



## **MTHONJANENI MUNICIPALITY**

## **SUPPLY CHAIN MANAGEMENT**

## **POLICY**

**Part A** is the **Supply Chain Management Policy**, adopted in terms of section 111 of the Local Government: Municipal Finance Management Act, No. 56 of 2003 and the Municipal Supply Chain Management Regulations, Notice 868 of 30 May 2005;

## **PART A**

### **MUNICIPAL SUPPLY CHAIN MANAGEMENT POLICY**

#### **LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003**

The Council of the Mthonjaneni Municipality resolved on \_\_\_\_\_ in terms of section 111 of the Local Government: Municipal Finance Management Act (no. 56 of 2003) to adopt the following as the Supply Chain Management Policy of the municipality:

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## 1. Definitions

### CHAPTER 1:

### ESTABLISHMENT AND IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

## 2. Supply Chain Management Policy

- 1) All officials and other role players in the Supply Chain management system of the **Mthonjaneni Municipality** must implement this Policy in a way 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;
    - iii) Regulations pertaining to Supply Chain Management.
  - b) is fair, equitable, transparent, competitive and cost effective;
  - c) complies with –
    - i) 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) This policy applies when the Municipality –
  - a) procures goods or services;
  - b) disposal of goods no longer needed;
  - c) selects contractors to provide assistance in the provision of municipal services including circumstances where Chapter 8 of the Municipal Systems Act applies.
- 3) Sub-paragraphs (1) and (2) above 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. Adoption and Amendment of the Supply Chain Management Policy

- 1) This policy applies to Mthonjaneni Municipality and any of its entities.
- 2) 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 Council.
- 3) If the accounting officer submits proposed amendments to Council that differs from the model policy issued by the National Treasury, the accounting officer must –
  - a) ensure that such proposed amendments comply with the Regulations; and

- b) report any deviation from the model policy to the National Treasury and the provincial treasury.
- 4) 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) The accounting officer must in terms of section 62(1)(f)(iv) of the Act, take all reasonable steps to ensure that the municipality implements the supply chain management policy.

#### **4. Delegation of Supply Chain Management powers and duties**

- 1) Council 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 responsibilities conferred on accounting officers 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 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.
- 2) Section 79 of the Act applies to the sub delegation of powers and duties delegated to the accounting officer in terms of sub-clause (1).
- 3) The accounting officer may not sub-delegate any supply chain management powers or duties to a person who is not an official of the Municipality or to a committee which is not exclusively composed of officials of the Municipality.
- 4) This clause 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**

- 1) The accounting officer may in terms of section 79 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 sub-clause (2) of this clause and clause 4 of this Policy.
- 2) The power to make a final award –
  - a) above R10 million (VAT included) may **not be sub-delegated** by the **accounting officer**;
  - b) above R200 000 (VAT included), but not exceeding **R10 million (VAT included)** may **not be sub-delegated** by the **accounting officer**;
- 3) Only the Accounting Officer can issue appointment letter on any tender above R200 0000 or more than R10M based on delegation unless the official is acting on behalf of the Accounting Officer.

3.1 Below R200 000 must be sub-delegated to **the CFO**.

3.2 Below R 30 000 must be sub-delegated to the **SCM Manager**.

3.3 Delegations include the authority to approve the following:-

- (i) Sign the official purchase order
  - (ii) Negotiations for projects less than R 200 000.00 (VAT included)
- 4) An official or bid adjudication committee to which the power to make final awards has been sub-delegated in accordance with sub-clause (2) must **within ten (10)** day of the end of each month submit to the official referred to in sub-clause 4(a) written report containing particulars of each final award made by such official or committee during that month, including–
- a) the amount of the award;
  - b) the name of the person to whom the award was made; and
  - c) the reason why the award was made to that person.
- 5) A written report referred to in sub-clause (3) must be submitted to the accounting officer, in the case of an award by a bid adjudication committee of which the chief financial officer or a senior manager is a member.
- 6) Sub-clauses (3) and (4) of this policy do not apply to procurement out of petty cash.
- 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. Also refer to clause 4(4) and 5(2)(a) of this Policy.

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

- 1) Council must maintain oversight over the implementation of this Policy.
- 2) For the purposes of such oversight 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 the supply chain management policy of any municipal entity under the sole or shared control of the municipality, to the council of the municipality; and
  - b. Whenever there are serious and material problems in the implementation of this Policy, immediately submit a report to Council.
- 3) The accounting officer must, within ten (10) days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the mayor of the municipality.
- 4) The availability of these reports must be made public in accordance with section 21A of the Local Government Municipal Systems Act 32, 2002

## **7. Supply Chain Management unit**

- 1) The accounting officer must establish a Supply Chain Management unit to implement this supply chain management policy. This supply chain management unit may be jointly established by the municipality and entities under its sole or shared control.
- 2) The supply chain management unit must operate under the direct supervision of the Chief Financial Officer or an official to whom this duty has been delegated in terms of section 82 of the Act.

## **8. Training of Supply Chain Management officials**

The training of officials involved in implementing this Policy should be in accordance with relevant legislation, including Treasury guidelines on supply chain management.



## **CHAPTER 2:**

### **FRAMEWORK FOR SUPPLY CHAIN MANAGEMENT POLICY**

#### **9. Format of Supply Chain Management Policy**

- 1) This policy provides systems for –
  - a) Demand management
  - b) Acquisition management
  - c) Logistics management
  - d) Disposal management
  - e) Risk management; and
  - f) Performance management

#### **Part 1: Demand management**

#### **10. System of Demand Management**

- 1) The accounting officer must establish and implement an appropriate demand management system in order to ensure that the resources required by the Municipality support its operational commitments and its strategic goals outlined in the Integrated Development Plan, the Budget and the Service Delivery and Budget Implementation Plan.
- 2) The demand management system must –
  - a) include timely planning and management processes to ensure that all goods and services required by the Municipality are quantified, budgeted for and timely and effectively delivered at the right locations and at the critical delivery dates, and are of the appropriate quality and quantity at a fair cost;
  - b) take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature; and
  - c) provide for the compilation of the required specifications to ensure that its needs are met.
  - d) To undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.

