

SUPPLY CHAIN MANAGEMENT

MTHONJANENI MUNICIPALITY

SUPPLY CHAIN MANAGEMENT

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1. Definitions

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

“Accounting Officer” means the municipal manager or his delegate;

“competitive bidding process” means a call for supply of goods and services, the receipt of offers for supply thereof from qualifying Vendors and the evaluation of offers received;

“competitive bid” means a bid in terms of a competitive bidding process;
“final award”, in relation to bids or quotations submitted for a contract, means the final decision on which bid or quote to accept;

“emergency” means a situation which is life threatening, and/or there is death and/or serious damage to property, and/or serious imminent loss to Council.

“formal written price quotation” means quotations received in hardcopy, electronic or facsimile delivered to the procurement section.

“in the service of the state” means to be –

- (a) a member of –
 - (i) any municipal council;
 - (ii) any provincial legislature; or
 - (iii) the National Assembly or the National Council of Provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature;

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

“list of accredited prospective providers” means the list of accredited prospective providers which is maintained by the municipality in terms of paragraph 14 of this policy;

“Municipality” means the Mthonjaneni Municipality or any entity under its control,

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

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

“Regulation” means the Local Government: Municipal Supply Chain Management Regulations (Notice 686 of 2005);

“Sundry Purchases” mean purchases made without going through a verbal or written quotation process;

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

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

“written or verbal quotations” means quotations referred to in paragraph 12(1)(c) of this policy.

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CHAPTER 1 ESTABLISHMENT AND IMPLEMENTATION OF THE OBJECTIVES OF THE SUPPLY CHAIN MANAGEMENT POLICY

2. Objectives of the Supply Chain Management policy

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

3. Applicability of this Policy

This policy applies to the Ntambanana and any of the Municipal's entities.

4. Amendment of the Supply Chain Management Policy

- (1) The accounting officer must –
 - (a) at least annually review the implementation of this policy; and
 - (b) when the accounting officer considers it necessary, submit proposals for the amendment of this policy to the council.
- (2) When amending this supply chain management policy the need for uniformity in supply chain practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.

5. Delegation of Supply Chain Management powers and duties

- (1) The municipality hereby delegates all powers and duties to the accounting officer which are necessary to enable the accounting officer
 - (a) to discharge the Supply Chain Management responsibility in terms of:-
 - (i) Chapter 8 or 10 of the Act; and
 - (ii) this Policy;
 - (b) to maximize administrative and operational efficiency in the implementation of the supply chain management policy;
 - (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favoritism and unfair and irregular practices in the implementation of the supply chain management policy; and
 - (d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- (2) The council or accounting officer may not delegate or sub-delegate any supply chain management powers or duties to a person who is not an official of the municipality or to a committee which is not exclusively composed of officials of the municipality;
- (3) This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this policy.

6. Sub-delegations

- (1) The accounting officer may in terms of section 79 or 106 of the Act sub-delegate any supply chain management powers and duties, including those delegated to

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the accounting officer in terms of this policy, but any such sub-delegation must be consistent with paragraph (2) below and section 5 of this policy.

- (2) The power to make a final award –
- (a) above R10 million (VAT included) may not be sub-delegated by the accounting officer;
 - (b) above R 200 000 (VAT included), but not exceeding R10 million (VAT included), may be sub-delegated but only to a bid adjudication committee of which the chief financial officer (Senior Manager: Financial Services) or a senior manager is a member;
 - (c) not exceeding R 200 000 (Vat included) may be sub-delegated but only to the Senior Manager and a manager director accountable to the Senior Manager: Financial Services;
- (3) The Bid Adjudication Committee to which the power to make final awards has been sub-delegated in accordance with paragraph (2) must within five days of the bid adjudication committee meeting submit to the accounting officer particulars of each final award made by such committee during that meeting, including–
- (a) the amount of the award;
 - (b) the name of the person to whom the award was made; and
 - (c) the reason why the award was made to that person.
- (4) No supply chain management decision-making powers may be delegated to an advisor or consultant.

7. Oversight role of council

- (1) The council must maintain oversight over the implementation of this Supply Chain Management policy.
- (2) For the purposes of such oversight the accounting officer must –
- (i) within 30 days (within 20 days for municipal entity) of the end of each financial year, submit a report on the implementation of the supply chain management policy of the municipality and of any municipal entity under its sole or shared control, to the council of the municipality,
 - (ii) whenever there are serious and material problems in the implementation of the supply chain management policy, immediately submit a report to the council.
- (3) The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the mayor.
- (4) The reports must be made public in accordance with section 21A of the Municipal Systems Act.

8. Supply Chain Management unit

- (1) The accounting officer must establish a Supply Chain Management unit to implement this supply chain management policy.
- (2) The supply chain management unit must operate under the direct supervision of the chief financial officer (Senior Manager: Financial Services) or an official to whom this duty has been delegated in terms of section 82 of the Act.

CHAPTER 2

COMPONENTS OF SUPPLY CHAIN MANAGEMENT

9. Format of Supply Chain Management

This Supply Chain Management policy provides systems for –

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

Part 1: Demand Management

10. System of Demand Management

The accounting officer must establish, through operational procedures, an effective system of demand management in order to ensure that the resources required to support the strategic and operational commitments are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy the needs.

