employed on a part time basis or a person earning a stipend, provided that such person be verified and cleared in terms of conflicts of interest by the COI Task Team, **"employee"** shall have a corresponding meaning;

**"Other applicable legislation"** must mean any other legislation applicable to municipal supply chain management, including, but not limited to:

(a) the Preferential Procurement Policy Framework Act, (PPPFA) 2000 (Act No. 5 of 2000);

(b) the Broad-Based Black Economic Empowerment Act, (BBBEEA) 2003 (Act No. 53 of 2003); and
(c) the Construction Industry Development Board Act, (CIDBA) 2000 (Act No.38 of 2000),

**"Owned"** must means having all the customary incidents of ownership, including the right of disposition, and sharing all the risks and profits commensurate with the degree of ownership interests, as demonstrated by an examination of the substance, rather than the form of ownership arrangements;

"**Person"** must mean a person including a juristic person and tenderer, supplier, service provider, contractor and business entity must have a corresponding meaning;

**"Preferred bidder"** must mean the most responsive and recommended bidder but whose tender and award has not been confirmed"

**"PFMA"** must mean Public Finance Management Act,1999 (Act No.1 of 1999);

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

**"Previously Disadvantaged people"** must mean persons or category of persons historically disadvantaged by unfair discrimination on the basis of race, gender or disability;

**"Prospective Provider"** must mean a person, business or enterprise registered with the Municipality in respect of specified categories of goods or services for which price quotations are invited as and when required;

**"Prime Contractor"** must mean a contractor who contracts with the Municipality as the principal or main contractor or as a joint venture partner to such contractors, to provide goods, services and works;

**"Project Authority"** must mean the authority to incur expenditure on the project as budgeted for and approved by Council;

**"Qualifying Small Enterprise"** must mean any enterprise with annual total revenue of between R10 million and R50 million;

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

**"Regulations"** must mean the Local Government: Municipal Supply Chain Management Regulations of 2005, as amended from time to time;

**"Reporting Officer"** must mean a delegated official who monitors the performance of a contractor;

**"Restrictive Horizontal Practice"** must have the same meaning as set out in the Competitions Act 89 of 1998;

**"Restrictive vertical Practice"** must have the same meaning as set out in the Competitions Act 89 of 1998;

**"Senior Manager"** must mean any official of the eThekwini Municipality with the title Senior Manager, Deputy Director, Director , Executive Director, Chief Financial Officer, City Manager, or who in either of these positions in an official acting capacity or the designated office which may supersede the title of "senior manager";

**"Sole Supplier"** must mean that there exist one service provider or supplier manufacturer in the market, with sole distribution rights and/or patent rights.

***"*Specific goals*"*** means specific goals as contemplated in section 2(1)(d) of the PPPFA 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 Reconstruction and Development Programme

**"SMMEs"** must mean Small, Medium and Micro Enterprises as defined in the National Small Business Act 102 of 1996;

**"Sub-contracting"** must mean the value of work to be subcontracted to enterprises or businesses;
**"Supplier"** must mean a firm that:

(a) owns, operates or maintains a store, warehouse or other establishment in which materials or supplies are bought, kept in stock and regularly sold to the public in the usual course of business; and
(b) engages as its principal business, and in its own name, in the purchase and sale of the products,

***"*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;

**"The Act"** must mean the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

**"Treasury guidelines"** must mean any guidelines on supply chain management issued by the Minister in terms of section 168 of the Act;

**"Unbundling of contracts"** must mean the practice of dividing large projects or contracts into smaller, more manageable components or contracts to ensure a broader economic empowerment opportunity among suppliers, service providers, contractors of various sizes, and support of historically disadvantaged individuals (HDIs);

**"Unconditional discounts"** must mean that the Municipality must, when calculating comparative prices, take into account any discounts which have been offered unconditionally.

**"Unsolicited Bid"** must mean any proposal/concept received by an institution outside its normal procurement process that has not been a solicited bid (a submission that must be innovative, unique and provided by a sole supplier);

**"Variation"** must mean a change to a provision/s in a contract, excluding the changes referred to in amendments in the definition of this Policy;

**"Works"** must mean engineering and construction works; and

**"Youth"** must mean South African citizens between the ages of 18 and 35.

## 2. Supply Chain Management Policy

2.1 The Municipality resolves in terms of section 111 of the Act to have and implement a Supply Chain Management Policy that:

(a) gives effect to section 217 of the Constitution;
(b) is fair, equitable, transparent, competitive and cost effective;
(c) complies with:
    (i) the regulatory framework prescribed in Chapter 2 of the Regulations; and
    (ii) any minimum norms and standards that may be prescribed in terms of section 168 of the Act,
(d) is consistent with other applicable legislation;
(e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
(f) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.

2.2 The Municipality may not act otherwise than in accordance with this Policy when:

(a) procuring goods, services or works;
(b) disposing of goods no longer needed;
(c) selecting contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
(d) selecting external mechanisms referred to in section 80(1)(b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of this Act.

2.3 Clauses 2.1 and 2.2 above do not apply in the circumstances described in section 110(2) of the Act except where specifically provided otherwise in this Policy.

## 3. Adoption and Amendment of the Supply Chain Management Policy

3.1 The Accounting Officer must:

(a) at least annually review the implementation of this Policy, by way of a revised policy document or annual report on the implementation of this Policy; and
(b) when he/she considers it necessary, submit proposals for the amendment of this Policy to Council.

3.2 If the Accounting Officer submits a draft policy to Council that differs from the model policy, the Accounting Officer must ensure that such draft policy complies with the Regulations.

3.3 The Accounting Officer must report any deviation from the model policy to the National Treasury and the relevant provincial treasury.

3.4 When amending this Policy the need for uniformity in supply chain practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.

3.5 The Accounting Officer must in terms of section 62(1)(f)(iv) of the Act take all reasonable steps to ensure that the Municipality has and implements this Policy.

## 4. Delegation Of Supply Chain Management Powers and Duties

4.1 Council hereby delegates such additional powers and duties to the Accounting Officer so as to enable the Accounting Officer:

(a) to discharge the supply chain management responsibilities conferred on Accounting Officers in terms of Chapter 8 or 10 of the Act and this Policy;
(b) to maximise administrative and operational efficiency in the implementation of this Policy;
(c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this Policy; and
(d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.

4.2 Sections 79 and 106 of the Act apply to the sub delegation of powers and duties delegated to an Accounting Officer in terms of clause 4.1 above.

4.3 Council and the Accounting Officer may not delegate or sub-delegate any supply chain management powers or duties to a person who is not an official of the Municipality or to a committee which is not exclusively composed of officials of the Municipality.

4.4 Clause 4 may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in clause 26 of this Policy.

**5. Sub delegations**

5.1 The Accounting Officer may in terms of section 79 or 106 of the Act sub-delegate any supply chain management powers and duties, including those delegated to the Accounting Officer in terms of this Policy, but any such sub-delegation must be consistent with clauses 5.2 and 5.5 of this Policy.

5.2 The power to make a final award:

(a) above R10 million (VAT included) may not be sub-delegated by the Accounting Officer;

(b) not exceeding R10 million (VAT included), is sub-delegated only to the Bid Adjudication Committee; and

(c) not exceeding R750 000 (VAT included), may be sub-delegated in terms of the supply chain management code of delegations approved by the Accounting Officer.

5.3 In the event of a non-award of a bid exceeding R10 million (VAT included), Accounting Officer must approve such non-award since the power to make decision on procurement above R10 million (VAT included) may not be sub-delegated.

5.4 An official or Bid Adjudication Committee to which the power to make final awards has been sub-delegated in accordance with clause 5.2 above, must ensure that within five days of the end of each month a written report containing particulars of each final award made by such official or Committee during that month is submitted to the official referred to in clause 5.5 below, including:

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

5.5 A written report referred to in clause 5.4 above, must be submitted to the Accounting Officer, and all contract awards with a value exceeding R100 000 (VAT included) must be captured on National Treasury's Contracts Database via the SCM Directorate.

5.6 Clauses 5.4 and 5.5 above, do not apply to procurements out of petty cash.

5.7 This clause may not be interpreted as permitting an official to whom the power to make final awards has been sub-delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in clause 26 of this Policy.

5.8 No supply chain management decision making powers may be delegated to an advisor or consultant.

5.9 All other delegations in terms of the supply chain management code of delegations as amended from time-to-time.

**6. Oversight Role of Council**

6.1 Council must maintain oversight over the implementation of this Policy.

6.2 For purposes of such oversight, as contemplated in clause 6.1 above, the Accounting Officer must:
(a) within 30 days of the end of each financial year, submit a report on the implementation of this Policy and of any municipal Entity under its sole or shared control, to Council; and
(b) whenever there are serious and material problems in the implementation of this Policy, immediately submit a report to Council.

6.3 The Accounting Officer must, within 10 days of the end of each quarter, submit a report on the implementation of this Policy to the Mayor.

6.4 All reports in respect of this clause must be made public in accordance with section 21A of the Municipal Systems Act.

## 7. Procurement and Supply Chain Management Directorate

7.1. The Accounting Officer must establish a Procurement and Supply Chain Management Directorate to implement this supply chain management policy.

7.2. The Procurement and Supply Chain Management Directorate must, where possible, operate under the direct supervision of the Chief Financial Officer or an official to whom this duty has been delegated in terms of section 82 of the Act.

7.3. Wherever possible, all procurement and supply chain management functions and activities are to be performed by the Procurement and Supply Chain Management u Directorate under the Director: Procurement and Supply Chain Management Directorate.

7.4. Accounting Officer / Chief Financial Officer or his/ her delegate may from time-to-time issue guiding circulars to allow for enhanced implementation of this Policy.

## 8. Training Of Supply Chain Management Officials

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

## 9. Format of supply chain management

9.1 This Policy prescribes that the following systems must be in place:

(a) demand management;
(b) acquisition management;
(c) logistics management;
(d) disposal management;
(e) risk management; and
(f) performance management.

## 10. System of Demand Management

10.1 All Directors of Directorate must submit as part of the Budget Approval process a procurement plan:

(a) containing all planned procurement; and

(b) which must be approved by the Executive Director and Director of a Directorate prior to its submission before end of March of each financial year.

10.2 A central contracts register must be maintained for all contracts within the Municipality. Items may only be permitted onto the register if contained within an approved procurement plan, emergencies are excluded.

10.3 Municipal Entities must submit the procurement plans referred to above within the same timeline.

10.4 The relevant information must be furnished in the format contained in a standardized Procurement Plan Template to be issued by the Director: Procurement and Supply Chain Management.

10.5 The appropriate method of procurement of goods, services and engineering & construction works for all contracts greater than the quotation threshold must be approved by the Bid Specification Committee.

10.6 Contracts exceeding R10 million (VAT inclusive) must be accompanied by project-specific procurement and B-BBEE strategies when presented to the Bid Specification Committee, these must be discussed and agreed between multi-disciplinary teams beforehand.

## 11. System of Acquisition Management

11.1 An official or Bid Adjudication Committee to which the power to make final awards has been sub- delegated must ensure that:

(a) goods and services are procured by the Municipality in accordance with authorised processes only;

(b) expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;

(c) the threshold values for the different procurement processes are complied with;
(d) bid specification documentation, evaluation and adjudication criteria, and general conditions of applicable contracts, are in accordance with any applicable legislation; and
(e) procurement circulars or guidelines issued by the National or Provincial Treasury and specifically adopted by Council are taken into account.

11.2 When procuring goods or services in terms of section 110(2) of the Act, the accounting officer must make public the fact that such goods or services are procured otherwise than through the Municipalities supply chain management system, including:
(a) the kind of goods or services; and
(b) the name of the supplier.

11.3 Lease contract for office accommodation which exceed beyond thirty-six months period must comply with the provisions of section 33 of the Act unless the period beyond thirty six months is not firm contractual commitment (e.g. renewal at the discretion of the municipality with no financial commitment) and the Municipality shall have the right to review the lease at every three year interval to ensure market related rental.

## 12. Range of procurement processes

12.1 The procurement of goods and services through this Policy can only be undertaken by way of:
(a) petty cash purchases, up to a transaction value of R2000 (VAT included);
(b) formal written price quotations for procurements of a transaction value over R2000 up to R750 000 (VAT included); and
(c) a competitive bidding process for:
(i) procurements above a transaction value of R750 000 (VAT included); and
(ii) the procurement of long-term contracts.

12.2 An electronic quotes management system is deemed to meet the SCM regulatory requirements.

12.3 Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of this Policy.