#### **Part 2: Acquisition management**

#### **11. System of Acquisition Management**

- 1) The accounting officer must implement the system of acquisition management set out in this Part in order to ensure –
  - a) That goods and services are procured by the Municipality in accordance with authorized processes only;
  - b) That expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
  - c) That the threshold values for the different procurement processes are complied with;
  - d) That bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
  - e) That any Treasury guidelines on acquisition management are properly taken into account.
- 2) When procuring goods or services contemplated in section 110(2) of the Act, the accounting officer must, subject to clause 2(3), make public the fact that such goods or services are procured otherwise than through the Municipality's 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) Goods and services may only be procured by way of –

- a) Petty cash purchases, up to a transaction value of R200 (VAT included);
  - b) Petty cash purchases exceeding the amount of R200 up to an amount of R2 000 (VAT included) to be authorised by the Chief Financial Officer or his delegatee;
  - c) Direct purchases by the Purchasing Division for procurement transactions with values lower than R2 000 (VAT included);
  - d) Formal written price quotations for procurement transactions with values over R2 000 up to R30 000 (VAT included);
  - e) Formal written price quotations for procurement transactions valued over R30 000 (VAT included) up to R200 000 (VAT included), subject to clause 18(b); and
  - f) a competitive bidding process for –
    - i) Procurement above a transaction value of R200 000 (VAT included); and
    - ii) The procurement of long term contracts, i.e. longer than one year.
- 2) The accounting officer may, in writing -
- a) Lower, but not increase, the different threshold values specified in sub-clause (1); or
  - b) direct that –
    - i) written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000 (VAT included);
    - ii) formal written price quotations be obtained for any specific procurement of a transaction value lower than R30 000 (VAT included); or
    - iii) a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000 (VAT included).
  - d) the delegated authority for the different threshold values must be contained in the Municipality's Delegations of Power
- 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 formal written price quotation or bid that exceeds R30 000 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;
  - iv) all relevant declarations
  - v) CSD report to prove that the vendor is registered on Central Suppliers Database
- b) has authorized the Municipality to verify any of the documentation referred to in sub-clause (a) above; 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 shareholder or stakeholders are in the service of the state, or has been in the service of the state in the previous twelve months; or
  - iii) whether a close family member of the provider or of a director, manager, shareholder or stakeholder referred to in sub-clause (ii) is in the service of the state, or has been in the service of the state in the previous twelve months;

- iv) that the tendering enterprise or any of its owners, directors, members or trustees, in their personal capacity are not in arrears with any account(s) with a Municipality for longer than 90 days / three months; or
- v) whether any Municipal staff member is a close family member of an owner, his/her partner serves on the board of directors, or are members or trustees, of the tendering enterprise.

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

- 1) The accounting officer must –
  - a) keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements through written or verbal quotations and formal written price quotations; and
  - b) at least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
  - c) specify the listing criteria for accredited prospective providers which must include at least the requirement to submit proof of compliance with SARS tax clearance and proof that local municipal rates and services payments are not in arrears for more than three months;
  - d) disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.
- 2) The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.
- 3) The list must be compiled per commodity and per type of service.
- 4) Service providers in the municipal suppliers database must be registered in the central suppliers database

#### **15. Petty cash purchases**

- 1) The general guideline is that petty cash purchases referred to in clause 12(1)(a) & (b) of this Policy are for minor items that are purchased for up to R2 000 (VAT included) where it is impractical, impossible or not cost-effective to follow formal procurement process and is strictly of a reimbursive nature and not for advances.
- 2) The conditions for the procurement of goods by means of petty cash purchases referred to in clause 12 (1)(a) & (b) of this Policy, are as follows:-
  - a) Accounting Officer to determine the terms on which the CFO may delegate responsibility for petty cash to an official reporting to the CFO;
  - b) Accounting Officer to determine the maximum number of petty cash purchases or the maximum amounts per month for each petty cash holder;
  - c) Accounting Officer to determine any types of expenditure from petty cash purchases that are excluded, where this is considered necessary; and
  - d) a monthly reconciliation report from each petty cash holder must be provided to the chief financial officer, including –
    - i) the total amount of petty cash purchases for that month; and
    - ii) the receipts and appropriate documents for each purchase;
  - e) any other conditions determined by Accounting Officer.
- 3) Petty cash purchases with threshold value from an amount of R1.00 up to an amount of R2 000 (VAT included) to be authorised by the Chief Financial Officer or his delegatee.

#### **16. Written quotations**

- 1) The conditions for the procurement of goods or services through written quotations for amounts under the threshold for formal quotations as stated in clause 12(1)(c) & (d) are as follows:

- a) quotations for transactions up to a value of R 2 000 (VAT Included) may be obtained from at **least one provider** preferably from, but not limited to, providers whose names appear on the list of **accredited prospective providers** of the Municipality provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria set out in clause 14(1) (b), (c) and (d) of this Policy;
  - b) providers must be requested to submit such quotations in writing;
  - c) the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices; and
  - d) if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider;
  - e) any other conditions determined by the Accounting Officer.
- 2) **No orders may be placed based on verbal price quotations.**

## 17. Formal Written quotations

- 1) The conditions for the procurement of goods or services through formal written price quotations are as follows:
  - a) quotations must be obtained in writing from at least **three different providers whose names appear on the list of accredited prospective** providers of the Municipality;
  - b) quotations may be **obtained from providers who are not listed**, provided that such providers meet the listing criteria set out in clause 14(1) (b), (c) and (d) of this Policy;
  - c) if it is not possible to obtain **at least three quotations**, the reasons must be recorded and approved by the **Chief Financial Officer** or an official acting in the position of the **Chief Financial Officer**, and
  - d) the **Chief Financial Officer** must record the names of the potential providers and their written quotations;
  - e) any other conditions determined by the Accounting Officer
- 2) A designated official referred to in sub-clause (1) (c) **must within ten (10) day of the end of each month report to** the accounting officer on any approvals given during that month by that official in terms of that sub-delegation.

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

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

- a) when using the list of accredited prospective providers the accounting officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;
- b) all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of clause 17, be advertised for at **least seven (7) days** on the website and an official notice board of the Municipality;
- c) quotes received must be evaluated on a comparative basis taking into account unconditional discounts;
- d) the **Chief financial officer** must on a monthly basis be notified in writing of all written or verbal quotations and formal written price quotations accepted by the **Manager: SCM** in terms of a sub-delegation;
- e) quotes must be awarded based on compliance to specifications, conditions of contract, ability and capability to deliver the goods and services, at **acceptable price**
- f) responsive and acceptable offers, which are subject to the preference points system (PPPFA and associated regulations and policy), must be awarded to the bidder who scored the highest points; The prescripts of the Preferential Procurement Policy Framework Act, Act No.5 of 2000 will be applied for procurement requirements equal to R30 000 or above (vat inclusive and any other applicable taxes);
- g) the **Manager: SCM** must set requirements for proper record keeping of all formal written price quotations accepted on behalf of the municipality;

- h) procurement requirements exceeding a value of R 30 000 (VAT Inclusive) must be submitted to the **Manager: SCM**.
- i) The Manager: SCM must make recommendation to the Chief Financial Officer or delegated official for approval.