Part 2: Acquisition management

11. System of acquisition management

- (1) The accounting officer must establish, through operational procedures, an effective system of acquisition management in order to ensure –
- (a) that goods and services are procured by the municipality in accordance with authorised processes only;
 - (b) that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
 - (c) that the threshold values for the different procurement processes are complied with;
 - (d) that bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and

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- (e) that any Treasury guidelines on acquisition management are properly taken into account.
- (2) This policy except where provided otherwise in the policy, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –
 - (a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
 - (b) electricity from Eskom or another public entity, another municipality or a municipal entity.
- (3) Whenever the municipality procures goods or services contemplated in section 110(2) of the Act the accounting officer must make public the fact that it procures such goods or services otherwise than through its Supply Chain Management system, including –
 - (a) the kind of goods or services; and
 - (b) the name of the supplier

12. Range of procurement processes

- (1) The procurement of goods and services through this policy is provided by way of:
 - (a) petty cash purchases, up to a transaction value of R 500 (VAT included);
 - (b) sundry purchases excluding Petty cash up to R 2 000 (Vat included);
 - (c) written or verbal quotations for procurements of a transaction value over R2 000 up to R10 000 (VAT included);
 - (d) formal written price quotations for procurements of a transaction value over R10 000 up to R200 000 (VAT included); and
 - (e) a competitive bidding process for:
 - (i) procurements above a transaction value of R200 000 (VAT included); and
 - (ii) the procurement of long term contracts.
- (2) The accounting officer may, in writing:
 - (a) lower, but not increase, the different threshold values specified in paragraph (1); or
 - (b) direct that:
 - (i) written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000;

- (ii) formal written price quotations be obtained for any specific procurement of a transaction value lower than R10 000; or
 - (iii) a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000.
- (3) Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the policy. When determining transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.

13. General preconditions for consideration of written quotations or bids

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

- (a) has furnished that provider's:
 - (i) full name;
 - (ii) identification number or company or other registration number; and
 - (iii) tax reference number and VAT registration number, if any;
- (b) has authorised the municipality to obtain a tax clearance from the South African Revenue Services that the provider's tax matters are in order; and
- (c) has indicated:
 - (i) whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
 - (ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
 - (iii) whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to in subparagraph (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.
- (d) In the event of the service provider being a joint venture of any nature, sections (a) to (c) shall apply mutatis mutandis to all parties in the joint venture

14. Lists of accredited prospective providers

- (1) (a) A list must be kept of accredited prospective providers of goods and services that must be used for all procurement requirements of the municipality greater than R 2 000.00 including VAT; and
- (b) At least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, prospective providers of

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goods or services must be invited to apply for evaluation and listing as accredited prospective providers;

- (c) The advertisement in (b) must specify the listing criteria for accredited prospective providers; and
- (d) The listing must disallow any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.

(2) The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.

(3) The list must be compiled per commodity and per type of service.

15. Petty cash purchases (up to R 1 000.00 - including VAT)

- (a) Petty cash may be used for procurement of goods and services as per paragraph 12 (1)(a) of this policy.
- (b) Petty cash may only be used for procurement of **urgent** goods and services from recognized suppliers.
- (c) Petty cash can only be obtained through Councils approved buying procedure (Authorised petty cash application form, acknowledgement of goods received and receipt/ proof of payment).
- (d) Each manager (Official responsible for Petty cash administration) must submit reconciliation reports including total amount of petty cash purchases with receipts and appropriate documents for each purchase, with each application for reimbursement.

16. Written or verbal quotations

For sundry purchases up to R1 000,00 (including VAT)

- (1) All orders where the total value is less than R2 000,00.
The order will require one quotation written or verbal from accredited supplier/s

17. Written or verbal quotations (from R1000,00 up to R10 000,00 (including VAT))

- (a) Quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the municipality or municipal entity, provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria in the supply chain management policy required by 14(1)(b) and (c) of this policy;
- (b) To the extent feasible, providers must be requested to submit such quotations in writing;

(c) If it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the accounting officer or another official designated by the accounting officer. (This has been delegated in terms of section 6 of this Policy);

(d) The accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices; and

(e) If a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.

18. Formal written price quotations (from R10 000,00 up to R200 000,00 (including VAT))

- (1)
 - (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 the supply chain management policy required by paragraph 14(1)(b) and (c);
 - (c) If it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer (Senior Manager: Financial Services) or an official designated by the Senior Manager: Financial Services. (This has been delegated in terms of section 6 of this Policy); and
 - (d) The accounting officer must record the names of the potential providers and their written quotations.
- (2) The designated official referred to in subparagraph (1)(c) above, must within three days of the end of each month report to the Senior Manager: Financial Services on any approvals given during that month by that official in terms of that subparagraph.

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

- (a) All requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 18, be advertised for at least seven days on the website and an official notice board of the municipality or municipal entity;
- (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) The accounting officer must take all reasonable steps to ensure that the procurement of goods and services through written or verbal quotations or formal written price quotations is not abused;

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- (d) The accounting officer or Senior Manager: Financial Services must on a monthly basis be notified in writing of all written or verbal quotations and formal written price quotations accepted by an official acting in terms of a sub-delegation.

20. Competitive bidding process

- (1) Goods or services above a transaction value of R200 000 (VAT included) and long term contracts may only be procured through a competitive bidding process, subject to paragraph 11(2) [organs of state] of this policy; and
- (2) No requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

21. Process for competitive bidding

- (a) Compilation of bidding documentation will at least comply with section 22 of this policy.
- (b) The public invitation of bids will be administered in terms of section 23 of this policy.
- (c) Handling of bids submitted in response to public invitation;
 - (i) The department Corporate Services shall be responsible for the administration of bids received by the Municipality as described in section 24 of this Policy;
 - (ii) The user department shall be responsible for the submission of a report to the Evaluation Committee, on which report at least a check list of responsiveness (compliance) with tender specifications, must be recorded, with a corresponding recommendation.
- (d) the evaluation of bids;
Evaluation Committee to evaluate bids and put through recommendation to the Bid and Adjudication Committee.
- (e) the award of contracts;
Final awards will be done by the Bid Adjudication Committee or Accounting Officer (depending on value of bid accepted) and the accounting officer will enter into a contract with the successful bidder.
- (f) the administration of contracts;
All administration of contracts shall be carried out by the user department strictly in terms of these Supply Chain Management Regulations and proper record keeping. All correspondence and records relating to the bid shall be forwarded to the central registry, which records shall be the only official record.