12.4 When determining transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.

## 13. General Preconditions for Consideration of Written Quotations or Bids

13.1 A written quotation or bid may not be considered unless the service provider who submitted the quotation or bid:

(a) has furnished that service provider's:

(i) full name;

(ii) identification number or company or other registration number;

(iii) tax reference number and VAT registration number, if any; and

(iv) tax clearance or tax compliance status from the South African Revenue Service that the provider's tax matters are in order; and

(b) has made the following declarations, where necessary:

(i) declaration of Interest (MBD4);

(ii) declaration for procurement above R10 million (all applicable taxes included) (MBD5);

(iii) preference points claim (MBD6.1);

(iv) declaration for local production and content, where applicable and specified (MBD6.2);

(v) declaration of bidder's past supply chain management practices (MBD8);

(vi) certificate of independent bid determination (MBD9);

(vii) declaration of municipal fees; and

(viii) tax certificate requirements (MBD2).

13.2 The Municipality must ensure that in instances where a Tax Clearance certificate or Tax Compliance Status with a PIN number is valid at the time of tender, but expires during the evaluation period, the preferred bidder must furnish the Municipality within a period of seven (7) days as stipulated by the Bid Committees with a valid tax clearance certificate or Tax Compliance Status with a PIN number.

## 14. Lists of Accredited Prospective Providers

14.1 The Accounting Officer must:

(a) keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements of the Municipality through formal written price quotations; and are in keeping with the National Treasury Centralized Supplier Database;
(b) at least once a year through newspapers commonly circulating locally, the website and any other mediums of communication, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
(c) specify the listing criteria for accredited prospective providers; and
(d) disallow the listing of any prospective provider whose name appears on the National Treasury databases as a person/company prohibited from doing business with the public sector, or who is prohibited in terms of clause 44 of this Policy or is blacklisted/restricted in terms of this Policy.

14.2 The list of accredited prospective providers must be:
(a) updated at least quarterly to include any additional prospective providers and any new commodities or types of services;
(b) allowed to submit applications for listing at any time and must in the first instance be registered with the Centralized National Treasury Database; and
(c) compiled per commodity and per type of service.

14.3 Prospective providers are allowed to amend the list of commodity and type of service at any given point in time.

14.4 The list must be compiled per commodity and per type of service.

14.5 No quotations may be solicited from any supplier/service provider/contractor who is not registered and verified by the National Treasury Central Supplier Database and by the appropriate branch on the eThekwini Municipality Central Supplier Database or is in a position to be so before the award.

14.6 The function of implementation and management of the list of accredited prospective providers is delegated to the Director: Procurement and Supply Chain Management or delegate.

## 15. Petty Cash Purchases

15.1 The conditions for the procurement of goods by means of petty cash purchases referred to in clause 12.1(a) of this Policy are as per the Municipality's Financial Regulations.

15.1.1 Petty cash limits:

(a) the purchase of a single item must not exceed an amount R2000 (two thousand rand);

(b) monthly maximum value of the total fund shall not exceed R5000 (five thousand rand); and

(c) in instances where line department needs to hold a central float for a number of depot or branches which may exceed petty cash fund limit, a detailed motivation from the respective Director of a Directorate must be addressed to Senior Manager: Reconciliation and Deputy Director: Internal Control for the approval of the petty cash limit in 15.2.1(a) and (b) below.

15.2 Restriction on use:

15.2.1 All petty cash expenses must be for valid business purposes and sundry in nature, Petty Cash fund cannot be used for the following:

(a) purchase of goods already covered by a contract secured under the supply chain management process;

(b) to reimburse an official using petty cash without prior management approval;

(c) pay personal services that would be considered to either wages or independent contractor payments such as photography, entertainers, caterers, lectures etcetera.

(d) reimburse expenditure greater than R2000 (two thousand rand);

(e) splitting of items so that they fall within the prescribed limit is not allowed;

(f) to reimburse an official using petty cash for purchases exceeding the departments approved petty cash fund limit per month;

(g) pay subsistence and travel expenditures excluding toll fees;

(h) purchase capital items; and

(i) make salary advances or personal loans.

15.2.2 Items not included in clause 15.2.1(a) to (i) above, may be procured through petty cash provided such purchase supports the operations of the respective department.

15.3 Petty cash reconciliations:

15.3.1 Petty cash reconciliation must be performed by the approved petty cash custodian and submitted to the Supervisor / Line Manager, for approval, on a monthly basis.

15.3.2 The cash on hand, petty cash vouchers and the Electronic Funds Transfer (EFT) remittance advices or cash payment advices must reconcile to the departmental limit as set in clause 15.1.1(b).

15.3.3 In the case where there is a shortage, the custodian must be liable to settle the debt within 48 hours but that does not prevent disciplinary processes where appropriate.

15.3.4 The records of approved reconciliations must be filed and locked in a safe where the petty cash fund is kept at the end of each day.

## 16. Formal Written Price Quotations

16.1 The conditions for the procurement of goods or services through formal written price quotations are:

(a) quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the Municipality or Municipal Entity;

(b) quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria in this Policy required by clause 14.1(b) and (c); If the initial invitation for quotations received is less than three in number, these must remain unopened until further quotes are re-invited, authority to invite further quotes must be received from the Director: Procurement and Supply Chain Management (SCM) Directorate;

(c) the Director: Procurement and SCM may in cases of urgency and emergency approve proceeding with the quotation without obtaining the minimum of three required quotations;

(d) If the invitation for quotations is not done in the course of normal procurement (i.e. in accordance with the electronic quotations system for goods and services under R750 000 (seven hundred and fifty thousand rand) (VAT included) the following shall apply:

(i) if quotations received results in less than three quotes in number, the Municipality in its discretion may re-open the invitation for a further period as it may deem appropriate;

(ii) the official with delegated authority to invite quotation must get written consent of the Director of the Directorate to re-invite further quotations: Provided that quotes already received are:

(aa) kept in a secure place; and

(bb) remain unopened until the second batch of quotes are received,

(iii) all quotes received must be opened and evaluated at the same time;

(iv) bidders who have submitted quotations in the first instance must not re-quote as their bid offers will be automatically carried over; and

(v) in the event that the above procedures still result in less than three quotes the reasons must be recorded and approved by the Accounting Officer or Director: Procurement and Supply Chain Management Directorate,

(e) if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the Chief Financial Officer or by the Director: Procurement and Supply Chain Management Directorate; and

(f) the Accounting Officer must record the names of the potential providers and their written quotations.

16.2 A designated official referred to in subclause 16.1(c) must within three days of the end of each month report to the Chief Financial Officer on any approvals given during that month by that official in terms of that subclause.

16.3 An electronic quotes management system is deemed to meet the SCM regulatory requirements.

16.4 If it is not possible to obtain at least three quotations, the quotations must be re-advertised for a further period, after which the reasons must be recorded and approved by the Chief Financial Officer or an official designated by the Chief Financial Officer.

## 17. Procedures for Procuring Goods or Services through written or verbal quotations and Formal Written Price Quotations

17.1 The operational procedure for the procurement of goods or services through formal written price quotations are:

(a) all goods or services in excess of R30 000 (thirty thousand rand) (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of this clause, be advertised for at least seven days on the website and an official notice board of the Municipality or municipal Entity unless a shorter period of advertisement is approved by the Chief Financial Officer or his / her delegate;

(b) when using the list of accredited prospective providers the Accounting Officer must promote ongoing competition amongst providers, including by inviting providers to submit quotations on a rotation basis;

(c) offers received must be evaluated on a competitive basis taking into account unconditional discounts;

(d) offers below R30 000 (thirty thousand rand) (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods or services and the lowest price;

(e) acceptable offers above R30 000 (thirty thousand rand) (VAT included) are subjected to the preference points system and must be awarded to the most responsive offer;

(f) the Accounting Officer must take all reasonable steps to ensure that the procurement of goods and services through formal written price quotations is not abused;

(g) the Accounting Officer or Chief Financial Officer must on a monthly basis be notified in writing of all and formal written price quotations accepted by an official acting in terms of a sub-delegation; and

(h) municipal requirements of proper record keeping must always be maintained.

## 18. Competitive Bidding Process

18.1 Goods or services above a transaction value of R750 000 (seven hundred and fifty) (VAT included) and long-term contracts may only be procured through a competitive bidding process, subject to clause 11.2 above.

18.2 For contracts in excess of three years, the requirements of section 33 of the Act must be complied with in full.

18.3 As a general requirement for goods or services above an estimated transaction value of R750 000 (seven hundred and fifty) (VAT included), may not 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.

However, the unbundling of large projects, where appropriate, into smaller contracts to ensure that a spread of opportunities is made available to suppliers, service providers and construction contractors of various sizes is permitted, but only with the approval of the Bid Specification Committee.

18.4

The Municipality reserves the right to spread the procurement of goods and services that are below a R750 000 (VAT included) to various suppliers, service providers and construction contractors for purposes of promoting economic empowerment goals is permitted, but only with the approval of the Director: Procurement and Supply Chain Management Directorate.

**19. Process For Competitive Bidding**

19.1 The procedure for the competitive bidding process is:

(a) the compilation of bidding documentation as detailed in clause 20;
(b) the public invitation of bids as detailed in clause 22;
(c) site meetings or briefing sessions, if applicable, as detailed in clause 22;
(d) the handling of bids submitted in response to public invitation as detailed in clause 23;
(e) the evaluation of bids as detailed in clause 28;
(f) the award of contracts as detailed in clause 29;
(g) the administration of contracts, must include a written agreement between the Municipality and the bidder after approval of the bid; and

(h) proper record keeping in that original or certified copies of documents are kept in a secure place for reference purposes.

## 20. Bid Documentation for Competitive Bids

20.1 The Bid documentation for a competitive bidding process must:

(a) take into account:
  (i) the general conditions of tender and contract;
  (ii) any Treasury guidelines applicable on bid documentation;
  (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure; and
  (iv) the minimum requirements for infrastructure procurement in accordance with the Standard for Infrastructure Procurement and Delivery Management, in the case of procurement relating to the provision of new infrastructure or rehabilitation, refurbishment or alteration of existing structures,

(b) include the preference points system to be used, sub-contracting, evaluation and adjudication criteria, including any criteria required by other applicable legislation;
(c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
(d) require bidders, if the value of the transaction is expected to exceed R10 million (ten million rand) (VAT included) to furnish:

  (i) audited financial statements, if it is required by law, for the past three years or since their establishment if established during the past 3 years;
  (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards the Municipality or other Service Provider in respect of which payment is overdue for more than 30 days;
  (iii) particulars of any contracts awarded to the bidder by an Organ of State during the past 5 years, including particulars of any material non-compliance or dispute concerning the execution of such contract; and

(iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the Municipality or Municipal Entity is expected to be transferred out of the Republic; and

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

20.2 Sureties, performance guarantees and retention for the procurement of goods and services (including consultant services) will not generally be called for, but in exceptional circumstances, where required, must be in accordance with the limits set for construction works under clause 20.3 below.

20.3 The performance guarantees required for construction works are as follows:

| **AMOUNT (Incl. VAT)** | **PERCENTAGE** |
|---|---|
| Up to R1 000 000 | Nil |
| R1 000 001 to R10 000 000 | 5% |
| Above R10 000 000 | 10% |

20.4 In the event that a contractor is unable to raise the required surety, the Chief Financial Officer or his/her delegate may allow such surety to be deducted in full or part from monies that are to become due to the contractor, this may take the form of deductions from the first three [3] payment certificates due to the contractor.

20.5 The Municipality requires a percentage of the project costs for all construction projects to be set aside as per clause 20.2 above and must be in line with CIDB requirements or any other applicable legislative prescripts.

20.6 A 5% retention fee up to a maximum of 10% of the contract sum will be applied on all contracts. Half of the retention amount must be released on issue of the completion certificate for the contract.

20.7 The balance of the retention will be released on the completion of the defects liability period of the contract.

20.8 All contracts must include a penalty clause.

20.9 For consultant services in respect of construction contracts, 10% retention is to be applied until the provision and acceptance of the final 'as-built' drawings.

## 21. Tender Validity

21.1. The period for which bids are to remain valid, irrevocable and open for acceptance must be indicated in the bid documents.

21.2. Bids must remain valid for acceptance for a period of twelve (12) months after the expiry of the original validity period, unless the Municipality is notified in writing of anything to the contrary by the bidder.

21.3. The validity of bids may be further extended by a period of not more than six months subject to mutual agreement and administrative processes and upon approval by the Director: Procurement and SCM, unless the required extension is as a result of an objection process or court ruling.

21.4. In circumstances where the validity period of a tender has expired, and the tender has not been awarded, the tender process must be considered "completed", despite there being no decision (award or cancellation) made. This anomaly must be treated as a non-award.

## 22. Public Invitation for Competitive Bids

22.1. The procedure for the invitation of competitive bids is as follows:

(a) any invitation to prospective providers to submit bids, including Framework Contracts or panel of Service Providers, must be by:

(i) means of a public advertisement in newspapers circulating locally;

(ii) means of the website of the Municipality or municipal Entity; or

(iii) any other appropriate means (which may include an advertisement in the Government Tender Bulletin); and

(b) the information contained in a public advertisement, must include:

(i) the closure date, time and venue for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long-term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subclause 22.2 below;

(ii) a statement that bids may only be submitted on the bid documentation provided by the Municipality or Municipal Entity; and

(iii) the date, time and venue of any proposed site meetings or briefing sessions.