## **19. 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 clauses 11(2) and 36 of this Policy.
- 2) No requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

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

The procedures for the following stages of a competitive bidding process are as follows:

- a) Compilation of bidding documentation as detailed in clause 21;
- b) Public invitation of bids as detailed in clause 22;
- c) Site meetings or briefing sessions as detailed in clause 22;
- d) Handling of bids submitted in response to public invitation as detailed in clause 23;
- e) Evaluation of bids as detailed in clause 28;
- f) Award of contracts as detailed in clause 29;
- g) Administration of contracts: After approval of a bid, the accounting officer and the bidder must enter into a written agreement unless the bidding documentation constitutes an acceptable contract.
- h) Proper record keeping: Original and legal copies of written agreements should be kept in a secure place for reference purposes.

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

- 1) The criteria to which bid documentation for a competitive bidding process must comply, and;
  - a) take into account –
    - i) the general conditions of contract and any special conditions of contract, if specified;
    - ii) any Treasury guidelines on bid documentation; and
    - iii) the requirements of the Construction Industry Development Board (CIDB), in the case of a bid relating to construction, upgrading, refurbishment of buildings or infrastructure; and
    - iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality is expected to be transferred out of the Republic;
  - b) include the preference points system to be used as contemplated in the Preferential Procurement Regulations, 2017 and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
  - c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
  - d) if the value of the transaction exceed R10 million (VAT included) –
    - i) the bidder is required by law to submit audited or reviewed annual financial statement; for the past three years; or since its establishment if established within the past three years;
    - ii) 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 calendar days;
    - iii) particulars of any contracts awarded to the bidder by the municipality during the past five years, including particulars of any material noncompliance 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) in the absence of formal construction or technical contracts, e.g. JBCC and General Conditions of Contract, in which guarantees / sureties are contained, the following shall apply:
  - i) where surety is required it shall be in the form of cash or a bank guarantee from a banking institution registered in terms of the Banks Act, 1990 (Act No. 94 of 1990) or from an insurer registered in terms of the Insurance Act, 2002 (Act No. 30 of 2002). Where bids in Category A cannot raise the required surety of 2,5%, and it is feasible to deduct the amount from the Preliminary and General (P+G) payment certificate, such concessions may be granted;
- g) indicate the value or extent to which the execution of the contract should or should not be subcontracted;
- h) submit a certificate from the Department of Labour indicating compliance with the Occupational Health & Safety Act, 1993 [Act No. 85 of 1993];
- i) any other criteria determined by the Accounting Officer; and
- j) the amount and period of retention.

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

- 1) The procedure for the invitation of competitive bids is as follows:
  - a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the notice boards at selected offices of the Municipality, the website of the Municipality or CIDB database in case of capital projects
  - 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 sub-clause (2) of this policy;
    - ii) a statement that bids may only be submitted on the **original bid** documentation provided by the Municipality;
    - iii) a statement that bids will only be considered if it was deposited in the bid box indicated in the bid invitation; and
    - iv) date, time and venue of any proposed site meetings or briefing sessions.
- 2) The accounting officer may determine a closure date for the submission of bids which is less than the required **30 or 14 days**, 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.

## **23. Procedure for handling, opening and recording of bids**

- 1) The procedures for the handling, opening and recording of bids, are as follows:
  - a) Bids-
    - i) must be opened only in public;
    - ii) **must be opened on the same date and time of closing of bids ;**
  - b) **Any bidder or member of the public has the right to request that the names of the bidders and their bidding price who submitted bids in time shall be read out.**

- c) No information, except the provisions in sub-clause (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
- d) 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 on the website ;
  - iv) publish the intention to award the in the municipal website with name of the successful bidder and the points scored
  - v) notify the successful bidders in writing.
- 2) Stamping of bids and reading out of names
  - a) An employee shall date-stamp the bid or quotation document and all enclosures related to prices. Bids and quotations shall be numbered in the sequence in which they have been opened.
  - b) Where prices have not been inserted in all relevant spaces on the form and such items have not been deleted by bidders, such spaces shall be stamped “no price” by the employee who opens the bids or quotations.
  - c) Details on how bidders responded to the relevant evaluation criteria e.g. SMME contribution, community benefits, job creation, environmental impact, etc. should not be disclosed.
- 3) Late Bids
  - a) Bids or quotations arriving after the specified closing time shall not be considered for evaluation.
  - b) Bid documents must clearly state the venue where the bidding box is situated for each bid. Any bid delivered to the wrong bid box will not be considered, even if it was delivered on time.
  - c) The late bid or quotation document shall be registered and stamped “late bid”
- 4) Amendments before the closing date
  - a) The Municipality is entitled to amend any bid condition, specification or plan, or extend the closing date of such a bid or quotation before the closing date, provided that such amendments or extensions are advertised
  - b) or are advised during briefing session and the details of amendment must recorded in briefing session minutes
  - b)The notice shall make provision for the bidders to request their submitted bid or quotations document.
- 5) Bid and quotation validity period
  - a)Validity period for bids above R200 000 (VAT Inclusive) is 90 days while the validity period for quotation between R30000 (VAT inclusive) and R200 000 (VAT Inclusive) is 60 days
  - b) No person may amend or tamper with any tenders, quotations, contracts or bids after their submission.
- 6) Extension of validity period
  - a) The municipality reserve right to extent the validity period through direct notice to all the bidders who tendered for the relevant project provided that the notice is made on or before an expiry of validity period

## **24. Negotiations with preferred bidders and communication with prospective providers and bidders**

- 1) The accounting officer or delegated official 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;
  - d) does not lead to a lower price in respect of sale of land / goods.
- 2) Minutes of such negotiations must be kept for record purposes and as far as practical be made part of the final contract.
- 3) No unauthorised communication with bidders and prospective providers:
  - a) where bids and quotations have been submitted to the municipality, a bidder may not communicate with any councillor, official, or authorised service provider on any matter regarding his/her bid, quotation or offer other than a notice of withdrawal.
  - b) No municipal personnel may communicate with a bidder or any other party who has an interest in a bid, during the period between the closing date for the receipt of the bid or quotation (or date of receipt of an offer), and the date of notification of the successful bidder of acceptance of his bid, quotation or offer, except as provided for in clause (c) below. Every such case of unauthorised communication shall forthwith be reported to the Supply Chain Management Unit as well as the relevant chairperson of the Bid Adjudication Committee. A bid or quotation in respect of which unauthorised communication has occurred may be disqualified.
  - c) The chairperson or deputy chairperson of the Bid Adjudication Committee or delegated official, may authorise an employee in writing, to communicate with a bidder during the period mentioned in subsection (b) above for the purpose of:-
    - i) explaining and verification of declarations made in the bid response;
    - ii) confirming technical particulars and the compliance thereof with specifications;
    - iii) clarifying delivery times/quantities;
    - iv) extending the validity period of a bid;
    - v) clarifying any other commercial aspect;
    - vi) for the submission of substantiating documents.
  - d) In all cases where authority has been granted to communicate with bidders in terms of clause (c) above, it should be clearly stated in the submission to the Bid Adjudication Committee the nature of the communication as well as by whom such authority to communicate has been granted.
  - e) All changes and/or clarification of specifications shall be conveyed to all bidders by means or methods as specified in clause 23.