22. Bid documentation for competitive bids

The Specifications Committee shall approve standard documentation pertaining to a particular type of or group of services for which tender specifications need to be developed.

Bid documentation must at least take into account:

- (a)
 - (i) the general and special conditions of contract;
 - (ii) any Treasury guidelines on bid documentation; and
 - (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
- (b) include evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish:
 - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements:
 - (a) for the past three years; or
 - (b) since their establishment if established during the past three years;
 - (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
 - (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
 - (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.
- (f) Documents that have to be present at tender opening which must be counter-signed and stamped accordingly are:
 - i. The signed form of tender.

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- ii. The price and all supporting pricing schedules.
- iii. The Preferential Procurement Certificate.
- iv. All qualitative documents where such are used as part of the pricing, that is where functionality has a weighting for contender score.

23. Public invitation for competitive bids

- (1) (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the municipality or municipal entity or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and
- (b) The information contained in a public advertisement, must include:
 - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2) of this policy; and
 - (ii) a statement that bids may only be submitted on the bid documentation provided by the municipality or municipal entity.
- (c) to contain all information to ensure unambiguous, free, transparent and competitive procurement.
- (d) Details of site meetings or briefing sessions and to clearly state:
 - whether a site inspection/meeting is compulsory or not;
 - criteria for bidders' representative attending the site inspection;
 - the penalty for non compliance with compulsory site inspection requirements;
 - that site meeting will be chaired by the user department
- (2) The accounting officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.
- (3) Bids submitted must be sealed.
- (4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

24. Procedure for handling, opening and recording of bids

- (a) Bids shall be placed in the official tender box located in the foyer of the Mthonjaneni Civic Centre, Richards Bay before the time and date specified in the bid advertisement;

- (i) The tender box shall be opened only by and in the presence of two officials delegated to do so by the Accounting Officer;
- (ii) The bid opening shall be open to the public. Attendance shall be recorded by signature of each attendee in the register referred to in (iii) below;
- (iii) Bids shall be opened **only in public** by the officials designated in (i) above and the results thereof recorded in an official register kept by the DCS; and
- (iv) must be opened at the same time and as soon as possible after the period for the submission of bids has expired;
- (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price; and
- (c) The accounting officer must:
 - (i) record in a register all bids received in time;
 - (ii) make the register available for public inspection; and
 - (iii) publish the entries in the register and the bid results on the website.

25. Negotiations with preferred bidders

- (1) The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation:
 - (a) does not allow any preferred bidder a second or unfair opportunity;
 - (b) is not to the detriment of any other bidder; and
 - (c) does not lead to a higher price than the bid as submitted.
- (2) This section be delegated in terms of Section 6 of the Policy to all Senior Managers.
- (3) The administration of such negotiations will be carried out as follows:
 - It will be the responsibility of the respective Senior Manager to ensure minutes of such negotiations are kept for record purposes.
 - It will be the responsibility of the Senior Manager to ensure that a representative from the Department of the Senior Manager: Financial Services is present for such negotiation. For this purpose, the representative from the Department of the Senior Manager: Financial Services be the Senior Manager: Financial Services, a manager or senior official from the Supply Chain Management Unit.

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26. Two-stage bidding process

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

27. Committee system for competitive bids

- (1) The accounting officer must:
 - (a) establish a committee system comprising 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.
- (2) The committee system must be consistent with:
 - (a) paragraph 28, 29 and 30 of this policy; and
 - (b) any other applicable legislation.
- (3) The accounting officer may apply the committee system to formal written price quotations (procurement between R10 000 and R200 000 (including VAT)).

28. Bid specification committees

- (1) The bid specification committee must compile the specifications for each procurement of goods or services by the municipality or municipal entity.
- (2) Specifications:

- (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
 - (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organization, 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 labeling of conformity certification;
 - (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the words "equivalent";
 - (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2001; and
 - (g) must be approved by the accounting officer prior to publication of the invitation for bids in terms of paragraph 22 of this policy.
- (3)
 - (a) The user department will compile bid documentation for bids generic to that department (*subject to other requirements contained in this document*).
 - (b) Documentation is to be approved by the Specifications Committee (to be established) prior to advertisement of bids.
 - (c) The bid specification committee must be composed of at least one (or more at the discretion of the departmental manager) deputy or assistant manager from all departments, of the municipality or municipal entity, and may, when appropriate, include internal or external specialists advisors and shall be chaired by election from its membership on a rotating three month basis by any one of its members.
 - (4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.

29. Bid evaluation committees

- (1) The bid evaluation committee must:

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- (a) evaluate bids in accordance with:
 - (i) the specifications for a specific procurement; and
 - (ii) the points system set out in terms of paragraph 28(2)(f).
 - (b) evaluate each bidder's ability to execute the contract;
 - (c) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, and;
 - (d) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
- (2) The bid evaluation committee must as far as possible be composed of:
- (a) The members of the specifications committee, and
 - (b) on an ad hoc basis, officials from departments requiring the goods or services; and
 - (c) at least one supply chain management practitioner of the municipality; and
 - (d) shall be chaired by election from its membership on a rotating three month basis by any one of its members.