22.2. The Accounting Officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, only if:

(a) such shorter period can be justified on the grounds of urgency or emergency; or

(b) there is an exceptional case where it is impractical or impossible to follow the official procurement process.

22.3. Bids submitted must be sealed and appropriately labelled.

22.4. Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

**23. Procedure for Handling, Opening and Recording of Bids**

23.1. The following procedures for the handling, opening and recording of bids including Framework Contracts or panel, Expression of Interest and task orders, applies:

(a) bids:

(i) must be opened only in public; and

(ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and any bids received after the closing time must not be considered,

(b) any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price; and

(c) the Accounting Officer must:

(i) record in a register all bids received in time;

(ii) make the register available for public inspection; and

(iii) publish the entries in the register and the bid results a notice board or on the website.

23.2. Task orders that arise as a result of Expression of Interest or Framework contracts with a total transaction value of R750 000 and above inclusive of VAT must be opened in the same manner as process contemplated in clause 23.1(a)(i) above.

**24. Negotiations with Preferred Bidders**

24.1. The Accounting Officer or his / her delegate may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation:

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

(b) is not to the detriment of any other bidder; and

(c) does not lead to a higher price than the bid as submitted.

24.2. Minutes of such negotiations must be kept for record purposes.

24.3. The multi-disciplinary team undertaking the negotiations must include a representative from SCM Policy and Support Services, the SCM practitioner must preside over the negotiations.

24.4. Authority to negotiate price and any conditions of tender with preferred bidder(s) must be approved by the Bid Adjudication Committee and the outcome of the negotiations must be reported back to the Bid Adjudication Committee for final approval or support.

24.5. Authority to negotiate price and any conditions of written or verbal quotations and formal written price quotations must be approved by an official who is sub-delegated in terms of supply chain management code of delegations approved by the Accounting Officer.

24.6. The outcome of the negotiations must be reported back to the duly delegated official for final approval.

24.7. The negotiations may include price and final terms and conditions of tender, project plan and service level agreement.

24.8. Discount offers or alternate offers must be considered for negotiation after the Bid Adjudication Committee has granted authority to consider any alternate or discount offers.

24.9. Outcome of the negotiation together with the minutes of the negotiation meeting must be reported back to the Bid Adjudication Committee for final approval or support.

24.10. Bid validity must be monitored and where applicable be extended by the Line Department at all times during the process of negotiations.

24.11. The framework or terms of reference for negotiations may be guided by the Bid Adjudication Committee.

24.12. If negotiations fail to result in acceptable contract terms, the Accounting Officer or his / her delegate:

(a) may terminate the negotiations; and
(b) must inform the original preferred bidder(s) of the reasons for termination of the negotiations.

## 25. Two-Stage Bidding Process

25.1. A two-stage bidding process is allowed for:

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

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

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

25.4. At each of the stages, proposal/bidding documents above the quotation threshold must be approved by the Bid Specification Committee.

## 26. Committee System for Competitive Bids

26.1 The Accounting Officer must:

(a) establish a committee system for competitive bids consisting of at least:
   (i) a Bid Specification Committee;
   (ii) a Bid Evaluation Committee; and
   (iii) a Bid Adjudication Committee,
(b) appoint the members of each committee, taking into account section 117 of the Act; and
(c) provide for an attendance or oversight process by a neutral or independent observer, appointed by the Accounting Officer, when this is appropriate for ensuring fairness and promoting transparency.

26.2 The committee system must be consistent with:

(a) clauses 27, 28 and 29 of this Policy; and
(b) any other applicable legislation.

26.3 The Accounting Officer may apply the committee system to formal written price quotations.

26.4 Bid Committees must conduct their business in accordance with the terms of reference and all applicable prescripts related to Supply Chain Management.

26.5 Each Bid Committee member must:

(a) disclose any interest that he or she may have in a matter on the agenda before the meeting or at least before the relevant item is considered by the committee and such person must excuse himself or herself from the sitting of the committee when the item is being decided, in order to avoid a conflict of interest; and

(b) keep confidential discussions and outcomes of the Bid Committee meeting.

26.6 Bid Committees place reliance on reports submitted by the various Departments, Directorate, and Entities, it is therefore incumbent on the authors of such reports to ensure that all the appropriate facts are placed before the Committees in a logical sequence for them to take informed decisions.

26.7 In signing reports contemplated in clause 26.6 above, authors undertake that they have complied with the applicable codes of conduct and subject themselves to disciplinary and other action should any gross negligence or misrepresentation be detected.

26.8 The Committees are hereby empowered, to call for investigations and or action where they deem necessary and appropriate.

## 27. Bid Specification Committee

27.1 All bid specifications and bid documentation must be compiled by an ad-hoc Bid Specification Committee led by SCM; constituted for each tender or procurement activity.

27.2 The Bid Specification Committee must approve the compilation of the specifications for each public invitation for competitive bids, and where authority has been sought to invite bids, by the Municipality.

27.3 Specifications:

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

(b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;

(c) where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;

(d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification;
(e) may not make reference to any particular trademark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the words "equivalent";
(f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Policy Framework Act;
(g) must be in accordance with clause 22 of this Policy; and
(h) must state the conditions of contract which shall govern the contract.

27.4 The Bid Specification Committee must only undertake business when an appropriate quorum is present, consisting of a majority of its members, subject to clause 27.5 below.

27.5 The Bid Specification Committee must be composed of at least one supply chain management practitioner of the Municipality or municipal Entity.

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

27.7 The appropriate method of procurement of goods, services and engineering and construction works for all contracts greater than the quotation threshold shall be approved by the Bid Specification Committee.

27.8 All contracts exceeding R10 million (VAT inclusive) must be accompanied by project-specific procurement and B-BEE strategies when presented to the Bid Specification Committee, these should be discussed and agreed between multi-disciplinary teams beforehand, where possible limit the number of awards to a singular company.

27.9 The Bid Specification Committee shall in its discretion determine the need for:
(a) samples; and
(b) compulsory or non-compulsory site clarification meetings.

27.10 In the event where samples are required the Committee shall determine physical location of the delivery of samples and controls to mitigate possible risk.

**28. Bid Evaluation Committee**

28.1 An ad-hoc Bid Evaluation Committee, led by SCM; must be constituted for each tender or procurement activity, to do a preliminary evaluation of bids received.

28.2 The Bid Evaluation Committee must:

(a) be composed of at least one supply chain management practitioner of the Municipality or municipal Entity;

(b) evaluate all bids, with the support of Directorate/Departments, in accordance with:

(i) the specifications for a specific procurement; and

(ii) the points system set out in terms of clause 27.3(f),

(c) ensure that an appropriate assessment of eligible bidder's ability to execute the contract has been undertaken by the department presenting the item;

(d) ensure that in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears;

(e) ensure in respect of the recommended bidder, that their tax clearance certificate or Tax Compliance Status with a PIN number, CIDB certificate and BBBEE certificates are in order;

(f) ensure in respect of bids where Consortia / Joint Ventures are involved, that each party submits a separate Tax Clearance Certificate or Tax Compliance Status with a PIN number;

(g) instruct a designated Line Department to communicate in writing with the preferred bidder about the applicability of any suspensive condition by latest the following day of the Bid Adjudication Committee meeting;

(h) ensure that CIDB status is valid and active at the time of submission of a bid, during consideration by the Bid Evaluation Committee and before final award;

(i) ensure that when the BBBEE certificate is valid at the time of tender and expires during evaluation or the level contribution changes; it is the level at the time of the closing of tender that is considered;

(j) consider that the MBD 6.1. document requires the bidder to fill in a claim for empowerment points, the BB-BEE certificate must therefore be taken as the substantiation of the claim and accordingly submission of a BB-BEE certificate is mandatory;

(k) in instances where the bidder does not complete MBD 6.1 document in full, but provides a valid BB-BEE certificate, award preference points in line with the PPPFA;
(l) ensure that Health and Safety Plans are submitted at the time of tender where applicable; and
(m) submit to the Bid Adjudication Committee a report and recommendations regarding the award of the bid or any other related matter.

28.3 No item may be considered at the Bid Evaluation Committee unless the appropriate SCM compliance check process has been undertaken and the item has been cleared for acceptance onto the agenda unless otherwise approved by the Chairperson.

28.4 Bid Evaluation Committee must only undertake business when an appropriate quorum is present, consisting a majority of its members, subject to clause 28.2(a) above**.**

**29. Bid Adjudication Committee**

29.1 The Bid Adjudication Committee must:
(a) consider the report and recommendations of the Bid Evaluation Committee; and
(b) depending on its delegations:
(i) make a final award;
(ii) make a recommendation to the Accounting Officer to make the final award; or
(iii) make another recommendation to the Accounting Officer on how to proceed with the relevant procurement.

29.2 The Bid Adjudication Committee must consist of at least four senior managers of the Municipality that must include:
(a) the Chief Financial Officer or another senior manager in the budget and treasury office reporting directly to the Chief Financial Officer and designated by the Chief Financial Officer;
(b) at least one senior Supply Chain Management Practitioner who is an official of the Municipality and must report directly to the Chief Financial Officer or an official designated by the Director: Procurement and Supply Chain Management; and

(c) a technical expert in the relevant field who is an official, if such an expert exists, and may when appropriate, appoint an external specialists advisor.

29.3 Bid Adjudication Committee must only undertake business when an appropriate quorum is present, consisting of a majority of its members, subject to clause 29.2(b) above.

29.4 The Accounting Officer must appoint the Chairperson of the committee, should the Chairperson be absent from a meeting, the members of the committee who are present must elect one of them to act as Chairperson at the meeting.

29.5 No member of the Bid Evaluation Committee, an advisor or any person assisting the Bid Evaluation Committee may be a member of the Bid Adjudication Committee.

29.6 Should the Bid Adjudication Committee decide to award a bid to a bidder other than the one recommended by the Bid Evaluation Committee, the Bid Adjudication Committee must prior to awarding the bid:

(a) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears; and
(b) notify the Accounting Officer including reasons for deviating from the recommendation of the Bid Evaluation Committee.

29.7 The Accounting Officer may:

(a) after due consideration of the reasons for the deviation, ratify or reject the decision of the Bid Adjudication Committee referred to in clause 29.6 above; and
(b) if the decision of the Bid Adjudication Committee is rejected, refer the decision of the Bid Adjudication Committee back to that Committee for reconsideration (Note- Not applicable to clause 36 procurement).

29.8 The Accounting Officer may at any stage of the bidding process, refer any recommendation made by the Bid Evaluation Committee or the Bid Adjudication Committee back to that committee for reconsideration of its recommendation.

29.9 The Accounting Officer must comply with section 114 of the Act if the decision is to award a bid other than the one recommended.

29.10 The Bid Adjudication Committee must at all times adhere to the requirements of MFMA circular 34 from National Treasury.

29.11 No item may be considered at the Bid Adjudication Committee unless the appropriate SCM compliance check has been undertaken and the item has been cleared for acceptance onto the agenda except where otherwise approved by the Chairperson.

29.12. The Municipality must consider the holding period of the validity of BBBEE certificate and Tax clearance certificate or Tax compliance status with a PIN number to be at the close of tender.

29.13. The SCM Practitioners must make all means possible to notify the bidder as soon as the award is made, to furnish the Municipality with required documents within the suspensive period of seven (7) working days.

29.14. A bidder may not be disqualified if he / she is in arrears with utilities and has an arrangement with the Municipality to offset the arrears, the bidder must furnish proof of the agreement, the agreement must have been in place at the time of submission and cannot be ex post facto.

## 30. Procurement of Banking Services

30.1. Banking services:

(a) must be procured through competitive bids;

(b) must be consistent with sections 7 and 85 of the Act; and

(c) may not be for a period of more than five years at a time.

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

30.3. The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of clause 22.1 above.

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

## 31. Procurement of IT Related Goods or Services

31.1. The Accounting Officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.

31.2. Both parties must enter into a written agreement to regulate the services rendered and the payments to be made to SITA.

31.3. The Accounting Officer must notify SITA together with a motivation of the IT needs, if:

(a) the transaction value of IT related goods or services required in any financial year will exceed R50 million (VAT included); or

(b) the transaction value of a contract to be procured whether for one or more years exceeds R50 million (VAT included).

31.4. Should the Municipality disagree with comments made by SITA on its submission, the comments and the reasons for rejecting or not following such comments must be submitted to:

(a) Council;

(b) the National Treasury and the relevant provincial Treasury; and

(c) the Auditor General.