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

- 1) A two-stage bidding process is allowed for –
  - a) large complex projects; or
  - 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.

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

- 1) A committee system for competitive bids is hereby established, consisting of the following committees for each transaction or cluster of transactions as the accounting officer may determine:
  - a) a bid specification committee;
  - b) a bid evaluation committee; and



- c) a bid adjudication committee;
- 2) The Accounting officer appoints the members of each committee, taking into account section 117 of the Act, and
- 3) The Accounting Officer may appoint a neutral or independent observer, to attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.
- 4) The committee system must be consistent with –
  - a) clause 27, 28 and 29 of this Policy; and
  - b) any other applicable legislation.
- 5) The Accounting officer may apply the committee system to formal written price quotations.

## **27. Bid specification committees**

- 1) The appropriate bid specification committee must compile the specifications for each procurement transaction for goods or services by the Municipality, depending on the department involved.
- 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 South African Bureau of Standards, 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) must, where possible, be described in terms of performance required and / or 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 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 word “equivalent”;
  - f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations, 2011; and
  - g) must be approved by the relevant senior manager prior to publication of the invitation for bids in terms of clause 22 of this Policy.
- 3) Composition of Bid Specification Committee
 

**A Bid Specification Committee must be composed of the following:**

  - a) One senior Official as the chairperson
  - b) One official from Finance Department/ SCM Unit
  - d) Manager or delegated official from the user department requesting goods or services.
  - e) One official to render secretariat services
- 4) The Committee may, when appropriate, include external specialist advisors. 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.

## **1. Bid evaluation committees**

- 1) A bid evaluation committee must evaluate all bids for procurement exceeding R 200 000 (VAT Inclusive) –
  - a) evaluate bids in accordance with –

- i) the specifications for a specific procurement; and
    - ii) the points system set out in terms of clause 27(2)(f);
    - iii) the general criteria to evaluate technical and financial ability
    - iv) the framework for the adjudication of bids as contained in Part B (Preferential Procurement Policy).
  - b) evaluate each bidder's ability to execute the contract;
  - c) evaluate the bids to ensure value for money for the municipality;
  - d) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears for more than three months or valid lease agreements or letter from traditional authorities.
  - e) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter;
  - f) submit to the adjudication committee a report and reasons in the event of a bid not being awarded.
- 2) Composition of Bid Evaluation Committee
- A bid evaluation committee must as far as possible be composed of**
- a) Standing members
    - i) Manager or official appointed by the Accounting Officer
    - ii) Finance/ Supply chain management official if the chairperson is from other departments
    - iii) One official to render secretariat services
  - b) Other members:
    - i) At least one knowledgeable / professional official from the Directorate for whom the bid is called.
    - ii) Technical experts, consultants or advisors, provided that these experts may only actively contribute to discussions, but not vote on the items evaluated.

## 2. Bid adjudication committees

- 1) A 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 recommendation to the accounting officer to make the final award; or
  - c) Consider the report and recommendations of the bid evaluation committee where it is recommended that the tender not be awarded; and either
    - i) take a decision that the tender not be awarded for the reasons presented and that it be re-advertised or not be re-advertised; or
    - ii) make a recommendation to the accounting officer to make the final award.
- 2) A bid adjudication committee shall be composed at least four senior managers including the following:-
  - a) the Chief Financial Officer as the Chairperson or, if the Chief Financial Officer is not available, the Deputy Chief Financial Officer or person acting in the position of the Chief Financial Officer;
  - b) Directors or in their absence, a duly delegated official appointed by the Accounting Officer.
  - d) In the event of an equal of votes the chairperson shall have a casting vote over and above a deliberate vote.
- 3) The Director of the department that called for the tender must be present at the Bid Adjudication meeting where the particular tender is considered.
- 4) A technical expert in the relevant field, who is an official, if such an expert exists, may attend the meeting as an advisor for clarification purposes. This official will not have voting rights at the Bid Adjudication Committee meeting.
- 5) The Accounting Officer must appoint the CFO or in his absence, the deputy CFO, as chairperson of the committee.

- 6) 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.
- 7) If the bid adjudication committee decides to recommend a bid other than the one recommended by the bid evaluation committee –
  - a) the bid adjudication committee must prior to recommending 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 for more than three months, 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 clause (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.
- 8) 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.
- 9) The accounting officer must comply with section 114 of the Local Government: Municipal Finance Management Act 56 of 2003 –
  1. *If a tender other than the one recommended in the normal course of implementing the supply chain management policy of a municipality or municipal entity is approved, the accounting officer of the municipality or municipal entity must, in writing, notify the Auditor-General, the relevant provincial treasury and the National Treasury and, in the case of a municipal entity, also the parent municipality, of the reasons for deviating from such recommendation.*
  2. *Subsection (1) does not apply if a different tender was approved in order to rectify an irregularity."*
- 10) Quorum at bid committee meetings shall be fifty percent plus one of total members.

### **30 Multi awards to one service provider**

- a) Service provider will be considered for further award upon verification of capacity to execute additional project

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

- 1) A contract for banking services –
  - a) must be procured through competitive bids;
  - b) must be consistent with section 7 of the Act; and
  - c) may not be for a period of more than five years at a time.
- 2) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.
- 3) The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of clause 22(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

### **32 Procurement of Information- and Communication Technology (ICT) related goods or services**

- 1) The accounting officer may request the State Information Technology Agency (SITA) to assist with the acquisition of ICT 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 ICT needs if –

- a) the transaction value of ICT 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 disagree with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the 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) Sub-clauses (1)(c) and (d) do not apply if –
  - a) a municipal entity procures goods or services through a contract secured by its parent municipality; or
  - b) a municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.
- 3) Prior considering the use of section 32, the full cost benefits analysis must be performed by the user department and cost benefit analysis must be first approved by the BAC if the project will be below R10m or accounting officer if the project is above R10m.