30. Bid adjudication committees

- (1) The bid adjudication committee must:
- (a) consider the report and recommendations of the bid evaluation committee; and
 - (b) either –
 - (i) depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or
 - (ii) make another recommendation to the accounting officer how to proceed with the relevant procurement.
- (2) The bid adjudication committee must consist of at least one senior managers of the municipality which must include:
- (i) the Senior Manager: Financial Services or, if the Senior Manager: Financial Services is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the Senior Manager: Financial Services; and
 - (ii) at least one supply chain management official who is an official of the municipality; and

- (iii) a technical expert in the relevant field who is an official, if such an expert exists; and
 - (iv) a legal expert.
- (3) The accounting officer must appoint the chairperson of the bid adjudication committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.
- (4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.
- (5) (a) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –
 - (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;
 - (ii) notify the accounting officer.
- (b) The accounting officer may –
 - (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
 - (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (6) The accounting officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (7) The accounting officer must comply with section 114 of the Act within 10 working days

31. Procurement of banking services

- (1) A contract for the provision of banking services:
- (a) must be procured through competitive bids;
 - (b) must be consistent with section 7 or 85 of the Act; and
 - (c) may not be for a period of more than five years at a time.
- (2) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.

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- (3) The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of paragraph 23(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

32. Procurement of IT related goods or services

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

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

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

34. Procurement of goods necessitating special safety arrangements

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

35. Proudly SA Campaign

All procurement shall support the Proudly SA Campaign to the extent that, all things being equal, preference in terms of the Preferential Procurement Policy is given to suppliers located within the Mthonjaneni Municipality:

36. Appointment of consultants

- (1) The accounting officer may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.
- (2) Consultancy services must be procured through competitive bids if–
- (a) the value of the contract exceeds R200 000 (VAT included); or
 - (b) the duration period of the contract exceeds one year.
- (3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of –
- (a) all consultancy services provided to an organ of state in the last five years; and
 - (b) any similar consultancy services provided to an organ of state in the last five years.
- (4) The accounting officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the municipality.

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

- (1) The accounting officer may –
- (a) dispense with the official procurement processes established by this policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only :
 - (i) in an emergency;
 - (ii) if such goods or services are produced or available from a single provider only;

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- (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
 - (iv) acquisition of animals for zoos and/or nature and game reserves; or
 - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
- (b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.
- (2) The accounting officer must record the reasons for any deviations in terms of subparagraphs (1)(a) and (b) of this policy and report them to the next meeting of the council and include as a note to the annual financial statements.
- (3) Subparagraph (2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this policy.
- (4) The Senior Managers be delegated the authority to address deviations from the procurement process mentioned in paragraph (1) above, but within a value range of R200 000. For practical purposes the requirements in terms of section 37(2) not be applied for orders for R30 000 or less."

38. Unsolicited bids

- (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- (2) The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if –
 - (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
 - (b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
 - (c) the person who made the bid is the sole provider of the product or service; and
 - (d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
- (3) If the accounting officer decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with –
 - (a) reasons as to why the bid should not be open to other competitors;

- (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
 - (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) All written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, must be submitted to the National Treasury and the relevant provincial treasury for comment.
- (5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, depending on its delegations.
- (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (7) When considering the matter, the adjudication committee must take into account –
 - (a) any comments submitted by the public; and
 - (b) any written comments and recommendations of the National Treasury or the relevant provincial treasury.
- (8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the accounting officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.
- (9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality **[or entity]** to the bid may be entered into or signed within 30 days of the submission.

39. Combating of abuse of supply chain management system

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

- (1) The accounting officer must–
 - (a) *take all reasonable steps to prevent abuse of the supply chain management system;*
 - (b) investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this supply chain management policy, and when justified–
 - (i) take appropriate steps against such official or other role player; or
 - (ii) report any alleged criminal conduct to the South African Police Service;

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

Part 3: Logistics, Disposal, Risk and Performance Management

40. Logistics management

The accounting officer must establish an effective system of logistics management in order to provide for the setting of inventory levels, placing of orders, receiving and distribution of goods, stores and warehouse management, expediting orders, transport management, vendor performance, maintenance and contract administration.

41. Disposal management

- (1) The accounting officer must establish an effective system of disposal management for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act, which must stipulate the following:
- (2) The disposal of assets must–
 - (a) be by one of the following methods –
 - (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
 - (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
 - (iii) selling the asset in compliance with the Preferential Procurement Policy; or
 - (iv) destroying the asset;
 - (b) provided that –
 - (i) immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
 - (ii) movable assets may be sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous. Except when the plight of the poor demands otherwise, the Accounting Officer, together with the Senior Manager: Financial Services and the relevant Senior Manager, may issue redundant or obsolete items to the community;
 - (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 has approved any sale or donation of firearms to any person or institution within or outside the Republic;
 - (c) furthermore ensure that –

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- (i) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise; and
- (ii) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed; and
- (d) ensure that where assets are traded in for other assets, the highest possible trade-in price is negotiated.

- (3) The actual approach taken to address various scenarios for the disposal and lease of immovable assets is contained in Annexure C of this Policy. (DMS 394828)

42. Risk management

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

43. Performance management

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

Part 4: Other matters

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

- (1) The accounting officer must ensure that, irrespective of the procurement process followed, no award above R15 000 is given to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (2) Before making an award to a person the Municipality must first check with SARS whether that person's tax matters are in order.

- (3) If SARS does not respond within 7 days such person's tax matters may for purposes of subparagraph (1) be presumed to be in order.