31.5. Prior authority to utilise SITA must be sought from the Bid Adjudication Committee.

31.6. Any agreement with SITA must be approved by the Bid Adjudication Committee.

## 32. Procurement of Goods and Services under Contracts Secured By Other Organs Of State

32.1. The Accounting Officer may procure goods or services under a contract secured by another organ of state, but only if:

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

32.2. Subclauses 32.1(c) and (d) do not apply if:

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

32.3. Any procurement of goods and services under contracts secured by other organs of state must be approved by the Bid Adjudication Committee or the Accounting Officer after consideration of the following documents:

(a) a copy of the public invitation to tender issued by the organ of state;
(b) a copy of the tender documentation/scope of work/RFP that was issued to bidders;
(c) a copy of the Bid Evaluation/Adjudication Report;
(d) a copy of the letter of award/letter of appointment;
(e) a copy of the Service Level Agreement dealing, *inter alia*, with the start and the end dates of the contract;
(f) minutes of bid committees; and

(g) a consent letter from the organ of state and the service provider wherein both parties consent to the use of the service provider secured by the other organ of State.

32.4. Should the Municipality decide to invoke the use of this Regulation as part of its procurement strategy for competitive bidding processes, the Municipality must ensure that procurement of such goods and services is part of the procurement plan for the applicable financial period.

32.5. The scope of the services or works or the quantities of goods in terms of municipal specifications must be the same as those included in the contract awarded by the other organ of state.

32.6. The tender unit price that is included in the contract of the Municipality must be exactly the same or lower as the unit price that was included in the contract secured by the other organ of state.

32.7. The Municipality will not enter into a new contract with the service provider but will become a participant in an existing contract.

32.8. The Municipality may participate in a transversal term contract facilitated by National Treasury, or relevant Provincial Treasury: Provided that when considering participating in a transversal contract, both designated Directorate and Procurement and Supply Chain Management Directorate must apply the following:

(a) confirm that the transversal contract meets the directive of supply chain management contemplated at clause 32.1 above;
(b) submit an application to National Treasury on the transversal term contracts participation template;
(c) ensure adequate budget for the transversal term contract is available;
(d) ensure transversal term contract meets the technical specifications and quantities of the relevant Department;
(e) obtain transversal term contract from National Treasury; and
(f) submit an approval or support by Bid Adjudication Committee to utilise transversal term contract according to the supply chain management delegations.

## 33. Procurement of Goods Necessitating Special Safety Arrangements

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

33.2. Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership, cost advantages and environmental impact and must be approved by the Accounting Officer.

## 34. Proudly SA Campaign

34.1. Wherever possible, the Proudly SA Campaign must be supported to the extent that, all things being equal, preference is given to procuring local goods and services from:

(a) suppliers and businesses within the Municipality;
(b) suppliers and businesses within the relevant province; and
(c) suppliers and businesses within the Republic of South Africa.

34.2. The requirements of the designated sectors for Local Production and Content as issued by the Department of Trade and Industry may be taken into account.

## 35. Appointment of Consultants

35.1. The Accounting Officer may procure consulting services provided that;

(a) there is confirmation that the Municipality or municipal Entity does not have the requisite skills or resources in its full time employ to perform the function; and
(b) Treasury guidelines in respect of consulting services are considered when such procurements are made.

35.2. Consultancy services must be procured through competitive bids if:

(a) the value of the contract exceeds R750 000 (VAT included); or
(b) the duration period of the contract exceeds one year.

35.3. In addition to any requirements prescribed by this Policy for competitive bids, bidders must furnish particulars of:

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

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

35.4. The Accounting Officer must ensure that copyright in any document produced and the patent rights or ownership in any plant, machinery, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the Municipality.

35.5. Consultants:

(a) appointed to provide consulting services for the preparation or implementation of a project and any if its affiliates, are precluded from subsequently providing goods or works or services related to the initial assignment, unless the various firms (consultants, contractors, or suppliers) are performing the contractors' obligation under a turnkey or design-and-build contract;

(b) which have been appointed by the Municipality to provide goods or works for a project and any of its affiliates, are precluded from providing consulting services for the same project; and

(c) or any of its affiliates may not be appointed for any assignment which, by its nature, may be in conflict with other assignments of the consultant, such as, but not limited to:

(i) consultants appointed to prepare an engineering design for an infrastructure project may not be appointed to prepare an independent environmental assessment for the same project; or

(ii) consultants assisting the Municipality in the privatisation of public assets may not purchase, nor advise purchasers of such assets.

## 36. Deviation from, and Ratification of Minor Breaches of Procurement Processes

36.1. The Accounting Officer may:

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

(i) in an emergency;

(ii) if such goods or services are produced or available from a single provider only;

(iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;

(iv) in acquisition of animals for zoos or nature and game reserves;

(v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and

(vi) in instances where it relates to event specific procurement by municipal entities which renders it impractical or impossible to follow the official procurement processes; and

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

36.2. The Accounting Officer must record the reasons for any deviations in terms of clause 36.1 above and report them to the next meeting of Council and include as a note to the annual financial statements or to a Board of Directors in the case of municipal Entities.

36.3. Prior authority to invite quotations invoking the use of clause 36 must be sought from:

(a) the Accounting Officer;

(b) the Chief Financial Officer; or

(c) the Director: Procurement and Supply Chain Management Directorate.

36.4. The Chief Financial Officer or his / her delegate has authority to make a final award on deviations below R750 000, these must be included in the reports contemplated in clause 36.2 above, on a quarterly basis.

36.5. In the case of emergencies greater than R750 000 (VAT included), where practicable:

(a) prior authority must be sought from the Accounting Officer to deviate from the official processes; and
(b) the Chairperson of the relevant Committee must be notified of such emergency situation.

36.6. All emergency procurement must be formalised in a report to the Accounting Officer within 5 working days.

36.7. Emergency procurement may not be used to evade the use of standard procurement procedures:
(a) as a consequence of insufficient stock-levels for items that are used on a daily basis unless it is demonstrated that such procurement is not due to failure to properly manage stock or poor contract management;
(b) as a result of working programmes not adequately planned for; or
(c) as a result of no or insufficient communication between warehouses and buying offices.

36.8. The circumstances which may give rise to an emergency which may not have been foreseeable, or where it is impractical or impossible to follow official procurement processes or may have been the result of negligent conduct a motivation for the use of this clause must show one or more of the following:
(a) the imminent threat to health, injury or death to persons;
(b) the imminent threat of damage to property, or suffering and death of livestock and animals;
(c) the unforeseeable interruption of essential services whose provision is within the municipal competency, including transportation and communication facilities or support services critical to the effective functioning of the Municipality as a whole;
(d) the imminent and unforeseeable serious damage occurring to the natural environment; or
(e) the imminent threat and or damage of the municipal assets.

36.9. The value of and duration of contracts which have been concluded as a result of the emergency situation must be in accordance with the goods and services required in order to address or remedy the immediate emergency.

36.10. Any other goods and services which may be required subsequent to the emergency and relating to such emergency must wherever possible follow the normal tendering process and procedures.

36.11. Procuring goods and services from sole supplier may occur in instances where only one supplier manufactures or renders goods and services due to unique nature of the requirements.

36.12. Goods and services already in the Municipality's value chain/employ may only be supplied by an Original Equipment Manufacturer (OEM) or by a licensed agent thereof and must meet the requirement for compatibility, continuity and alignment.

36.13. The process for the approved list of sole supplier(s) is as follows:

(a) Departments or Directorate requiring the use of sole supplier must issue a circular calling for the of sole supplier(s) who wish to be on the list or database of sole suppliers, the Procurement and SCM Directorate must manage and maintain the list of sole suppliers;

(b) the response to the circular must contain appropriate motivation in terms of constitutional pillars of:

(i) fair;

(ii) equitable;

(iii) transparent;

(iv) cost effective; and

(v) competitive,

(c) the response to the circular and compilation of the list of sole suppliers must be categorised, screened and supported by a relevant appointed team, in instances where there is no consensus among the team members, such must be escalated to the Director : Procurement and SCM for a decision and support;

(d) the supported list of sole suppliers must be advertised for public comments and objections;

(e) in instances where there are objections, such objections must be referred to the Director Procurement and SCM for a decision and support;

(f) the list of sole suppliers must be reviewed and reported annually to the Director : Procurement and SCM; and

(g) the report must outline how value for money will be achieved and managed.

36.14. The Directorate or Departments invoking the use of clause 36.1(a)(v) must, in all reports to the Accounting Officer or Bid Adjudication Committee, demonstrate that the use of this provision:

(a) is not as a result of poor planning for it being impractical or impossible to follow the official procurement processes, where there is a risk of poor planning or negligence proof that remedies and actions including disciplinary processes have been taken to avoid recurrence; and
(b) has taken into account that it does not prejudice other potential tenderers where practical to invite quotes and meet the requirements of section 217 of the Constitution.

36.15. The respective Director of the Directorate must sign off a report to the Accounting Officer or the Bid Adjudication Committee invoking clause 36.1(a)(v) that he / she is accepting full responsibility and accountability for the report and its contents.

## 37. Unsolicited Bids

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

37.2. The Accounting Officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if:
(a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
(b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
(c) the person who made the bid is the sole provider of the product or service; and
(d) the reasons for not going through the normal bidding processes are found to be sound by the Accounting Officer.

37.3. Should the Accounting Officer decide to consider an unsolicited bid that complies with clause 37.2 above, 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.

37.4. All written comments received pursuant to clause 37.3 above, including any responses from the unsolicited bidder, must be submitted to the National Treasury and the relevant provincial treasury for comments.

37.5. The Bid Adjudication Committee must consider the unsolicited bid and may award the bid or make a recommendation to the Accounting Officer, depending on its delegations.

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

37.7. When considering the matter, the Bid Adjudication Committee must take into account:

(a) any comments submitted by the public; and

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

37.8. If any recommendations of the National Treasury or provincial Treasury are rejected or not followed, the Accounting Officer must submit to the Auditor General, the relevant provincial Treasury and National Treasury, the reasons for rejecting or not following such recommendations.

37.9. Submission contemplated in clause 37.8 above, must be made within seven days after the decision on the award of the unsolicited bid is taken, no contract committing the Municipality to the bid may be entered into or signed within 30 days of the submission.

## 38. Combating of Abuse of Supply Chain Management System

38.1. In establishing measures for the combating of abuse of the supply chain management system, the Accounting Officer must:

(a) take all reasonable steps to prevent abuse of the supply chain management system;

(b) investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this Policy, and when justified:
    (i) take appropriate steps against such official or other role player; or
    (ii) report any alleged criminal conduct to the South African Police Service,
(c) take all reasonable steps to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector or blacklisted by the Municipality;
(d) reject any bid from a bidder if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the Municipality, or to any other municipality or Municipal Entity, are in arrears for more than three months;
(e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
(f) cancel a contract awarded to a person if:
    (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
    (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person,
(g) ensure that any cancellation or termination of a contract is in line with the provisions of Promotion of Administrative Justice Act 3 of 2000;
(h) act against Directorate or Departments that commence a competitive bidding process but fail to close off the process by submitting a report to Bid Committees for its approval as contemplated in clause 38.2 below; and
(i) reject the bid of any bidder if that bidder or any of its directors:
    (i) has abused the supply chain management system of the Municipality or has committed any improper conduct in relation to such system;
    (ii) has been convicted for fraud or corruption during the past five years;
    (iii) has wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years;
    (iv) has been listed in the Register for Tender Defaulters In terms section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004); and
    (v) has been blacklisted by the Municipality.

38.2. Cancellation or termination of a contract must be approved by the Bid Adjudication Committee.

38.3. The Accounting Officer must inform the National Treasury and relevant provincial Treasury in writing of any actions taken in terms of clause 38.1(b)(ii), (e) or (f) of this Policy.

## 39. Logistics Management

39.1. Logistics management must provide for an effective system in order to provide for:

(a) the setting of inventory levels;
(b) placing of orders;
(c) receiving and distribution of goods;
(d) stores and warehouse management;
(e) expediting orders;
(f) transport management;
(g) vendor performance;
(h) maintenance; and
(i) contract administration.

### 39.2. General Logistics

39.2.1. Purchase orders:

(a) must be created for bids and quotations;
(b) must be captured on the appropriate financial management system exclusive of VAT; and
(c) approvals must be systems based and must be authorised by the Procurement and SCM Directorate only.

39.2.2. Goods received must be captured on the appropriate financial management system via a “Goods Received Note” with reference to the relevant purchase order.

39.2.3. The Treasury Department's Assets Section (for asset creation) and Insurance Section (for claims) must be informed of the purchase via the appropriate financial management system at the end of the procurement process and in terms of other applicable policies.

39.2.4. Deliveries of goods may not exceed the order quantity, short deliveries will keep the purchase order open until the balance of the order is received or cancelled.