### **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 gases 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 employee duly authorised in terms of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993).

### **35 Proudly SA Campaign**

The Municipality supports the Proudly SA Campaign to the extent that, as far as possible, preference is given to procuring local goods and services.

### **36 Appointment of consultants**

- 1) The accounting officer may procure consulting services provided that any Treasury guidelines and the relevant professional body requirements 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 the municipality in the last five years; and
  - b) any similar consultancy services provided to the municipality 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;
    - a) Circumstances that warrant emergency dispensation, includes but are not limited to -
      - a) the possibility of human injury or death;
      - b) the prevalence of human suffering or deprivation of rights;
      - c) the possibility of damage to property, or suffering and death of livestock and animals;
      - d) the interruption of essential services, including transportation and communication facilities or support services critical to the effective functioning of the municipality as a whole;
      - e) the possibility of serious damage occurring to the natural environment;
      - f) the possibility that failure to take necessary action may result in the municipality not being able to render an essential community service;
      - g) the possibility that the security of the state could be compromised.
    - b) The prevailing situation, or imminent danger, should be of such a scale and nature that it could not readily be alleviated by interim measures, in order to allow time for the formal tender process.
    - c) Procurement in the case of emergencies must be tacitly approved by the relevant director, chief financial officer the Municipal Manager.
      - i) if such goods or services are produced or available from a single provider only;
      - ii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
      - iii) acquisition of animals for zoos and/or nature and game reserves; or
      - iv) in any other exceptional case where it is impractical or impossible to follow the official procurement processes,
      - v) in the case of strip and quote, quotations will be sourced from service providers listed on the database on rotational basis.
      - vi) Renewal and acquisition of IT licenses shall be sourced directly from accredited agencies
  - 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; and
- 2) The accounting officer must record the reasons for any deviations in terms of subclauses (1)(a) and (b) of this policy and report them to the next Council Meeting and include as a note to the annual financial statements.

### **38 Limited bidding/Close Bid**

It is allowed under this policy that the accounting officer may use limited bidding to procure goods and services but approval must only be granted where there is sufficient motivation / reasons and after a careful and thorough analysis of the market.

- (i) "Multiple source"- There is a limited competition, hence only a few prospective bidders are allowed to make

- proposal. This should be based on a thorough analysis of the market.
- (ii) "Single Source"- This should be based on a thorough analysis of the market and use a transparent and equitable pre-selection process, to request only one amongst a few prospective bidders to make a proposal.
- (iii) "Sole source"- There is no competition and it has been proven through careful and transparent market analysis that only one bidder exists (for example, sole distribution rights etc.)

### **39 Unsolicited bids**

- 1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- 2) The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if –
  - a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
  - b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
  - c) the person who made the bid is the sole provider of the product or service; and
  - d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
- 3) If the accounting officer decides to consider an unsolicited bid that complies with sub-clause (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 was to be accepted; and
  - c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- 4) The accounting officer must submit all written comments received pursuant to sub-clause (3), including any responses from the unsolicited bidder, 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 five day after the decision on the award of the unsolicited bid is taken, but no contract committing the Municipality to the bid may be entered into or signed within 30 day of the submission.
- 10) Closed bids shall only be accepted after the municipality failed to attract potential service providers through normal competitive bidding processes

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

- 1) The accounting officer is hereby enabled to –
  - 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) 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 of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- 2) The accounting officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of sub-clauses (1)(b)(ii), (e) or (f) of this policy.
- 3) Restrictive practices are prohibited:
  - a) In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder is or a contractor was involved in collusive bidding.
  - b) If a bidder or contractor, based on reasonable grounds or evidence obtained by the municipality, has engaged in the restrictive practice referred to above, the municipality may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No. 89 of 1998.
  - c) If a bidder or contractor has been found guilty by the Competition omission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder or contractor from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder or contractor concerned.
- 4) **Blacklisting criteria:**
  - a) Fraudulent and corrupt activities shall amount to 10 years sanction
  - b) Collusive activities shall amount to 10 years sanction

- c) Misrepresentation of facts or false declarations shall amount to 5 years sanction
- d) Poor or non-performance shall amount to 2 years sanction

**Part 3:**

***Logistics, Disposal, Risk and Performance Management***

**41 Logistics management**

The accounting officer must establish and implement an effective system of logistics management, which must include -

- 1) the monitoring of spending patterns on types or classes of goods and services incorporating, where practical, the coding of items to ensure that each item has a unique number;
- 2) the setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;
- 3) the placing of manual or electronic orders for all acquisitions other than those from petty cash;
- 4) before payment is approved, certification by the responsible officer that the goods and services are received or rendered on time and is in accordance with the order, the general conditions of contract and specifications where applicable and that the price charged is as quoted in terms of a contract;
- 5) appropriate standards of internal control and warehouse management to ensure that goods placed in stores are secure and only used for the purpose for which they were purchased;
- 6) regular checking to ensure that all assets are properly managed and maintained in terms of Council's Asset Management Policy; and 7) monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for particular goods or services.

**42 Disposal management**

Assets must be disposed of in terms of Council's Asset Management Policy as well as the Immoveable Property Management Policy.

**43 Risk management**

The Accounting Officer must implement an effective system of risk management for the identification, consideration and avoidance of potential risks in the supply chain management system as per Council's Risk Management Policy.

**44 Performance management**

The accounting officer must implement an internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes were followed and whether the objectives of this Policy were achieved in terms of the Performance Management System- Implementation Policy.

**Part 4:**

***Other matters***

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

Bids in excess of R15 000 will only be evaluated if the municipality is in possession of a bidder's valid original tax clearance certificate which declares that the bidder's tax matters have been declared to be in order by the South African Revenue Services (SARS). Alternatively the central supplier database will be checked to verify the tax matters of the recommended bidders.



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

- 1) Irrespective of the procurement process followed, no award may be made to a person in terms of this Policy –
  - a) who is in the service of the state;
  - b) 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 in respect of a contract that would cause a conflict of interest.

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

The accounting officer must ensure that the notes to the annual financial statements disclose particulars of any award of more than R2 000 (VAT included) to a close family member of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –

- 1) the name of that person;
- 2) the capacity in which that person is in the service of the state; and
- 3) the amount of the award.