45. Prohibition on awards to persons in the service of the state

The accounting officer must ensure that irrespective of the procurement process followed, no award may be given to a person –

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

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

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

47. Ethical standards

- (1) A code of ethical standards is hereby established, in accordance with subparagraph (2), for officials and other role players in the supply chain management system in order to promote –
 - (a) mutual trust and respect; and
 - (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
- (2) An official or other role player involved in the implementation of the supply chain management policy –
 - (a) must treat all providers and potential providers equitably;
 - (b) may not use his or her position for private gain or to improperly benefit another person;
 - (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
 - (d) notwithstanding subparagraph (2)(c), must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit

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promised, offered or granted to that person or to any close family member, partner or associate of that person;

- (e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the municipality ;
 - (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
 - (g) must be scrupulous in his or her use of property belonging to the municipality;
 - (h) must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
 - (i) must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –
 - (i) any alleged fraud, corruption, favouritism or unfair conduct;
 - (ii) any alleged contravention of paragraph 47(1) of this policy; or
 - (iii) any alleged breach of this code of ethical standards.
- (3) Declarations in terms of subparagraphs (2)(d) and (e) -
- (a) must be recorded in a register which the accounting officer must keep for this purpose;
 - (b) by the accounting officer must be made to the mayor of the municipality who must ensure that such declarations are recorded in the register.
- (4) The National Treasury's code of conduct must also be taken into account by supply chain management practitioners and other role players involved in supply chain management.
- (5) It is recommended that the municipality or municipal entity adopt the National Treasury's code of conduct for supply chain management practitioners and other role players involved in supply chain management. When adopted, such code of conduct becomes binding on all officials and other role players involved in the implementation of the supply chain management policy of the municipality or municipal entity. A copy of the National Treasury code of conduct is available on the website www.treasury.gov.za/mfma located under "legislation". This code of conduct must be adopted by council. Attached **Annexure B**. (DMS 377286)
- (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.

48. Inducements, rewards, gifts and favours to municipalities, officials and other role players

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

49. Sponsorships

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.

50. Objections and complaints

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

51. Resolution of disputes, objections, complaints and queries

- (1) The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes:
- (a) to assist in the resolution of disputes between the municipality **[or municipal entity]** and other persons regarding:

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- (i) any decisions or actions taken in the implementation of the supply chain management system; or
- (ii) any matter arising from a contract awarded in the course of the supply chain management system; or
- (b) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.

Note:

A parent municipality and a municipal entity under its sole or shared control may for purposes of subparagraph (1) appoint the same person.

- (2) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.
- (3) The person appointed must –
 - (a) strive to resolve promptly all disputes, objections, complaints or queries received; and
 - (b) submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.
- (4) A dispute, objection, complaint or query may be referred to the relevant provincial treasury if –
 - (a) the dispute, objection, complaint or query is not resolved within 60 days; or
 - (b) no response is forthcoming within 60 days.
- (5) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.
- (6) This paragraph must not be read as affecting a person's rights to approach a court at any time.

52. Contracts providing for compensation based on turnover

If a service provider acts on behalf of a municipality [or municipal entity] 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 [or municipal entity] must stipulate –

- (a) a cap on the compensation payable to the service provider; and

- (b) that such compensation must be performance based.

53. Commencement

This policy takes effect on the date on which it is adopted by the council.

ANNEXURE C - DMS 394828

POLICY: SALE AND LEASE OF IMMOVABLE ASSETS

INTRODUCTION

In creating a policy for the sale and lease of immovable property a distinction should be drawn between legal requirements and guidelines. While legal requirements have to be met, guidelines have no such compulsory consequences and are more of a discretionary nature. This document will therefore concentrate on the legal requirements.

The legal requirements are principally contained in the Municipal Finance Management Act, 2003 (Act No 56 of 2003) as well as the Supply Chain Management Regulations issued in terms of the Municipal Finance Management Act. Based on the aforementioned Council adopted its Supply Chain Management Policy.

In drafting this policy consideration was given to two possible approaches. The first approach is to write general principles applicable to all sales and leases without distinguishing between the different types of transactions. The alternative is to distinguish between the various types of transactions and to write policy guidelines for each type of transaction. The unique nature of land ownership and development in the Municipality make the latter approach the more appropriate. As a result, a certain number of most frequent transactions are mentioned in this policy. The policy is not cast in stone and can be amended from time to time as the need arises.

THE SALE OF IMMOVABLE PROPERTY

1. Large pieces of land where major economic intervention is required and initiative is both complex and unique, whether the land is proclaimed or zoned or otherwise (e.g. Marina Development, Tata Steel). In addition, land where significant industrial, commercial and residential developments are envisaged and/or where the Council has no specific conceptual design (large shopping complexes, golf estates etc).

TENDER

- Sales of this nature must allow the Council a say in a type of development that it wishes to see in the land. The municipality has structure plans, zonings and IDP in place which dictates to a large degree the type of development that is allowed on a

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piece of land. In addition to these existing requirements, the Council may well wish to approve of the nature of the development that it sees on the land that it sells. It is in fact a principle of good governance and in the public interest that the municipality guide development to a high degree. Whether the Council therefore decides to have a piece of land developed for a specific purpose, or is approached by a developer to develop a piece of land for a specific purpose, the Council must always have the opportunity to approve of the nature of the development. During the consideration of this aspect the Council is obviously free to state that it has no strategy with respect to a specific piece of land. In such a case the land will be sold subject to the market value as the minimum price by way of a tender process to the highest tenderer.

TWO ENVELOPE SYSTEM

- Should the Council however, decide to have a say in the type and the nature of the development, a dual system of open tender will be followed as follows:
 1. Unlimited and open proposals will be requested from prospective tenderers to be included in a clearly marked envelope with a second envelope dealing with the offer in price for the land in question.

This will enable the Council to consider the envelopes containing the suggestions on the type of development first. The Council will be able to consider these proposals but also to request the proposers to make presentations to the Council in order to explain these proposals if necessary. The Council will then be obliged to identify proposals which are acceptable and to reject those proposals which are entirely unacceptable.
 2. The issue will then be referred to the Council's Bid and Adjudication Committees where the Bid Evaluation Committee will first consider the proposals with the information contained in the second envelope now forming part of the evaluation. Recommendation will be made to the Bid Adjudication Committee. The Bid Adjudication Committee will then finalise the sale in terms of the principle that the highest price will receive preference, unless there is some reason where public interest demands a decision which deviates from this principle. The Bid Specification Committee can be used if necessary to consider the initial advertisement that goes out to advertise the sale of the property, giving guidance as to the nature and type of the development if necessary.