39.2.5. A designated official must monitor and expedite outstanding purchase orders.

39.2.6. The performance monitoring of a contractor must be in accordance with the service provider performance management element of this Policy.

39.2.7. A contract manager must:

(a) be a designated official of the Municipality who must attend to the administration of the contract from inception;
(b) derive his / her duties and powers from the conditions of contract and any other applicable law;
(c) be fair to the parties to the contract when required to make decisions or form an opinion in respect of the contract, whilst always acting in the best interests of the Municipality;
(d) ensure that all the necessary formalities in the signing up of the contract and issuing the purchase order(s) are adhered to;
(e) ensure that contracts related to the procurement of goods or services and works are captured on the appropriate financial management system;
(f) ensure that all original contract documentation is lodged with the Procurement and Supply Chain Management Directorate for record purposes;
(g) where appropriate, authorise payments due in terms of the contract by:
    (i) processing payment certificates (if applicable); and
    (ii) ensuring that the necessary Service Entry Sheets or Goods Received Notes are captured on the appropriate financial management system,
(h) manage amendments, variations and procedures in terms of the contract;
(i) administer disputes where necessary, in terms of this Policy and the applicable Conditions of Contract;

(j) conduct a post contract review;
(k) maintain accurate and detailed records to create an audit trail;
(l) act with care and diligence;
(m) observe all accounting and legal requirements; and
(n) ensure that payments are paid:
    (i) within 30 calendar days of the receipt of valid invoice; or
    (ii) within 14 days of the receipt of a valid invoice, in respect of Exempted Micro Enterprise (EME) payments must be paid without EME being requested to offer any discounts to the Municipality.

39.2.8. Departmental Directors must be responsible for ensuring that contract managers:
(a) are assigned to all contracts within the Department Director's area of responsibility; and
(b) are adequately trained so that they can exercise the necessary level of responsibility in the performance of their duties.

39.2.9. All Directors of Directorate must submit as part of the Budget Approval process a procurement plan containing all planned procurement, this procurement plan must be approved by the Director of the Directorate or his / her delegate prior to its submission.

39.2.10. A central contracts register must be maintained for all contracts within the Municipality, items may only be permitted onto the register if contained within an approved procurement plan.

39.2.11. Stock is valued on the weighted average/standard costing method per plant and is VAT exclusive, input VAT is claimed upon purchase and output VAT is accounted for at the time of issue according to the accounting Policy.

39.2.12. Stock items must be systematically replenished using the re-order point planning strategy and open reservations must be taken into account during the replenishment run.

39.2.13. Goods:
(a) must be issued from stock with reference to reservations; and

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

39.2.14. Purchase orders must be created, where applicable, with reference to replenishment requisitions in respect of term supply contracts for goods.

39.2.15. Replenishment requisition approvals will be systems based.

39.2.16. All replenishments must be effected via the Acquisition Management System.

39.2.17. The registered stores function shall be decentralised and must operate under the jurisdiction of the Procurement and Supply Chain Management Directorate.

39.2.18. The Procurement and Supply Chain Management Directorate must:

(a) ensure proper financial and budgetary control;
(b) uphold the principle of effective administration; and
(c) ensure proper stock holding and control, product standardisation, quality of products and a high standard of service levels.

39.2.19. Management of inventory must be in accordance with the Inventory Policy.

## 40. Disposal Management

40.1. The system of disposal management for the disposal or alienation of assets, including unserviceable, redundant or obsolete assets is subject to sections 14 and 90 of the Act.

40.2. The system of disposal or alienation of assets must:

(a) specify the ways in which assets may be disposed of, including by:

(i) transferring the asset to another organ of state in terms of a provisions for the transfer of assets;
(ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
(iii) the alienation of the asset; or
(iv) destroying the asset, after taking into account re-cycling,

(b) stipulate that:
(i) immovable property may be sold only through a competitive bidding process except when the public interest or the plight of the poor demands otherwise;
(ii) movable assets may be sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
(iii) in the case of the free disposal of computer equipment, the provincial Department of Education must first be approached to indicate within 30 days whether any of the local schools are interested in the equipment; and
(iv) in the case of the disposal of firearms, the National Conventional Arms Control Committee must have approved any sale or donation of firearms to any person or institution within or outside the Republic,

(c) provide that:
(i) immovable property is alienated at market related values, except when the public interest or plight of the poor demands otherwise; and
(ii) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed; and

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

40.3. In the event that a specialised plant item is disposed before it reaches the end of its projected life cycle or before the asset is fully depreciated which will normally occur when a higher capacity or specified product is available in the market and where demonstrated that such improvement will reduce the operating costs and improve productivity to the Municipality, the following procedure applies:

(a) the Original Equipment Manufacturer (OEM) or the authorised agent must provide the Municipality with official quotation to trade in the asset;

(b) the Municipality must obtain an additional quotation from an independent industry specialist that would provide a market value of the asset;
(c) in the event of the offer received from the OEM or agent being lower than that of the industry specialist, the relevant Departmental and a Supply Chain Official must make representations to the OEM or the authorised agent so that they may review their offer to that of the industry specialist;
(d) a report must be submitted to the Bid Adjudication Committee recommending the acceptance of an offer from an OEM or authorised agent to trade in an item of specialised plant on an improved model; and
(e) ensure that where assets are traded in for other assets, the highest possible trade-in price is negotiated.

40.4. Disposal of land must be carried out in accordance with the Municipality Land Disposal and Granting of Property Rights Policy as duly authorised and approved by Council.

40.5. Letting of immovable assets must be carried out in accordance with a duly authorised and approved Land Disposal and Granting of Property Rights Policy.

## 41. Risk Management

41.1. The Accounting Officer must ensure an effective system of risk management for the identification, consideration and avoidance of potential risks in the supply chain management system.

41.2. Risk management must include:
(a) the identification of risks on a case-by-case basis;
(b) the allocation of risks to the party best suited to manage such risks;
(c) acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;

(d) the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
(e) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

## 42. Performance Management

42.1. The Accounting Officer must ensure an effective 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 desired objectives were achieved.

42.2. Performance management must be characterised by a monitoring process and retrospective analysis to determine whether:
(a) value for money has been attained;
(b) proper processes have been followed;
(c) desired objectives have been achieved;
(d) there is an opportunity to improve the process;
(e) suppliers have been assessed and the outcome thereof; and
(f) there has been deviation from procedures and, if so, the reasons for that deviation.

42.3. The performance management system must, *inter alia,* focus on:
(a) achievement of goals;
(b) compliance to norms and standards;
(c) savings generated;
(d) cost variances per item;
(e) non-compliance with contractual conditions and requirements; and
(f) the cost efficiency of the procurement process itself.

42.4. A close-out report is required on completion of all contracts, as contemplated under clauses 42.2 and 42.3 above.

42.5. For all annual supply, period, or term contracts, the report to the Bid Specification Committee for the replacement contract, must meet the requirements contemplated under clauses 42.1 and 42.2 above.

42.6. For monitoring performance on individual contracts, clause 53 shall apply with the necessary changes.

**43. Prohibition on Awards to Persons Whose Tax Matters are Not in Order**

43.1. The Accounting Officer must ensure that, irrespective of the procurement process followed, no award is given to a person whose tax matters have not been declared by the South African Revenue Service to be in order.

43.2. If the Municipality or municipal Entity is in possession of:

(a) a supplier's original valid tax clearance certificate; or

(b) Tax Compliance Status with a PIN number through National Treasury Central Supplier Database, it is not necessary to obtain a new tax clearance certificate or a TAX compliance status with a PIN number each time a price quotation or bid is submitted from that specific supplier.

43.3. Clause 43.2 may be applied only if the closing date of the price quotation or bid falls within the expiry date of the tax clearance certificate or a Tax compliance status with a PIN number that is in the Municipality's or municipal Entity's possession including but not limited to Central Supplier Database record.

43.4. Cross-reference must be made to the original tax clearance certificate or Tax compliance status with a PIN number for audit purposes.

**44. Prohibition on Awards to Persons in the Service of the State**

44.1. The Accounting Officer must ensure that irrespective of the procurement process followed, no award may be given to the following:

(a) employees of the Municipality and municipal Entities;

(b) employees of national and provincial spheres of government;
(c) employees of constitutional institutions in terms of schedule 1 of PFMA;
(d) employees of major public entities in terms of schedule 2 of PFMA;
(e) employees of other public entities in terms of schedule 3 of PFMA
(f) a juristic person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state;
(g) a person who is an advisor or consultant contracted with the Municipality or municipal Entity.
(h) a Councillor of the Municipality appointed through the Municipal Structures Act; and
(i) any person not specifically mentioned in (a) to (g) above but receives a remuneration and is subject to the conditions of employment of such entities as outlined above.

44.2. Ward Committee Members receiving remuneration from the Municipality but are not subject to the conditions of employment are not considered to be in the service of the state.

44.3. The Municipality further reserves its rights to immediately cancel any contract if such conflicts are discovered after the award of a contract.

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

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

**46. Ethical standards**

46.1. A code of ethical standards is hereby established 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.

46.2. An official or other role player involved in the implementation of this Policy:

(a) must treat all providers and potential providers equitably;

(b) may not use his or her position for private gain or to improperly benefit another person;

(c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;

(d) must notwithstanding subclause 46.2(c) above, declare to the Accounting Officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;

(e) must declare to the Accounting Officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the Municipality;

(f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;

(g) must be scrupulous in his or her use of property belonging to the Municipality or municipal Entity;

(h) must assist the Accounting Officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and

(i) must report to the Accounting Officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including:

(i) any alleged fraud, corruption, favouritism or unfair conduct;

(ii) any alleged contravention of clause 46.1 of this Policy; or

(iii) any alleged breach of this code of ethical standards.

46.3. Declarations in terms of clause 46.2(d) and (e):

(a) must be recorded in a register which the Accounting Officer must keep for this purpose; and

(b) by the Accounting Officer must be made to the Mayor of the Municipality who must ensure that such declarations are recorded in the register.

46.4. The National Treasury's code of conduct must also be taken into account by Supply Chain Management Practitioners and other role players involved in supply chain management.

46.5. The Municipality adopts the National Treasury's code of conduct for Supply Chain Management Practitioners and other role players involved in supply chain management, when adopted, such code of conduct becomes binding on all officials and other role players involved in the implementation of this Policy. A copy of the National Treasury code of conduct is available on the website www.treasury.gov.za/mfma located under "legislation".

46.6. A breach of the code of conduct adopted by the municipality must be dealt with in accordance with Schedule 2 of the Systems Act.

## 47. Inducements, rewards, gifts and favours to municipalities or municipal entities, officials and other role players

47.1. No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant:

(a) any inducement or reward to the Municipality for or in connection with the award of a contract; or

(b) any reward, gift, favour or hospitality to:

(i) any official; or

(ii) any other role player involved in the implementation of this Policy.

47.2. The Accounting Officer must promptly report any alleged contravention of clause 47.1 above, to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.

47.3. Clause 47.1 does not apply to gifts less than R350 in value.

## 48. Sponsorships

48.1. The Accounting Officer must promptly disclose to the National Treasury and the relevant provincial treasury any sponsorship promised, offered or granted, whether directly or through a representative or intermediary, by any person who is:

(a) a provider or prospective provider of goods or services; or

(b) a recipient or prospective recipient of goods disposed or to be disposed.

## 49. Complaints and Objections

Section 62 of the Municipal Systems Act (32 of 2000) does not apply in respect of Complaints and Objections

### 49.1. Complaints

49.1.1 The Accounting Officer must appoint an independent and impartial person, not directly involved in the supply chain management processes to assist in the resolution of complaints.

49.1.2 A flat, non-refundable tariff (fee) as per approved Council tariffs is payable by the Complainant for each complaint lodged, to the Municipality. The Complainant will be advised of the amount on request.

49.1.3. Proof of the payment of the fee must be attached to the Complaint.

49.1.4. The independent and impartial person contemplated in clause 49.1.1 decides matters on paper.

49.1.5. The Complainant shall cause to be lodged, a written compliant with all supporting documents, addressed to: The City Manager using the email address as directed in the tender document.

49.1.6. The following time frames apply to the different types of complaints:

(a) the complaint must be filed before closure of bid, in the case of a complaint relating to:

(i) the technical requirements contained in the bid specification;

(ii) the adjudication criteria set out in the bid specification;

(iii) the tender conditions set out in the bid specification; or

(iv) the terms and conditions contained in bid specification documents,

(b) the complaint must be filed before closure of the quotation management system, for complaints relating to requests for quotations; and

(c) the complaint must be filed within 14 days of the Complainant reasonably becoming aware of the cause of complaint relating to:

(i) the implementation of a contract already awarded through the SCM process;

(ii) the request for an enquiry relating to fraud or corruption during the awarding stage or during the execution of the contract; or

(iii) any other matter which is not specifically mentioned arising from the implementation of the supply chain management system.