#### **48 Ethical standards**

- 1) A code of ethical standards for supply chain management practitioners and other role players involved in supply chain management is hereby established in accordance with sub-clause (2) 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 sub-clause (2)(c), must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
  - e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the Municipality;
  - f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
  - g) must be scrupulous in his or her use of property belonging to the municipality;
  - h) must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and

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 47(1) of this policy; or
  - iii) any alleged breach of this code of ethical standards.
- 3) Declarations in terms of sub-clauses (2)(d) and (e) -
- a) must be recorded in a register which the accounting officer must keep for this purpose;
  - i) 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) A breach of the code of ethics must be dealt with as follows -
- a) in the case of an employee, in terms of the disciplinary procedures of the Municipality envisaged in section 67(1)(h) of the Municipal Systems Act;
  - b) in the case a councillor, in terms of Schedule 1 of the Systems Act;
  - c) in the case a role player who is not an employee, or a councillor through other appropriate means in recognition of the severity of the breach; and
  - d) in all cases, financial misconduct must be dealt with in terms of Chapter 15 of the Act.

#### **49 Inducements, rewards, gifts and favours to municipal officials and 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 this Policy.
- 2) The accounting officer must promptly report any alleged contravention of subclause (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) Sub-clause (1) does not apply to gifts less than R350 in value.

#### **50 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.

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

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

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

- 1) The accounting officer must appoint an independent and impartial person or persons, 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;
  - b) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.
  - 2) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.
  - 3) The person appointed must –
    - a) strive to resolve promptly all disputes, objections, complaints or queries received; and
    - b) submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.
  - 4) A dispute, objection, complaint or query may be referred to the municipal bid appeals tribunal if –
    - a) the dispute cannot be resolved internally.
  - 5) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query will be referred to the National Treasury for resolution.
  - 6) This clause must not be read as affecting a person's rights to approach a court at any time.
- 53 Dispute resolution on payment of Contractors and/or Service Providers
- 1) All the dispute on payment from the user department must be reported to the office of the CFO in writing and circular 49 must be utilised to resolve the issue.
  - 2) All the disputed payment must be reported on section 71 reports as part of statutory reporting;

#### **54 Contracts providing for compensation based on turnover**

- 1) If a service provider acts on behalf of a Municipality to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for the service or the amount collected, the contract between the service provider and the Municipality must stipulate –
  - a) a cap on the compensation payable to the service provider; and
  - b) that such compensation must be performance based.

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

- 1) It is recognized that, in exceptional cases, an accounting officer may deem it necessary to expand or vary order against the original contract.
- 2) Contract(s) may be expanded or varied by not more than 20% for construction related goods, works and/or services and 15% for all other goods or services of the original value of the contract after approval by the Accounting Officer.
- 3) Any expansion or variation of contract in excess of these thresholds must be dealt with in terms of the provision to section 116(3) of the MFMA which will be regarded as an amendment to contract and should be approved by council.
- 4) Contracts for supply of goods and services (Month to Month contracts) may not be extended for a period more than three months.

#### **56 Contracts having budgetary implications beyond three financial years**

The municipality may not enter into any contract that will impose financial obligations beyond the three years covered in the annual budget for that financial year, unless the requirements of section 33 of the Municipal Finance Management Act have been fully complied with.

## **57 Short title and commencement**

This part of the policy is called Mthonjaneni Municipality Supply Chain Management Policy and takes effect from the day of adoption by council.

## **PART B**

### **PREFERENTIAL PROCUREMENT POLICY**

**PREFERENTIAL PROCUREMENT POLICY** adopted in terms of section 2 of the Preferential Procurement Policy Framework Act, No. 5 of 2000 and the Preferential Procurement Regulations, 2017



## **PREAMBLE**

**WHEREAS** the Mthonjaneni Municipality aims to improve the quality of life of the local community and to free the potential of each person within a framework of facilitating service delivery, through effective governance and the Council takes into account the need for transparent procedures that give the effect to the principle of preferential procurement;

**AND WHEREAS** local economic development plays a crucial role in creating a prosperous, equitable, stable and democratic society and the overall national vision of economic development is one of decent work and living standards for all in the context of qualitative improved equality in ownership, skills and access to opportunities;

**NOW THEREFORE** the Council of the Mthonjaneni Municipality resolves in terms of section 2 of the Preferential Procurement Policy Framework Act, No. 5 of 2000 that the principles embodied in the Preferential Procurement Regulations, 2017 are herewith integrated into the Mthonjaneni Municipality's Supply Chain Management Policy to form the basis of the evaluation criteria for quotations and competitive tenders.

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## 1 Definitions

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

<b>"all applicable taxes"</b>	includes Value-Added Tax, Pay-as-you-Earn, Income Tax, Unemployment Insurance Fund Contributions and Skills Development Levies;
<b>"B-BBEE"</b>	means Broad-Based Black Economic Empowerment as defined in Section 1 of the BroadBased Black Economic Empowerment Act;
<b>"B-BBEE status level of contributor"</b>	means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
<b>"black designated groups"</b>	has the meaning assigned to it in the codes of good practice issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
<b>"black people"</b>	has the meaning assigned to it in section 1 of the Broad-Based Black Economic Empowerment Act;
<b>"Broad-Based Black Economic Empowerment Act" (B-BBEEA)</b>	means the Broad-Based Black Economic Empowerment Act, 2003 (Act No.53 of 2003);
<b>"co-operative"</b>	means a co-operative registered in terms of section 7 of the Cooperatives Act, 2005 (Act No. 14 of 2005);
<b>"Comparative price"</b>	means the price after the factors of a non-firm price and all unconditional discounts that can be utilised have been taken into consideration;
<b>"Consortium or Joint Venture"</b>	means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
<b>"Contract"</b>	means the agreement that results from the acceptance of a tender by the Mtonjaneni Municipality;
<b>"designated group"</b>	means- black designated groups; black people; women; people with disabilities; or small enterprises, as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);
<b>"designated sector"</b>	means a sector, sub-sector or industry or product designated in terms of clause 8(1)(a);
<b>"EME"</b>	means an exempted micro enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

<b>"Firm price"</b>	is the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of a law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
<b>"Functionality"</b>	means the measurement according to predetermined norms, as set out in the tender documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a tenderer;
<b>"imported content"</b>	means that portion of the tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad, plus freight and direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry;
<b>"local content"</b>	means that portion of the tender price which is not included in the imported content, provided that local manufacture does take place;
<b>"military veteran"</b>	has the meaning assigned to it in section 1 of the Military Veterans Act, 2011 (Act No. 18 of 2011);
<b>"Municipality"</b>	The Mthonjaneni Municipality;