UNSOLICITED BIDS

- Should the Council receive a proposal for development in this category, especially in respect of unproclaimed land situate within the IDZ area, it may consider such proposal as an unsolicited bid, provided that the requirements of transparency in concluding such sales will be adhered to in the strictest terms (advertisement, etc.).
2. **Land zoned for a particular purpose and for a particular type of development (residential and industrial)**
- The Director Corporate Services will on a regular basis call for tenders in respect of land available for development. The market value, or cost to Council, whichever is the greater, of such land will be the upset prices for such tender.

- In this instance such land will be sold without the two-envelope system of the previous category. The land will merely be advertised in the press as land for sale and requesting interested parties to submit offers for the land. The existing three committees dealing with the Council's bid and adjudication procedure will be used in accordance with the requirements of the case.
- No land may be sold in this category at below market value.
- Whenever a purchaser approaches the Council with a view to purchase a specified piece of land, the procedure mentioned in the first bullet under this heading will be followed.
- Tenderers can submit Preferential Procurement Certificates as part of their tenders and Council's Preferential Procurement Policy will apply to these tenders as any other tenders, with the allocation of points in accordance with Annexure "A".
- Should no tender(s) be received after such tender(s) had been advertised, the respective site(s) will be available for sale on a first-come-first-serve basis. A list of available erven will be maintained by the Director Corporate Services for this purpose. In respect of the erven remaining on the list, tenders will be called for every three months, for which purpose the erven will be revalued/ the current applicable upset price be confirmed.

3. Land for social housing

- The Council acts as the agent of the Department of Housing in the provision of housing to qualifying candidates in terms of a means test prescribed by the Department of Housing. The sale and lease of properties in this category are governed by the laws pertaining to social housing and the policies of the relevant government departments.
- It is well known that in such cases the rules applicable to the sale and lease of the relevant land do not comply with the requirements of the MFMA or the Regulations. In terms of the exceptions mentioned in this policy, namely public interest and the plight of the poor, it is recorded that these deviations are reasonable and justified.

4. Employee housing

- Historically the Council provided housing to its officials at a subsidized rental due to the shortage of housing in an area which showed a growth rate far above the national average. This approach led to exceptional expenses for the Council and its preceding municipal Councils with maintenance and administrative costs exceeding what is reasonable under the circumstances. In view of this circumstance the Council resolved to bring the benefits to a close but was obliged in law to accept that officials who at the time of the cancellation of the benefit was entitled to participate, had an existing right which had to be honored. To this day a declining number of officials remain entitled to participate in this benefit.
- The most important way in which the Council could assist its officials to become independent and therefore to relieve the Council of the burden described in the previous paragraph, was to offer the housing stock belonging to the council to the

officials for sale. The most common practice remaining in existence is the selling of the house that an official is leasing from the Council to the incumbent lessee. In other cases where a leased property becomes vacant, the house is sold to any of the entitled officials by way of tender process but with such tenders being strictly confined to officials with existing rights as the remaining beneficiaries. In the case of such sales the official purchases the relevant property and then loses his/her right to be provided with rented accommodation, thereby reducing the burden of maintenance and administrative costs referred to above. This reduction in the liabilities of the Council is in the public interest as it reduces the contribution from the rates income of the Council to leased housing for Council employees.

- Housing sold to employees will therefore in the public interest be continued on the basis that the process that is followed will not be competitive as required by the law but competitive to a limited degree when qualifying officials will be required to compete in a tender process for the available housing unless the house is sold to the qualifying occupant. These sales are further strictly subject to market prices as the minimum selling price.

5. Outfall land e.g. public open spaces, servitudes, and cut offs from proclaimed land

- Normal town planning procedures and township establishments result in outfall public open spaces, servitudes and cut offs which lead to a variety of problems for the Council. Not only is the maintenance of such pieces of land costly, but it also leads to problems relating to vagrancy, vandalism and illegal occupations. These pieces of land are not large enough to constitute separate entities and therefore have limited value. However, when incorporated with adjacent pieces of land, its value may be enhanced in some cases.
- In order to avoid the problems referred to in the previous paragraph, it is established practice to sell (or lease) such pieces of outfall land to adjacent owners. In the event of only one person showing an interest to purchase such a piece of land it is in the public interest to sell such land to the interested purchaser at market value. When more than one adjacent owner is interested in the relevant piece of land, a limited process of competition may be introduced by inviting tenders.
- Outfall pieces of land will therefore in terms of this policy be sold to adjoining owners out of hand when only one candidate is interested or by way of a limited competitive tender when more than one adjoining owner may be interested. The land will be sold at market value unless the public interest or the plight of the poor demands otherwise.
- It is recorded that when the procedure described in this paragraph is followed, the requirements of transparency in concluding such sales will be adhered to in the strictest terms (advertisement, etc.).

6. Exceptional cases

- It happens from time to time that a person or company who leases a property from the Council on a long-term basis (say anything exceeding 15 years) requests the Council to convert the lease into a sale agreement. Invariably there are improvements on such leased properties as a result of the right of the lessee to effect further improvements of a prescribed nature on the property.

- On the basis of the conversion of an existing right (the long term lease) into another right (ownership), the Council may consider adhering to such a request without complying with the requirement that a sale should be competitive.
- The Council may decide up-front that it will not comply with requests of this nature in view of the fact that the relevant lessee made his/her choices when the first agreement was entered into.
- Should the Council, however, decide to allow requests of this nature it will have to determine a policy spelling out the rules of sales of this nature e.g.
 - ❖ the minimum time span of the remaining long term lease to justify the conversion of one request to another.
 - ❖ the establishment of the market value of the land in question, and
 - ❖ the requirement to consider in each case whether the public interest will justify a deviation from the accepted sales policy.