49.1.7. Proof of payment as contemplated in clause 49.1.2 above, must accompany the complaint for it to be regarded as properly lodged.

49.1.8. Should the Complainant omit to attach the required proof of payment/s, Legal and Compliance may provide the Complainant with an indulgence to furnish the omitted proof within two (2) calendar days from the date of receipt of the complaint being lodged.

49.1.9. Failure to send the required proof of payments, shall be regarded as abandonment of the complaint and the matter must be regarded as being finalised.

49.1.10. Where a response is required from the Complainant, a response must be given within seven (7) calender days from the date of receipt of written request from the Municipality.

49.1.11. Failure to comply with the timeframe mentioned in sub-clause 49.1.10 above will result in the complaint being treated as abandoned and finalised.

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49.1.12. Should a party not be satisfied with the ruling of the independent and impartial person contemplated in clause 49.1.1, the next step will be a review in a competent Court of Law.

49.1.13. Failure to send the required formal complaint within the stipulated timelines contemplated in clause 49.1.6, shall be regarded as abandonment of the complaint and the matter must be regarded as being finalised.

**49.1. Objections**

49.2.1. An Objector must cause to be lodged a written Objection, with all supporting documents and payments within 14 days of notification that he/she is unsuccessful.

49.2.2. The Objection must be addressed to: The City Manager, c/o Simone Pillay (Legal Services Directorate) using the email address as directed in the tender document.

49.2.3. A flat, non-refundable tariff (fee) as reviewed annually as per approved Council tariffs is payable by the Objector to the Municipality. The fee shall be set out in the letter of regret.

49.2.4. Proof of the payment of the fee must be attached to the Objection, should the Objector omit to attach the required proof of payment of the fee; Legal Directorate may provide the Objector with an indulgence to furnish the omitted proof within two (2) calendar days from the date of receipt of the Objection being lodged (as evidenced on the Outlook system).

49.2.5. Failure to attach or send the required proof of payment by the timeframe stipulated above, shall be regarded as abandonment of the Objection and the matter must be regarded as being finalised.

49.2.6. The bidder must within seven (7) calendar days after having received reasons and information, lodge the final grounds of the appeal..

49.2.7. Failure to comply with the timeframe mentioned in sub-clause 49.2.6. above will result in the appeal being treated as abandoned and finalised.

49.2.8. An Objection shall have the effect of causing all procurement processes to be held in abeyance until the Objection Authority rules on the Objection, save for in exceptional circumstances below:

(a) where the outcome of the Objection will not affect the appointment of other bidders to a framework or panel, to which a successful Objector (after resolution by the Objections Authority) may be added; or

(b) where emergency procurement necessitates that the work or part of the work be commenced with to remove potential danger.

49.2.9. The Objections Authority:

(a) must decide matters on paper; or
(b) may in exceptional circumstances and in its sole discretion; subject only to the consent of the Director Legal Services Directorate , convene an oral hearing.

49.2.10. All Bidders in the tender process must keep a copy of their own documents as a record, should the bidder fail to keep a copy of his or her documents; the Municipality must charge a flat non-refundable tariff.

49.3 In the case of procurement processes as contemplated in clause 36(1)(a)(i) to (vi) above, clause 49 shall not apply.

**50. Resolution of Disputes, Objections, Complaints and Queries**

50.1. The Accounting Officer must appoint an independent and impartial person, not directly involved in the supply chain management processes:

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

50.2. 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.

50.3. 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.

50.4. 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.

50.5. 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.

50.6. This clause must not be read as affecting a person's rights to approach a court at any time.

50.7. Reports on Objections and Complaints must be included in the normal Procurement and SCM monthly, quarterly and annual reports.

## 51. Contracts Providing for Compensation Based on Turnover

51.1. If a service provider acts on behalf of the 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.

51.2. The specifications for all such contracts must also be approved by the Bid Specification Committee.

## 52. Preferential Procurement

### Identification of Preference Point System

52.1. The Municipality must in its tender documents, stipulate:
   (a) the applicable preference point system as envisaged in clauses 52.3, 52.3.1 52.3.2 and 52.5 below; and

(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.

52.2. If it is unclear whether the 80/20 or 90/10 preference point system applies, the Municipality must in its 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.

52.3. The formulae for the 80/20 and 90/10 preference points system are as follows:

(a) the price in respect of bids (including quotations) with an estimated Rand value of greater than R30 000 and up to a Rand value of R50 000 000 (all applicable taxes included):

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

(b) the price in respect of bids (including price quotations) with an estimated Rand value of greater than R50 000 000 (all applicable taxes included):

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

*Where:*

Ps = Points scored for comparative price of the bid under consideration;

Pt = Comparative price the bid under consideration; and

Pmin = Comparative price of the lowest responsive bid.

52.3.1. The formulae for the 80/20 preference points system for income generating contract are as follows:

(a) 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:

$$Ps = 80 \left[1 + \frac{(Pt - Pmax)}{Pmax}\right]$$

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of highest acceptable tender.

(b) a maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender;

(c) 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; and

(d) subject to section 2(1)(f) of the PPPFA, the contract must be awarded to the tenderer scoring the highest points.

52.3.2. 90/10 preference point system for tenders for income-generating contracts with Rand value above R50 million are as follows:

(a) 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:

$$Ps = 90 \left[1 \ \frac{(Pt - Pmax)}{Pmax}\right]$$

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of highest acceptable tender.

(b) a maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender;

(c) 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; and

(d) subject to section 2(1)(f) of the PPPFA, the contract must be awarded to the tenderer scoring the highest points.

52.3.3. If the tender estimate is close to the Rand value of a prescribed threshold, both the 80/20 and 90/10 preference point system must be stipulated in the tender document.

### 52.4. Cancellation of Tenders

52.4.1. The Municipality may, before the award of a tender, cancel a tender invitation if:

(a) due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;

(b) funds are no longer available to cover the total envisaged expenditure;

(c) no acceptable tender is received;

(d) there is material irregularity in the tender process; or

(e) negotiations have failed with the tenderers.

52.4.2. The decision to cancel a tender invitation in terms of clause 52.4.1 must be issued to all respondents to the tender advert.

### 52.5. Broad-Based Black Economic Empowerment

52.5.1. Bidders may score up to 20 or 10 preference points for their B-BBEE status level of contribution as may be indicated in the terms and conditions of tender in line with the table below:

| B-BBEE Status of Contributor | Number of points (90/10 system) | Number of points (80/20 system) |
|---|---|---|
| 1 | 10 | 20 |

| B-BBEE Status of Contributor | Number of points (90/10 system) | Number of points (80/20 system) |
|---|---|---|
| 2 | 9 | 18 |
| 3 | 6 | 14 |
| 4 | 5 | 12 |
| 5 | 4 | 8 |
| 6 | 3 | 6 |
| 7 | 2 | 4 |
| 8 | 1 | 2 |
| Non-compliant contributor | 0 | 0 |

52.5.2. All bidders must submit BEE rating certificates, issued by either verification agencies accredited by the South African Accreditation System (SANAS) or by registered auditors approved by the Independent Regulatory Board for Auditors (IRBA) or sworn affidavits in a case of Exempted Micro Enterprises or Qualifying Small Enterprise.

52.5.3. Any enterprise with an annual Total Revenue of R 10 million or less qualifies as an Exempted Micro-Enterprise.

52.5.4. Exempted Micro-Enterprises are deemed to have B-BBEE Status of "Level Four Contributor" having a B-BBEE procurement recognition of 100% in terms of the Codes of Good Practice.

52.5.5. An Exempted Micro Enterprise (EME) with at least 51% black ownership qualifies as a Level 2 contributor with BBBEE level of 125% in terms of the Codes of Good Practice.

52.5.6. An Exempted Micro Enterprise with 100% black ownership qualifies as a Level 1 contributor with BBBEE level of 135% in terms of the Codes of Good Practice.

52.5.7. An Exempted Micro Enterprise that is regarded as a specialized enterprise with at least 75% black beneficiaries qualifies as a Level 1 contributor with BBBEE level of 135% in terms of the Codes of Good Practice.

52.5.8. An Exempted Micro Enterprise that is regarded as a specialized enterprise with at least 51% black beneficiaries qualifies as a Level 2 contributor with BBBEE level of 125% in terms of the Codes of Good Practice.

52.5.9. A Qualifying Small Enterprise (QSE) with at least 51% black ownership qualifies as a Level 2 contributor.

52.5.10. A QSE with 100% black ownership qualifies as a Level 1 contributor.

52.5.11. A QSE that is regarded as a specialized enterprise with at least 51% black beneficiaries qualifies as a Level 2 contributor with BBBEE level of 125% in terms of the Codes of Good Practice.

52.5.12. A QSE with less than 51% black ownership is required to submit a BBBEE level verification certificate issued by a BBBEE verification professional.

52.5.13. A Trust, consortium or joint venture:

(a) must submit a B-BBEE status level certificate in order to qualify for points;
(b) may qualify for points as an unincorporated entity provided, that they submit their consolidated scorecard is prepared for separate tender; and
(c) where no consolidated scorecard exists, the weighted average (in accordance with participation percentages) must be used and rounded off to the nearest status level.

52.5.14. If a service is provided by only tertiary institutions, such services must be procured from the tertiary institutions identified by means of bidding process, tertiary institutions must submit their B-BBEE status in terms of the B-BBEE Codes of Good Practice Specialized Scorecard.

52.5.15. Gazetted Sector Codes supersede Generic Codes.

52.6. **Sub-Contracting**

52.6.1. B-BBEE points must not be awarded to a tenderer who intends sub-contracting more than 25% of the value of the contract to an enterprise that does not qualify for at least the points that such contractor qualifies for, unless the intended sub-contractor is an EME who has the ability and capability to execute the contract.

52.6.2. A person awarded a contract may not sub-contract more than 25% of the value of the contract to an enterprise that does not have an equal or higher B-BBEE status level, unless the intended sub-contractor is an EME who has the ability and capability to execute the contract.

52.6.3. A person awarded a contract in relation to a designated sector may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the prescribed minimum threshold.

52.6.4. If feasible to subcontract for a contract above R30 million, the Municipality must apply sub-contracting to advance designated groups.

52.6.5. Bids that are between the contract value of R5 million and R30 million inclusive of VAT must, where feasible, allow for subcontracting.

**52.7. The Basket of Preference Goals**

52.7.1. The Municipality may apply specific goals in any combination format, depending on its preference targets, the basket of preference goals as contained in the relevant legislation are listed hereunder:

**52.7.1.1. Preference Goal 1 (Ownership as a specific goal)**

52.7.1.1.1. A maximum of:

(a) 20 points (80/20 preference points system); or

(b) 10 points (90/10) preference points system),

may be allocated.

52.7.1.1.2. A Bidder may score preference points contemplated in clause 52.7.1.1.1 above, based on company ownership.

52.7.1.1.3. If the Municipality applies ownership as specific goal, the Municipality must advertise the tender with a specific tendering preferential procurement requirement that in order for a tenderer to claim 10 or 20 points for specific goal, a tendering company must have the following ownership:

(a) race, (Historically Disadvantaged Persons);

(b) gender (Historically Disadvantaged Persons); or

(c) disability (Historically Disadvantaged Persons).

52.7.1.1.4. Ownership verification may be conducted through the Companies and Intellectual Property Commission (CIPC).

52.7.1.2. **Preference Goal 2 (RDP Goals)**

52.7.1.2.1. Over and above the awarding of preference points in favour of HDIs, the following activities may be regarded as a contribution towards achieving the goals of the RDP (published in Government Gazette No. 16085 dated 23 November 1994):

(a) the promotion of South African owned enterprises;

(b) the promotion of export orientated production to create jobs;

(c) the promotion of SMMEs;

(d) the creation of new jobs or the intensification of labour absorption;

(e) the promotion of enterprises located in a specific province for work to be done or services to be rendered in that province;

(f) the promotion of enterprises located in a specific region for work to be done or services to be rendered in that region;
(g) the promotion of enterprises located in a specific municipal area for work to be done or services to be rendered;
(h) the promotion of enterprises located in rural areas;
(i) the empowerment of the work force by standardising the level of skill and knowledge of workers;
(j) the development of human resources, including by assisting in tertiary and other advanced training programmes, in line with key indicators such as percentage of wage bill spent on education and training and improvement of management skills; and
(k) the upliftment of communities through, but not limited to, housing, transport, schools, infrastructure donations, and charity organizations.

52.7.1.2.2. The Municipality may also use other RDP goals identified in the Government Gazette No. 16085 dated 23 November 1994.

52.7.1.3. **Preference Goal 3 (Combinations of any other Goals)**

52.7.1.3.1. The Municipality may also combine any specific goals contemplated above, in a manner that will help it evaluate and apply preference points to tenders.

