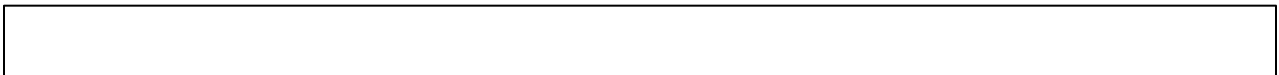




## **SUPPLY CHAIN MANAGEMENT POLICY**

**Date of implementation: 1 July 2013**



**SUPPLY CHAIN MANAGEMENT POLICY**  
**LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003**

**Date of adoption:**

**Council** resolves in terms of section 111 of the Local Government Municipal Finance Management Act (No. 56 of 2003), to adopt the following proposal as the Supply Chain Management Policy of the **municipality**.

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1. **Definition** - In this Policy, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, and –

“**Accounting officer**” – means the municipal official referred to in section 60 of the Act

“**B-BBEE**” means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act.

“**B-BBEE Status Level of Contributor**” means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.

“**Bid**” means a written offer in a prescribed or stipulated form in response to an invitation by the municipality for the provision of goods, services or construction works through price quotations, advertised competitive bidding processes or proposals.

“**Bidder**” means any person submitting a competitive bid or a quotation.

“**Broad-Based Black Economic Empowerment Act**” means the Broad-Based Black Economic Empowerment Act, 53 of 2003 and Codes of Good Practice pertaining thereto.

“**Chief Financial Officer or CFO**” means a person designated in terms of section 80(2)(a) of the Act.

“**CIDBA regulations**” means any regulations issued in terms of the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000);

“**Community Based Vendor**” means a supplier of goods, services and/or construction works who resides in the Emalahleni municipal area or has its principal business activities in the Emalahleni municipal area, who meets the criteria for community based

vendor as determined by the Municipal Council from time to time, and who is registered as such on the municipality's supplier database.

**“Competitive bidding process”** means a competitive bidding process referred to in paragraph 12 (1) (d) of this Policy;

**“Competitive bid”** means a bid in terms of a competitive bidding process;

**“Consultant”** means a person or entity providing amongst others consulting firms, management firms, procurement agents, inspection agents, auditors, other multinational organisations, investment and merchant banks, universities, research agencies, government agencies, non-governmental organisations (NGOs) and individuals.

**“Contract”** means the agreement which is concluded when the municipality accepts, in writing, a competitive bid or quotation submitted by a supplier.

**“Day(s)”** means calendar days unless the context indicates otherwise.

**“Designated sector”** means a sector, sub-sector or industry that has been designated by the Department of Trade and Industry in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content.

**“Disposal”** in relation to capital assets means –

- (a) The demolition, dismantling or destruction of the capital asset; or
- (b) Any other process applied to a capital asset which results in loss of ownership of the capital asset otherwise than by way of transfer of ownership;

**“Exempted Micro Enterprise”** means a bidder with annual total revenue of R5 million or less (in terms of the Broad-Based Black Economic Empowerment Act).

**“Final award”**, in relation to bids or quotations submitted for a contract, means the final decision on which bid or quote was accepted;

**“Formal written price quotation”** means a written or electronic offer to the municipality in response to an invitation to submit a quotation as referred to in paragraph 19 of this Policy;

**“Head of Department”** means a Senior Manager as defined in the Municipal Finance Management Act, 2003 (Act no.56 of 2003) and who is responsible for a vote as assigned by the Accounting Officer;

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

- (a) A member of –
  - (i) Any municipal council;
  - (ii) Any provincial legislature; or
  - (iii) The National Assembly or the National Council of Provinces;
- (b) A member of the board of directors of any municipal entity;
- (c) An official of any municipality or municipal entity;
- (d) An employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Municipal Finance Management Act, 2003 (Act No.56 of 2003); and Public Finance Management Act, 1999 (Act No. 1 of 1999)
- (e) A member of the accounting authority of any national or provincial public entity;  
or
- (f) An employee of Parliament or a provincial legislature;

**“Joint Venture or Consortium”** means an association of persons formed for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract or contracts. The Joint Venture must be formalised by agreement between the parties.