7. Expansion of Existing Businesses

In the event of an owner of an existing business wanting to purchase an adjacent piece of land to expand his/her business, such application will be circulated to the various departments. Should the application be supported, the following competitive process will be followed:

- in the event of the piece of land being too small to constitute a viable unit capable of being developed (e.g. parking), Council's intention to sell the land will be advertised in the local media. In the event of any objections being received, such will be considered during the evaluation process. If no objections are received, the sale will be proceeded with.
- in the event of the piece of land being large enough to constitute a viable unit, such proposal may be treated as an unsolicited bid, or tenders will be called for and the land sold to the highest tender.

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THE LEASE OF IMMOVABLE PROPERTY

1. Registered long-term commercial leases

- The Council leases its property from time to time on a long-term basis (longer than 20 years and 11 months).
- Such long-term leases are formalized by way of notarial agreement and registered in the deeds office
- Long-term leases will only be approved on properties with substantial improvements on them or where the lessee is required as a contractual obligation to effect such substantial improvements.
- The Council may decide on its own volition to lease a property on long-term leases or may do so in reaction to a request submitted by an interested party.
- In both cases the Council may call for either proposals or public tenders through its bid committees.
- No long-term lease will be entered into if the rental offered is below a previously established market value. The lessee will also be liable for assessment rates in respect of the land.
- In the case of a call for proposals a two envelope system may be used to afford the Council a say in the type of development, resulting from the requirement to effect improvements to the leased property, subject to the referral of the transaction to the Council's bid committees once qualifying candidates for the type of development have been identified.

2. Registered long-term leases aimed at benefitting the community as a whole

- Well established, reputable and financially sound community organizations may approach the Council to lease land with or without improvements. The subsequent lease agreement may provide for further improvements on the property
- Leases of this nature are long-term and registered in the Deeds Office.
- In order for an organization to qualify for a lease of this nature its members may derive no benefit from the operations of the organization and its aim must be to assist in community development and alleviating the plight of the poor.
- On the principle of such organizations working in the public interest and assisting the poor, leases of this nature are concluded through direct negotiations and at a nominal rental. It entails very project specific motivation to Council and acceptance based on community needs.

3. Medium-term unregistered leases

- Leases for less than 9 years and 11 months will qualify for this type of agreement.
- Council can decide on its own motivation or if requested by a prospective lessee, to enter into a lease of this nature. Whenever such a decision is taken the lease will be concluded through a formal tender process.
- Medium-term leases are subject to a minimum rental equal to market value.

4. Short-term leases

- Short-term leases with a notice period of 3 months may be concluded with adjacent owners pertaining to walkways and outfall land e.g. public open spaces, servitudes and cut-offs.
- Considerations of maintenance, vagrancy, vandalism and illegal occupations justify the lease of such pieces of land to adjacent owners in circumstances where the land cannot be leased or sold as separate entities due to, amongst others, its size.
- If only one person shows an interest in leasing the land, a negotiated lease will be created but in the event of more than one adjacent owner showing an interest, a limited tender process will be followed.
- Leases of this nature will be at a nominal rental due to the public interest aspect thereof.
- It is recorded that when the procedure described in this paragraph is followed, the requirements of transparency be adhered to in the strictest terms (advertisement, etc).

5. Sport Clubs

- Leases to sport clubs who render a recreation service with a non-profit motive will be negotiated with individual sport clubs for medium-terms, but always shorter than 9 years and 11 months.
- The Council may develop policy requirements which qualifying sports clubs will be required to adhere to.
- The basis of leases of this nature is that qualifying sports clubs render a service on behalf of the Council to develop sport and the individuals who participate in sporting activities.
- Rental for qualifying sport-clubs will be nominal in nature.
- In order to qualify for subsidized leases, qualifying sport clubs must submit an approved Constitution to the municipality in terms of which the Council must be satisfied that the membership of the club is open. In addition, specific programmes must be established to benefit individuals and communities who are previously disadvantaged citizens.

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6. Short-term leases between 1 day and 3 months

- The Council is often required to make facilities available to individuals and organizations on a very short term, usually restricted to no more than 3 days. Examples of the need for such short-term leases are the use of streets for funeral events, neighbourhood events (parties, public meetings, fete's and bazaars, festivals, demonstrations and community events (e.g. crime prevention, AIDS campaigns, company's against abuse of women and children)).
- On the basis of public interest, Council owned land is made available for these purposes free of charge or at a nominal rental.
- Negotiations are concluded with the relevant organizations and individuals who can convince the Council that they are bona fide in the promotion of community affairs.

7. Short-term leases to community groups e.g. to enable agricultural cultivation business co-operatives and arts and crafts

- Short-term leases will be concluded by Council to enable individuals and community groups to take part in agricultural cultivation, business co-operatives and arts and crafts.
- Leases are concluded for defined renewable periods subject to direct negotiations with the lessees concerned on the payment of a nominal rental in the interest of the poor.
- The Council retains the right to convert leases of this nature to agreements in terms of the Council's by-laws on street traders, after which the provisions of the by-laws shall apply in full.

8. Public places e.g. public halls, public facilities and sports fields

- The Council has by-laws in place dealing with the rental of Council amenities in detail.
- The by-laws dealing with such rentals include provisions relating to deposits and damage to Council property.
- Insofar as these by-laws cover specified situations in a transparent manner in the public domain, such amenities and such situations are excluded from the provisions of this policy document.

9. Adopt A-spot

- The Council has a policy in place in terms of which the caretakership of a piece of land or an amenity is given to a business (e.g. a nature conservation area of small proportions or an electrical lamppost with the adjacent public land).
- In view of the savings in maintenance costs of such land and amenities, which would otherwise have been paid through residents rates and tariff charges, it is regarded as in the public interest and given in care of the qualifying business at no charge.