52.7.1.3.2. The Bid Specification Committee must set appropriate Local Economic Development Targets in the form of sub-contracting objectives which must form part of the invitation to tender, set as performance criteria within contracts, where appropriate, for the following target groups:
(a) Black People;
(b) Women;
(c) Youth;
(d) Disabled;
(e) Co-operatives; and
(f) Military Veterans.

52.7.1.3.3. The contract must be awarded to the tenderer who scores the highest points, unless objective criteria in addition to those contemplated in paragraph (d) and (e) of section 2(1) of the PPPFA justify the award to another tenderer.

52.7.1.3.4. The address declared by the prospective bidder in the National Treasury Central Supplier Database (CSD) or in eThekwini Municipality Vendor Portal shall be used to determine the location of a business enterprise.

52.7.1.3.5. The preference points system must be used on the sale or letting of assets and in accordance with the disposals management clause of this Policy.

52.8. **Criteria for Breaking Deadlock in Scoring**

52.8.1. If two or more tenderers score:

(a) an equal total number of points, the contract must be awarded to the tenderer that scored the highest points for specific goals; and

(b) equal total points in all respects, the award must be decided by the drawing of lots.

52.9. **Remedies**

52.9.1. If the Municipality is of the view that a tenderer submitted false information regarding a specific goal, it must:

(a) inform the tenderer; and

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

52.9.2. After considering the representations contemplated in subclause (b) above, the Municipality 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

## 53. Performance Monitoring of Service Providers

53.1. A municipal service may be provided by the Municipality by entering into a Service Delivery Agreement in terms of section 76(b) of the Municipal System Act 32 of 2000 with an external service provider.

53.2. The Municipality is responsible for monitoring and assessing the implementation of the agreement contemplated in clause 53.1 above, including the performance of the service provider in accordance with section 41 of the Municipal Systems Act 32 of 2000.

53.3. The performance of service providers that have been selected to provide assistance in the provision of a municipal service, otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies, is required, by section 116 of the Municipal Finance Management Act, to be monitored and reported on.

53.4. Clause 53 applies to contracts that have been awarded or reviewed, before or after the adoption of this Policy.The objectives of the Performance Monitoring of Service Providers is to:

(a) ensure a high quality of service is maintained;
(b) detect underperformance early, thereby reducing the risks to projects;
(c) create mechanisms to improve performance where targets are not being achieved;
(d) provide data to municipal officials so that informed decisions can be made;
(e) assist in government's developmental objectives in the form of structuring appropriate business;
(f) support strategies or interventions to targeted enterprises; and
(g) assess the suitability of a service provider for pre-qualification, selective tender lists or expressions of interest.

53.5. While departments have mechanisms in place to monitor the work done by service providers, the following is the minimum standard required.

53.6. All service providers or prospective service providers must be made aware of:

(a) the requirement for the assessment and reporting of a service provider's performance;

(b) the use of the service provider performance reports when evaluating service providers for registration, pre-qualification, selective tender list, expressions of interest or awarding of a contract;
(c) the exchange of information on service provider performance reports between government units or departments; and
(d) monitoring of performance against contract must also include skills transfer to the Municipality in line with the roles and responsibilities outlined in clause 53.30 below.

53.7. The appointed service provider must be given the opportunity to discuss the performance criteria with the Implementing Directorate before commencement of the contract.

53.8. Any changes to the performance criteria must be agreed to by the Municipality and the service provider.

53.9. The decision to amend the performance criteria after commencement of a contract is the responsibility of the Reporting Officer.

53.10. The amendments contemplated in clause 53.10 above, must be:
(a) signed by the service provider, the client and implementing Directorate; and
(b) attached to the contract or service delivery agreement.

53.11. A service provider's performance must be assessed in the context of the project as a whole, the respective roles and obligations of the Municipality and service provider under the contract must be taken into account.

53.12. The delegated official preparing or reviewing the performance of a service provider must consider whether satisfactory progress or completion of a project has been affected by any matters which are:
(a) outside the service provider's control; and
(b) the result of some action by the Municipality.

53.13. The delegated official preparing or reviewing the performance of a service provider must measure the service provider's performance after taking into account clause 53.12 above.

53.14. If there is evidence that the underperformance or non-performance of the service provider is due to factors caused by the Municipality:

(a) the service provider may not be penalised; and

(b) the Accounting Officer, or delegated official must take corrective action where necessary.

53.15. The performance assessment reports must be made available to inter- Directorate, inter-governmental departments and the CIDB (where applicable) only:

(a) on completion of a contract; and

(b) if there are no pending disputes.

53.16. The Service Provider must be notified of the assessment.

53.17. The Service Provider may respond on the assessment, in writing, and this must be filed with the assessment.

53.18. The conditions of appointment set in the contract must determine what action may be taken against the service provider if underperformance or non-performance is detected.

53.19. Appropriate key performance indicators for the contract must be set by the Municipality as a yardstick for measuring performance.

53.20. Measurable targets must be set for each key performance indicator.

53.21. The SMART principle as laid out in the Municipality's Organisational Performance Framework must be followed in developing key performance indicators:

(a) Specific;

(b) Measurable;

(c) Achievable;

(d) Realistic; and

(e) Time-framed.

53.22. The management of the contract and the performance of the service provider must be reported quarterly to Council of the Municipality in the format set by the Procurement and SCM Directorate.

53.23. The performance information must be audited:
(a) as part of the Municipality's internal auditing process; or
(b) annually by the Auditor-General.

53.24. The Municipality must endeavour to facilitate support interventions to service providers in the identified areas of underperformance.

53.25. Service providers who have been identified as under-performing in identified areas must be informed of these support interventions.

53.26. The support interventions may be:
(a) sponsored by the Municipality;
(b) subsidised by the Municipality; or
(c) paid for by the attending service provider.

53.27. Records of support interventions and attendance registers must be signed by all parties and filed.

53.28. The impact of the support interventions provided by the Municipality to the service provider must be monitored.

53.29. The table below outlines the roles and responsibilities of municipal officials in the management of service provider performance:

| **ROLE** | **RESPONSIBILITY** |
|---|---|
| Reporting Officer | • Directorate<br>• Monitor and assess work done or service provided as per the service delivery agreement or contract<br>• Report on the performance of the service provider<br>• Monitor, review and report on skills transfer in a contract |
| Reviewing Officer | • Review the assessment made by the reporting officer |

| ROLE | RESPONSIBILITY |
|---|---|
| Procurement and Supply Chain Management Directorate | • Manage the performance monitoring process<br>• Report on contract management and service provider performance to council quarterly<br>• Report to Council annually on the performance of service providers<br>• Investigate and report on the impact of the interventions on areas of underperformance as part of the quarterly and annually report.<br>• Review the policy and process annually.<br>• Liaise with Programme Co-ordination Directorate on interventions for underperforming areas. |
| Accounting Officer: Delegated to Monitoring, Evaluation and Advisory Services Directorate | • Ensure that KPI's are included in the appropriate Individual Performance Plan of the Municipal Official<br>• Review the policy and process annually.<br>• Facilitate the quarterly and annual report to EThekwini Municipal Audit and Risk Assurance Services Directorate |
| EThekwini Municipal Audit and Risk Assurance Services Directorate | • Audit the performance information |

| ROLE | RESPONSIBILITY |
|---|---|
| Programme Co-ordination Directorate | • Facilitate support interventions to address the underperforming areas |

53.30. The requirements of this Policy must be included in the contract of the service provider.

53.31. The performance of the contractor under the contract or must be assessed monthly by the Reporting Officer.

53.32. The assessment must be filed in the contract file or captured onto the database.

53.33. The Reporting Officer must complete the Service Provider Assessment Form on the database at the end of each quarter and on completion or termination of the contract in the prescribed format.

53.34. The Reviewing Officer must review the assessment on the database for each quarter.

53.35. The quarterly assessment must be completed within 15 working days after the end of each quarter.

53.36. The Reporting Officer must provide a copy of the assessment to the Service Provider at the end of each quarterly assessment period.

53.37. Procurement and Supply Chain Management Directorate must review the quarterly Service Provider Assessments within 20 days after the end of each quarter, this process must include verification and may require a site visit.

**54. Green procurement**

54.1. Wherever possible green procurement must be supported so that the related environmental impact is minimised.

**55. Amendments to contracts – MFMA section 116(3)**

55.1. A contract or agreement procured through this Policy, may be amended by the parties, only after:

(a) the reasons for the proposed amendment have been noted by Council; and

(b) the local community:

(i) has been given reasonable notice of the intention to amend the contract or agreement; and

(ii) has been invited to submit representations to the Municipality or a municipal Entity.

55.2. Reports to Council for the amendments of contracts must include:

(a) sufficient details including all previous amendments or variations;

(b) the start and the end dates of the contract;

(c) the original contract value;

(d) the proposed additional contract value and/or additional contract period; and

(e) the percentage of the proposed additional contract value against original contract value.

**55.3. The Policy and Process for Major Amendments to Contracts:**

55.3.1. **Step1** of the process is for the Directorate to seek authorisation from the Executive Director of the Department and Director: Procurement and SCM to issue a public advert to solicit public views regarding the proposed amendment to contract.

55.3.2. There must be a periodic review of the contract or agreement once every three years in a case of a contract or agreement for longer than three years.

55.3.3. **Step 2** of the process is for Line Department to table a report to Council, for Council tonote proposed Major Amendment to a contract; and the reasons thereof.

55.3.4. **Step 3** of the process is the submission of a Report to Bid Adjudication Committee recommending approval of Major Amendments to the Contract:

(a) the contents of the report must contain:

(i) proof that Step 1 Major Amendments has been followed, together with associated documentation; and

(ii) results of advertising in terms of section 116(3) (b)(i) and (ii) of the MFMA, and the results thereof showing representations received and the materiality and impact of these representations,

(b) consideration must be made of section 33 of the MFMA for contract extensions that will exceed three years;

(c) where the contract value exceeds R10 million, final authority rests with the Accounting Officer; and

(d) the BAC must consider a major amendment request subject to the compliance with clause 55.3.4. below.

**55.4. The Policy and Process for Minor Amendments to Contracts**

55.4.1. **Step 1** is the submission of a Report to the Bid Adjudication Committee recommending approval of Minor Amendments to a Contract:

(a) The contents of the Report must contain:

(i) proof that the contract was procured through this Policy;

(ii) proof that there is a written contract in place;

(iii) proof that the contract been monitored on a monthly basis in terms of section 116(2)(b) of the Act;

(iv) proof that the contract been reported on in terms of section 116(2)(d) of the Act; and

(v) proof and motivation that the reasons for the proposed amendments are valid and do not exceed the thresholds for minor amendments,

(b) consideration must be made of section 33 of the MFMA for contract extensions that will exceed three years;

(c) Minor amendments may only be considered if the total amended value does not exceed 20% of its original contract value for construction related goods, services or infrastructure projects and 15% for all; and

(d) where the contract value exceeds R10 million final authority rests with the Accounting Officer.

55.4.2. **Step 2** of the process is the submission of a Report to Council on the Minor Amendments to contracts, including reasons for the amendments.

55.4.3. The report must be included as a separate annexure in the standard monthly reports on tender awards made, which are produced by the Director: Procurement and SCM.

55.4.4. The Director of a Directorate overseeing the projects must ensure that all applicable information is made available to Procurement and SCM Directorate to adequately prepare these reports.

55.4.5. The Chief Financial Officer or Director Procurement and Supply Chain Management Directorate or his / her delegate has authority to approve the amendment of contractual period not exceeding 3 months.

Amendment of contractual period exceeding 3 months must be approved by the Accounting Officer if contract value exceeds R10milion or the Bid Adjudication Committee if contract value is below R10 million.

## 56. Blacklisting

### 56.1. The Blacklisting Committee

56.1.1. The Accounting Officer must establish the Blacklisting Committee (hereinafter referred to as "the Committee") to consider applications for blacklisting for a term to be determined by the Accounting Officer.

56.1.2. The Committee may only act on an application from:

(a) City Integrity and Investigations Directorate (CIID);
(b) EThekwini Municipal Audit and Risk Assurance Services Directorate;
(c) Legal Services Directorate;
(d) Executive Director or Director of Directorate;
(e) the Accounting Officer; and
(f) Conflict of Interest Task Team.

56.1.3. The Municipality may blacklist an entity which:

(a) has submitted a bid to the Municipality, through either its quotation management system or competitive bidding system, or any other procurement system utilised by the Municipality and such bid has not yet been awarded;
(b) has been awarded a contract through the Municipality's procurement systems but has not commenced with any task order or execution of the contract; or
(c) has been awarded a contract and has proceeded to execute such contract.