<b>"National Treasury"</b>	has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
<b>"Non-firm prices"</b>	means all prices other than "firm" prices;
<b>"organ of state"</b>	<p>The definition of organ of state in section 1 of the Act in paragraph (a) to (e) includes-</p> <ul style="list-style-type: none"> <li>a national or provincial department as defined in the Public Finance Management Act, 1999;</li> <li>a municipality as contemplated in the Constitution;</li> <li>a constitutional institution as defined in the Public Finance Management Act; • Parliament;</li> <li>a provincial legislature.</li> </ul> <p>Paragraph (f) of the definition of organ of state in section 1 of the Act includes any other institution or category of institutions included in the definition of "organ of state" in section 239 of the Constitution and recognised by the Minister by notice in the Government Gazette as an institution or category of institutions to which the Act applies. Government Notice R. 501 of 8 June 2011 recognises, with effect from 7 December 2011, all public entities listed in Schedules 2 and 3 to the Public Finance Management Act, 1999, as</p>

	institutions to which the Act applies. Note should be taken of notices issued from time to time in terms of paragraph (f) of this definition. The application of these Regulations is also subject to applicable exemptions approved in terms of section 3 of the Act.
<b>"Person"</b>	includes reference to a juristic person;
<b>"people with disabilities"</b>	has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998);
<b>"Policy"</b>	Means the Preferential Procurement Policy of the Mthonjaneni Municipality
<b>"price"</b>	includes all applicable taxes less all unconditional discounts;
<b>"proof of B-BBEE status level of contributor"</b>	means- the B-BBEE status level certificate issued by an authorised body or person; a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act;
<b>"QSE"</b>	means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
<b>"Rand value"</b>	means the total estimated value of a contract in Rand, calculated at the time of the tender invitation;
<b>"rural area"</b>	means- a sparsely populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or an area including a large settlement which depends on migratory labour and remittances and government social grants for survival, and may have a traditional land tenure system;
<b>"stipulated minimum threshold"</b>	means the minimum threshold stipulated in terms of clause 8(1)(b);
<b>"Sub-Contract"</b>	means the primary contractor's assigning or leasing or making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
<b>"Tender"</b>	means a written offer in a prescribed or stipulated form in response to an invitation by the Mthonjaneni Municipality for the provision of services, works or goods, through price quotations, advertised competitive tender

	processes or proposals;
<b>"the Act"</b>	means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
<b>"Total revenue"</b>	bears the same meaning assigned to this expression as 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, 2003 and promulgated in the Government Gazette on 9 February 2007;
<b>"township"</b>	means an urban living area that any time from the late 19th century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994;

<b>"treasury"</b>	has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and
<b>"Trust"</b>	means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
<b>"Trustee"</b>	means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.
<b>"youth"</b>	has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).

## 2 Application

These Regulations apply to organs of state as envisaged in the definition of organ of state in section 1 of the Act.

## 3 Identification of preference point system, designated sector, pre-qualification criteria, objective criteria and subcontracting

1) The Municipality must-

- a) determine and stipulate in the tender documents-
  - i) the preference point system applicable to the tender as envisaged in clause 6 or 7; or
  - ii) if it is unclear which preference point system will be applicable, 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;
- b) determine whether pre-qualification criteria are applicable to the tender as envisaged in clause 4;
- c) determine whether the goods or services for which a tender is to be invited, are in a designated sector for local production and content as envisaged in clause 8;
- d) determine whether compulsory subcontracting is applicable to the tender as envisaged in clause 9; and

- e) determine whether objective criteria are applicable to the tender as envisaged in clause 11.

#### **4 Pre-qualification criteria for preferential procurement**

- 1) If the Municipality decides to apply pre-qualifying criteria to advance certain designated groups, then the tender must be advertised with a specific tendering condition that only one or more of the following tenderers may respond-
  - a) a tenderer having a stipulated minimum B-BBEE status level of contributor;
  - b) an EME or QSE;
  - c) a tenderer subcontracting a minimum of 30% to-
    - i) an EME or QSE which is at least 51% owned by black people; ii) an EME or QSE which is at least 51% owned by black people who are youth; iii) an EME or QSE which is at least 51% owned by black people who are women; iv) an EME or QSE which is at least 51% owned by black people with disabilities;
    - v) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
    - vi) a cooperative which is at least 51% owned by black people; vii) an EME or QSE which is at least 51% owned by black people who are military veterans viii) an EME or QSE.
- 2) A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender.

#### **5 Tenders to be evaluated on functionality**

- 1) The Municipality must indicate in the tender documents if the tender will be evaluated on functionality;
- 2) The evaluation criteria for measuring functionality must be objective.
- 3) The tender documents must specify-
  - a) evaluation criteria for measuring functionality;
  - b) the points for each criteria and, if any, each sub-criterion; and
  - c) minimum qualifying score for functionality,
- 4) The minimum qualifying score for functionality for a tender to be considered further-
  - a) must be determined separately for each tender; and
  - b) may not be so-
    - i) low that it may jeopardise the quality of the required goods or services; or ii) high that it is unreasonably restrictive.
- 5) Points scored for functionality must be rounded off to the nearest two decimal places.
- 6) A tender that fails to obtain the minimum qualifying score for functionality as indicated in the tender documents is not an acceptable tender.

- 7) Each tender that obtained the minimum qualifying score for functionality must be evaluated further in terms of price and the preference point system and any objective criteria envisaged in clause 11.

**6 80/20 preference point system for acquisition of goods or services for Rand value equal to or above R30 000 and up to R50 million**

- 1) The following formula must be used to calculate the points out of 80 for price in respect of a tender (including price quotations) with a Rand value equal to, or above R 30 000 and up to a Rand value of R50 million inclusive of all applicable taxes:

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

Where;

$P_s$  = Points scored for price of tender under consideration;  $P_t$  = Price of tender under consideration; and  $P_{min}$  = Price of lowest acceptable tender.

- 2) The following table must be used to calculate the score out of 20 for BBEE:

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

- 3) A tenderer must submit proof of its B-BBEE status level of contributor.
- 4) A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but-
- may only score points out of 80 for price; and
  - scores 0 points out of 20 for B-BBEE.
- 5) A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.
- 6) The points scored by a tenderer for B-BBEE in terms of sub-clause (2) must be added to the points scored for price under sub-clause (1).

- 7) The points scored must be rounded off to the nearest two decimal places.
- 8) Subject to sub-clause (9) and clause 11, the contract must be awarded to the tenderer scoring the highest points.
- 9) If the price offered by a tenderer scoring the highest points is not market-related, the Municipality may not award the contract to that tenderer. a) The Municipality may-
  - i) negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
  - ii) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
  - iii) if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.
- b) If a market-related price is not agreed as envisaged in paragraph (a)(iii), the Municipality must cancel the tender.