- Caretaker agreements will be concluded with businesses on an individual and negotiated basis with conditions agreed upon to suit the circumstances of the case.

PREFERENTIAL PROCUREMENT POLICY: ALLOCATION OF PREFERENTIAL POINTS

Contracts < R 500 000 (80:20 category)	Contracts >= R 500 000 (90:10 category)
(1) Historically Disadvantaged Individuals	
To businesses owned and managed by South African citizen who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983, (Act No 110 of 1983) or the Constitution of the Republic of South Africa, 1993, (Act No 200 of 1993).	
Maximum 5 points	Maximum 3 points
(2) Gender	
To businesses owned and managed by South African citizens who are female according to the proportion of ownership and management.	
Maximum 3 points	Maximum 2 points
(3) Handicapped	
To businesses owned and managed by South African citizens who are registered as handicapped according to the proportion of ownership and management.	
Maximum 3 points	Maximum 1 point
(4) SMME's	
To small, medium or micro enterprises which employ 25 people or fewer.	
Maximum 3 points	Maximum 2 points
(5) Local labour	
For the use of labour provided by people residing within the boundaries of the Mthonjaneni Municipality.	
Maximum 6 points	Maximum 2 points

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ANNEXURE B - DMS 377286

NTAMBANANA MUNICIPALITY

CODE OF CONDUCT FOR SUPPLY CHAIN MANAGEMENT PRACTITIONERS AND OTHER ROLE PLAYERS

In accordance with regulation 46(4) and 46(5) of the Local Government Municipal Finance Management Act, 2003: Municipal Supply Chain Management Regulations, the supply chain management policy of a municipality or municipal entity is required take into account the National Treasury's code of conduct for supply chain management practitioners and other role players. Alternatively a municipality or municipal entity may adopt the National Treasury code of conduct. When adopted, such code of conduct becomes binding on all officials and other role players involved in the implementation of the supply chain management policy of the municipality or municipal entity.

The purpose of this Code of Conduct is to promote mutual trust and respect and an environment where business can be conducted with integrity and in a fair and reasonable manner.

1. General Principles

- 1.1 The Mthonjaneni Municipality commits itself to a policy of fair dealing and integrity in the conducting of its business. Officials and other role players involved in supply chain management (SCM) are in a position of trust, implying a duty to act in the public interest. Officials and other role players should not perform their duties to unlawfully gain any form of compensation, payment or gratuities from any person, or provider/contractor for themselves, their family or their friends.
- 1.2 Officials and other role players involved in SCM should ensure that they perform their duties efficiently, effectively and with integrity, in accordance with the relevant legislation, policies and guidelines. They should ensure that public resources are administered responsibly.
- 1.3 Officials and other role players involved in SCM should be fair and impartial in the performance of their functions. They should at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual. They should not abuse the power and authority vested in them.

2. Conflict of interest

2.1 An official or other role player involved with supply chain management –

- (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 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, or in any award of a contract by the Mthonjaneni 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 declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest;
- (h) should not place him/herself under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties; and
- (i) should not take improper advantage of their previous office after leaving their official position.

3. Accountability

- 3.1 Practitioners are accountable for their decisions and actions to the public.
- 3.2 Practitioners should use public property scrupulously.
- 3.3 Only accounting officers or their delegates have the authority to commit the Mthonjaneni Municipality to any transaction for the procurement of goods and / or services.
- 3.4 All transactions conducted by a practitioner should be recorded and accounted for in an appropriate accounting system. Practitioners should not make any false or misleading entries into such a system for any reason whatsoever.
- 3.5 Practitioners must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system.
- 3.6 Practitioners 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 the policy on inducements, rewards, gifts and favours to municipalities or municipal entities, officials or other role players; and
 - (iii) any alleged breach of this code of conduct.
- 3.7 Any declarations made must be recorded in a register which the accounting officer must keep for this purpose. Any declarations made by the accounting officer must be made to the Mayor who must ensure that such declaration is recorded in the register.

4. Openness

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- 4.1 Practitioners should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only if it is in the public interest to do so.

5. Confidentiality

- 5.1 Any information that is the property of the Municipality or its providers should be protected at all times. No information regarding any bid / contract / bidder / contractor may be revealed if such an action will infringe on the relevant bidder's / contractor's personal rights.
- 5.2 Matters of confidential nature in the possession of officials and other role players involved in SCM should be kept confidential unless legislation, the performance of duty or the provisions of law requires otherwise. Such restrictions also apply to officials and other role players involved in SCM after separation from service.

6. Bid Specification / Evaluation / Adjudication Committees

- 6.1 Bid specification, evaluation and adjudication committees should implement supply chain management on behalf of the **Municipality** in an honest, fair, impartial, transparent, cost-effective and accountable manner.
- 6.2. Bid evaluation / adjudication committees should be familiar with and adhere to the prescribed legislation, directives and procedures in respect of supply chain management in order to perform effectively and efficiently.
- 6.3 All members of bid adjudication committees should be cleared by the accounting officer at the level of "CONFIDENTIAL" and should be required to declare their financial interest annually.
- 6.4 No person should-
- 6.4.1 interfere with the supply chain management system of the **Municipality** ; or
- 6.4.2 amend or tamper with any price quotation / bid after its submission.

7. Combative Practices

- 7.1 Combative practices are unethical and illegal and should be avoided at all cost. They include but are not limited to:
- (i) Suggestions to fictitious lower quotations;
 - (ii) Reference to non-existent competition;
 - (iii) Exploiting errors in price quotations / bids;
 - (iv) Soliciting price quotations / bids from bidders / contractors whose names appear on the Register for Tender Defaulters.