56.1.4. Objectives of blacklisting are as follows:

(a) to prevent the Municipality from doing business with persons, business, organisations or entities who abuse the supply chain management system by committing a corrupt, fraudulent, unfair or irregular practice/s;

(b) to prevent the Municipality from doing business with individual persons, business, organisations or entities who default on any contract, performance wilfully or negligently;

(c) to develop a uniform criterion and a fair process for barring such persons, tenderers and business entities who engage in subclauses (a) or (b) above; and

(d) to discourage persons who are blacklisted from re-entering the procurement arena by setting up new business entities and by using existing business entities to tender for work offered by the Municipality during the blacklisting period.

56.1.5. Any restriction imposed on any business entity by the Committee may, at the discretion of the Committee, also be applicable to any:

(a) partner;

(b) manager;

(c) director; or

(d) other person,

who wholly or partly exercises or exercised or may exercise control over the business entity.

56.1.6. Whilst such persons are blacklisted, such persons may re-organise themselves into new entities, however; such new entities will be precluded from tendering for work put out to tender by the Municipality.

56.1.7. The onus is on the entity who is so blacklisted to advise his/her business associates or partners that he or she has been blacklisted.

56.1.8. The Committee may depending on the level of complexity of the blacklisted person/entity in the current blacklisting application; blacklist holding companies and subsidiaries of which the blacklisted entity/person is a member, shareholder, associate.

**56.2. Grounds for Blacklisting**

56.2.1. The grounds for blacklisting are as follows:

(a) committing an improper practice/s as defined;

(b) failing to achieve a specified goal as is stipulated in the tender document;

(c) committing of any offence as set out in section 12 and 13 of the Prevention and Combating of Corrupt Activities Act 12 of 2004;

(d) persistent non–performance as defined and as monitored in terms of the Performance Management Policy of the Municipality; or

(e) a conviction in respect of a related criminal activity, by a competent court of law, for which the sentence is a term of imprisonment of not less than six (6) months.

**56.3. Application**

56.3.1. The Complainant shall cause to be submitted to the Chairperson of the Committee, a written report making a case for the consideration of blacklisting.

56.3.2. Supporting documents must be attached which shall include but not be limited to:

(a) documentary evidence;

(b) CIID Reports;

(c) contracts;

(d) payment certificates;

(e) invoices;

(f) communiqué's' between parties; or

(g) statements of witnesses.

56.3.3. In the case of applications for blacklisting pertaining to construction or works, where non-performance is alleged, (excluding failure to achieve specified goals) the application must be accompanied by proof:

(a) that the contractor has been advised in writing of his/her non-performance and had been given an opportunity to remedy the non-performance, a certificate from a consultant registered engineer, or an internal report from a suitably qualified official confirming the non-performance and failure to remedy must be attached; and

(b) a final demand must have been issued by the Accounting Officer or any duly authorised official requesting the contractor to perform not later than fourteen (14) days from the date of the notice.

56.3.4. In the case of applications in respect of contracts other than contracts mentioned above and failure to achieve specified goals a copy of all notices served on the supplier/contractor to perform must be attached to the application.

**56.4. Notification of Intention to Blacklist**

56.4.1. The Secretariat must send out a notification to the person or entity against whom the application is made.

56.4.2. The notice may be sent by:

(a) registered post;
(b) delivery by hand to the person/entity concerned; or
(c) electronic communication.

56.4.3. The notice shall set out:

(a) the basis of the claim, together with all supporting documents;
(b) the time period within which the Respondent is to respond, by furnishing reasons why he/she/it should not be blacklisted; and
(c) the place for the delivery of the response.

**56.5. Response**

56.5.1. The Respondent must in his/her response indicate whether he/she admits or denies the allegations and may make representations to the Committee.

56.5.2. Should the Respondent wish to review the report by City Integrity and Investigations Directorate, it shall do so by addressing its request with the Secretariat.

**56.6. Notification of Date**

56.6.1. The Secretariat must upon receipt of the response, advise the Respondent and the Complainant of a date for consideration of the matter.

56.6.2. The notice contemplated at clause 56.4.2 above, must:

(a) advise both parties of the date for consideration by the Committee which shall be a date not less than twenty (20) calendar days from the date of the notice; and

(b) advise the Respondent that he/she/it may submit, a statement setting out the basis of any denial and any supporting documents and should he/she/it wish to present evidence in person, that he/she/it is to advise so that suitable arrangements may be made.

56.6.3. If the Respondent does not respond to the first notice despite proper notification, he/she shall be deemed to have no objection and the Committee must proceed with the consideration and finalisation of the matter.

56.6.4. Any documentation received from the Respondent must be made available to the Complainant who may file a written response thereto, a copy of which shall be made available to the Respondent.

**56.7. The Committee Meeting**

56.7.1. The Committee must only undertake business when an appropriate quorum is present, consisting of 50% of its membership plus 1 member.

56.7.2. The Committee must on the basis of the application, together with all other documents filed impose an appropriate sanction.

56.7.3. The Committee shall not be precluded from calling for oral evidence on issues of clarity or disputes of fact.

56.7.4. The Committee must make a decision on the facts before it and issue an order within ten (10) working days.

**56.8. Notification of Decision and Order**

56.8.1. The Secretariat or any duly authorised Department must advise the parties of the decision in writing within ten (10) working days of the decision being made, by enclosing in the notice, a copy of the order.

56.8.2. The order shall contain the following information:

(a) The decision;

(b) The effective date of the sanction; and

(c) The date of the expiration of the sanction.

56.8.3. The decision notice shall enclose the order and set out the reasons for the decision.

56.8.4. The Accounting Officer must receive regular reports as soon as there are incidents of blacklisting.

**56.9. Effect of the decision**

56.9.1. A business entity is blacklisted/restricted from the effective date as set out in the order referred to in clause 56.8.2 above.

56.9.2. No Department within the Municipality may award a contract to such person/entity from the effective date to the expiry of the period set out in the order.

56.9.3. The Municipality shall terminate contracts of a blacklisted entity, at a point which is deemed most convenient for the Municipality based on prevailing circumstances, not exceeding 90 calendar days from the date of the issue of the Order.

**56.10. Publication**

56.10.1. The Director: Procurement and SCM or his nominee must submit the names of blacklisted/restricted entities to National Treasury for inclusion on the Tender Defaulters Register together with the appropriate supporting information supplied by the Committee.

56.10.2. The Procurement and Supply Chain Management Directorate or any duly authorised Directorate may publicise the findings of the Committee on the Municipality's website.

**56.11. Onus**

56.11.1. The onus shall rest with the Respondent to ensure that he/she/it is removed from the defaulters list and the Municipality's website once the period of blacklisting has expired.

**56.12. Sanctions**

56.12.1. If the Committee is satisfied that there are grounds to blacklist/restrict, the Committee must decide on the blacklisting period based on the merits of each matter.

56.12.2. The Committee must take into account, *inter alia*, the following:

(a) the seriousness of the offence;
(b) previous similar conduct in bidding processes in other municipalities and the Municipality;
(c) the hardship/inconvenience that has been occasioned by the entity's conduct;
(d) other remedies which the Municipality has/may invoke; and
(e) the financial loss suffered by the Municipality.

56.12.3. The Municipality shall not be precluded from invoking its conventional remedies in law.

**56.13. The Appointment of Members of the Blacklisting Committee**

56.13.1. The criteria for appointment of the Committee must consist of at least the following disciplines:

(a) Legal Services;
(b) Procurement of processes, whether in the public or private domain;
(c) Public Sector Management;
(d) Business Management/Finance Management; and
(e) Any other Senior Official as delegated by the Accounting Officer.

56.13.2. A Councillor within the Municipality shall not be eligible for membership of the Committee.

56.13.3. The Committee must be constituted as follows:

(a) Chairperson where possible; he/she must be an attorney or advocate;
(b) Deputy Chairperson where possible; he/she must be a senior official, Director of Directorate or at Deputy Director Level;
(c) Members where possible; should be cross functional teams consisting of senior officials; and

(d) Secretariat.

56.13.4. The Committee may co-opt advisory members or experts within the Municipality to advise the Committee in its deliberations provided that such persons may not vote on any matter before the Committee.

**56.14. Observers**

56.14.1. The Chairperson may, on request in consultation with the Committee, allow officials to attend a meeting as observers.

56.14.2. Observers may not participate in the proceedings, except to advise the representative (member) or the Committee if permitted by the Chairperson.

56.14.3. Observers must be cautioned to maintain the confidentiality of the discussions.

56.14.4. Observers may not record proceedings of meetings, take notes during meeting and use any form of electronic device at meetings.

56.14.5. Councillors are not permitted to sit in as observers.

**56.15. Decisions of The Blacklisting Committee**

56.15.1. The Committee must pronounce on the matter, having regard to the merits of the matter, by:

(a) restricting the tenderer / contractor and imposing on him/her an appropriate sanction; or
(b) dismissing the application;
(c) deferring the matter to request further and detailed information from the person making the application; or
(d) requesting the affected company or shareholder or director or partner or member and or management to provide information that will enable the Committee to make a justifiable order.

56.15.2. An order of the Committee shall be duly signed by the Chairperson.

56.15.3. Decisions of the Committee are final and binding.

## 57. Municipality Contracting with Another Organ of State – MFMA Section 110

57.1. In accordance with section 110(2) of the MFMA, this Policy does not apply when services are provided by an Organ of State.

57.2. All approvals as contemplated in section 110(2) of the MFMA must be made by:

(a) the CFO or his/ her delegate; or
(b) the Accounting Officer where contract value exceeds R10 million.

## 58. Special Deviations from SCM Policy

58.1. Certain procurements must be treated as special deviations from the SCM process, this covers areas previously treated as 'Finance Payments' and the approved list is included as per the table below.

58.2. Prior approval for deviations contemplated in this clause must be sought from:

(a) the CFO;
(b) the Director: Procurement and SCM;
(c) the designated official as contemplated in clause 58.6 or CFO for the municipal Entities; or
(d) the Accounting Officer where contract value exceeds R10 million.

58.3. Without evidence of the prior approval contemplated in clauses 58.2 and 58.5.(1-7), payments may not be authorised and must be treated as irregular expenditure.

58.4. Quarterly reports must be produced for the Accounting Officer on expenditure incurred or to be incurred through a central register that must be maintained by the Procurement and SCM Directorate.

58.5. The Accounting Officer must record the reasons for any deviations that have been incurred in terms of number 1 to 7 on the table below and report them to the next meeting of the council and include as a note to the annual financial statements or to a Board of Directors in the case of municipal Entities.

| No. | Special Deviations | Remarks | Authority |
|---|---|---|---|
| 1 | Seminars and Conferences | Staff members or public office bearers attending function relating to their field of expertise and continued<br><br>professional development must ensure that the study tour, event and or conference will address the relevant skills gaps in the municipality.<br><br>The number of officials or public office bearers that are scheduled or planned to attend a conference, event or study tour must be limited to three (3). | International to be approved by<br><br>City Manager. Others by<br><br>delegated official. |
| 2 | IT Software Licences | Approved Software register by the Accounting Officer | Requires prior authority from<br><br>Director Procurement and SCM and Director: Information Technology. |
| 3 | Subscriptions in general such - Newspapers, | Newspaper and magazine<br><br>requirements for libraries and | Respective Director of the Directorate or by delegated official. |

| | | | |
|---|---|---|---|
| | Magazines, music licence subscription etc | departments.<br><br>Municipal Cost Containment Regulation prohibits the purchase of newspapers unless it is required for the professional purposes and where unavailable in electronic formats. | |
| 4 | Advertising and Marketing | All Advertising and Marketing is done via the Marketing and Communications Directorate . | Executive Director Governance & International Relations or Director<br><br>Marketing and Communications or Delegated Official. |
| 5 | Special Events | Co-Ordinating normal and special events is done via the Marketing and Communications Directorate .<br><br>Catering expenses to be incurred in instances where meetings, conferences, workshops, courses, forums, recruitment interviews and proceedings of council exceed five hours. | City Manager, Executive Director Governance & International Relations or Director Marketing and<br><br>Communications or Delegated Official. |

| | | | |
|---|---|---|---|
| 6 | Sponsorship and Partnering | Co-Ordinating all forms of Sponsorship and Partnering is done via the Marketing and Communications Directorate. This is in addition to clause 48 of this policy.<br><br>Catering expenses to be incurred in instances where meetings, conferences, workshops, courses, forums, recruitment interviews and proceedings of council exceed five hours. | City Manager, Executive Director Governance & International Relations or Director<br><br>Communications or Delegated Official. |
| 7 | Hire of Venue | Staff members making use of specific venues relating to their field of Operations that involves the Marketing and Communications Directorate. | City Manager, Executive Director Governance & International Relations or Director Communications or Delegated Official. |
| 8 | Provision of Artistic Ephemeral Talent | Provision of artistic services in events or gatherings organised by the Municipality | Chief Financial Officer,<br><br>Director: Procurement and Supply Chain Management Directorate and |

| | | | |
|---|---|---|---|
| | | | the respective Director of the Directorate or delegated official. |