**7 90/10 preference point system for acquisition of goods or services for Rand value above R50 million.**

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

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

Where

$P_s$  = Points scored for price of tender under consideration;  $P_t$  = Price of tender under consideration; and  
 $P_{min}$  = Price of lowest acceptable tender

- 2) The following table must be used to calculate the score out of 10 for BBEE:

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

- 3) A tenderer must submit proof of its B-BBEE status level of contributor.
- 4) A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but-



- a) may only score points out of 90 for price; and
  - b) scores 0 points out of 10 for B-BBEE.
- 5) A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.
  - 6) The points scored by a tenderer for B-BBEE in terms of sub-clause (2) must be added to the points scored for price under sub-clause (1).
  - 7) The points scored must be rounded off to the nearest two decimal places.
  - 8) Subject to sub-clause (9) and clause 11, the contract must be awarded to the tenderer scoring the highest points.
  - 9) If the price offered by a tenderer scoring the highest points is not market-related, the Municipality may not award the contract to that tenderer. a) The Municipality may-
    - i) negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
    - ii) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
    - iii) if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.
 b) If a market-related price is not agreed as envisaged in paragraph (a)(iii), the Municipality must cancel the tender.

## **8 Local Production and Content**

- 1) The Department of Trade and Industry may, in consultation with the National Treasury-
  - a) designate a sector, sub-sector or industry or product in accordance with national development and industrial policies for local production and content, where only locally produced services or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content, taking into account economic and other relevant factors; and
  - b) stipulate a minimum threshold for local production and content.
- 2) The Municipality must, in the case of a designated sector, advertise the invitation to tender with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered.
- 3) The National Treasury must inform organs of state of any designation made in terms of regulation 8(1) through a circular.
  - 3a. If there is no designated sector, the Municipality may include, as a specific condition of the tender, that only locally produced services or goods or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered.

3b. The threshold referred to in paragraph (a) must be in accordance with the standards determined by the Department of Trade and Industry in consultation with the National Treasury.

4. A tender that fails to meet the minimum stipulated threshold for local production and content is an unacceptable tender.

## **9 Subcontracting as a condition of tender**

1. If feasible to subcontract for a contract above R30 million, the Municipality must apply subcontracting to advance designated groups.
2. If the Municipality applies subcontracting as contemplated in sub-clause (1), the Municipality must advertise the tender with a specific tendering condition that the successful tenderer must subcontract a minimum of 30% of the value of the contract to-
  - a) an EME or QSE;
  - b) an EME or QSE which is at least 51% owned by black people;
  - d) an EME or QSE which is at least 51% owned by black people who are youth;
  - e) an EME or QSE which is at least 51% owned by black people who are women;
  - f) an EME or QSE which is at least 51% owned by black people with disabilities;
  - g) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
  - h) a cooperative which is at least 51% owned by black people;
  - i) an EME or QSE which is at least 51% owned by black people who are military veterans
  - j) more than one of the categories referred to in sub-clauses (a) to (h).
3. The Municipality must make available the list of all suppliers registered on a database approved by the National Treasury to provide the required goods or services in respect of the applicable designated groups mentioned in sub-clause (2) from which the tenderer must select a supplier.

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

1. If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest points for B-BBEE.
2. If functionality is part of the evaluation process and two or more tenderers score equal total points and equal preference points for B-BBEE, the contract must be awarded to the tenderer that scored the highest points for functionality.
3. If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

## **11 Award of contracts to tenderers not scoring highest points**

1. A contract may be awarded to a tenderer that did not score the highest points only in accordance with section 2(1)(f) of the Act.
2. If an organ of state intends to apply objective criteria in terms of section 2(1)(f) of the Act, the organ of state must stipulate the objective criteria in the tender documents.

## **12 Subcontracting after award of tender**

1. A person awarded a contract may only enter into a subcontracting arrangement with the approval of the organ of state.
2. A person awarded a contract in relation to a designated sector, may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
3. A person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

## **13 Cancellation of tender**

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; or
  - d) there is a material irregularity in the tender process.
2. The decision to cancel a tender invitation in terms of sub-clause (1) must be published in the same manner in which the original tender invitation was advertised.
3. The Municipality may only with the prior approval of the relevant treasury cancel a tender invitation for the second time.

## **14 Remedies**

1. Upon detecting that a tenderer submitted false information regarding its B-BBEE status level of contributor, local production and content, or any other matter required in terms of this policy which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any subcontracting arrangements, the Municipality must-
  - a) inform the tenderer accordingly;
  - b) give the tenderer an opportunity to make representations within 14 days as to why-
    - i) the tender submitted should not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part;
    - ii) if the successful tenderer subcontracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and
    - iii) the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state; and
  - c) if it concludes, after considering the representations referred to in sub-clause (1)(b), that-
    - i) such false information was submitted by the tenderer-
      - a) disqualify the tenderer or terminate the contract in whole or in part; and
      - b) if applicable, claim damages from the tenderer; or

- ii) the successful tenderer subcontracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.

2a. An organ of state must-

- i) inform the National Treasury, in writing, of any actions taken in terms of sub-clause (1); ii) provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and
- iii) submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.

2b. The National Treasury may request an organ of state to submit further information pertaining to sub-clause (1) within a specified period.

3. The National Treasury must-

- a) after considering the representations of the tenderer and any other relevant information, decide whether to restrict the tenderer from doing business with any organ of state for a period not exceeding 10 years; and
- b) maintain and publish on its official website a list of restricted suppliers.

## **15 Circulars and guidelines**

1. The National Treasury may issue-

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

## **16 SHORT TITLE AND COMMENCEMENT**

This part of the policy is called the Preferential Procurement Policy of the Mthonjaneni Municipality.

This policy will come into effect on 1 July 2019 and will be reviewed at least annually by way of a Council resolution.

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

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 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**

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

2.1 must treat all providers and potential providers equitably;

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

2.3 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;

2.4 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;

2.5 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 municipality ;

2.6 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;

2.7 must declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest;

2.8 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

2.9 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 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.

3.5 Practitioners should not make any false or misleading entries into such a system for any reason whatsoever.

3.6 Practitioners must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system.

3.7 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.

3.8 Any declarations made must be recorded in a register which the accounting officer must keep for this purpose.

3.9 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**

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**

Combative practices are unethical and illegal and should be avoided at all cost. They include but are not limited to:

7.1 Suggestions to fictitious lower quotations;

7.2 Reference to non-existent competition;

7.3 Exploiting errors in price quotations / bids;

7.4 Soliciting price quotations / bids from bidders / contractors whose names appear on the Register for Tender Defaulters