**“Line manager”** means a manager reporting directly to a senior manager and who is responsible for a cost centre as assigned by the relevant senior manager;

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

**“List of accredited prospective providers”** means the list of accredited prospective providers which the **municipality** must keep in terms of paragraph 14 of this policy;

**”Municipality”** means Emalahleni Municipality or any person(s) or committee delegated with the authority to act on its behalf.

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

- (a) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- (b) The Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (c) The Construction Industry Development Board Act, 2000 (Act No.38 of 2000); and
- (d) The Preferential Procurement Regulations of 2011

**“Policy”** means this Supply Chain Management Policy as amended from time to time by Council

**“Targeted Labour”** means those individuals employed by a contractor, or sub-contractor, in the performance of a contract, who are defined in the contract as the target group, and who permanently reside in the municipal area.

**“Tender”** referred to in the Preferential Procurement Regulations 2011, has the same meaning as “bid” as defined in this policy

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

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

**“The Regulations”** means the Local Government: Municipal Finance Management Act, 2003, Municipal Supply Chain Management Regulations published by Government Notice 868 of 2005;

**“Written quotations”** means quotations referred to in paragraph 12(1) (b) of this Policy.

## 2. Policy statement and objectives

Section 111 of the Municipal Finance Management Act requires each municipality and municipal entity to adopt and implement a supply chain management policy, which gives effect to the requirements of the Act.

In addition, the Preferential Procurement Policy Framework Act requires an Organ of State to determine its Preferential Procurement Policy and to implement it within the framework prescribed.

The objectives of this Policy are:

- to give effect to section 217 of the Constitution of the Republic of South Africa by implementing a system that is fair, equitable, transparent, competitive and cost effective;
- to comply with all applicable provisions of the Municipal Finance Management Act including the Municipal Supply Chain Management Regulations published under GN868 in Government Gazette 27636 30 May 2005 and any National Treasury Guidelines issued in terms of the MFMA; regulations pertaining thereto, including:
  - the Preferential Procurement Policy Framework Act;
  - the Broad-Based Black Economic Empowerment Act;
  - the Construction Industry Development Board Act;
  - the Local Government: Municipal Systems Act; and
  - the Promotion of Administrative Justice Act.

**CHAPTER 1**  
**IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY**

**3. Supply chain management policy**

- (1) All officials and other role players in the supply chain management system of the **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;
  - (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) Disposes of goods no longer needed;
  - (c) Selects contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; and
  - (d) Selects external mechanisms referred to in section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.

- (e) the procurement of goods and services under a contract secured by that other organ of state, provided that the relevant supplier has agreed to such procurement.
- (3) This Policy, except where provided otherwise, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –
- (a) Water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
  - (b) Electricity from Eskom or another public entity, another municipality or a municipal entity.

#### 4. Amendment of the supply chain management policy

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

## 5. Delegation of supply chain management powers and duties

- (1) The 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) Sections 79 and 106 of the Act apply to the sub delegation of powers and duties delegated to an accounting officer in terms of subparagraph (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 paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 35-37 of this Policy.

## 6. Sub delegations

- (1) The accounting officer may in terms of section 79 or 106 of the Act sub delegate any supply chain management powers and duties, including those delegated to the accounting officer in terms of this Policy, but any such sub delegation must be consistent with subparagraph (2) of this paragraph and paragraph 4 of this Policy.
  
- (2) The power to make a final award –
  - (a) Above R 5 million (VAT included) may not be sub delegated by the accounting officer;
  - (b) Above R2 million (VAT included), but not exceeding R5 million (VAT included), may be sub delegated but only to –
    - (i) The chief financial officer;
    - (ii) A bid adjudication committee of which the Chief Financial Officer is a member / Chairperson;
  - (c) Not exceeding R2 million (VAT included) may be sub delegated but only to –
    - (i) The chief financial officer;
    - (ii) A senior manager;
    - (iii) A manager directly accountable to the chief financial officer or a senior manager; or
    - (iv) A bid adjudication committee.
  
- (3) An official or bid adjudication committee to which the power to make final awards has been sub delegated in accordance with subparagraph 5(2) must within five days of the end of each month submit to the official referred to in subparagraph 5(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.
- (4) A written report referred to in subparagraph 5(3) must be submitted –
- (a) To the accounting officer, in the case of an award by –
    - (i) The chief financial officer;
    - (ii) A bid adjudication committee of which the chief financial officer; or
  - (b) To the chief financial officer or his delegate responsible for the relevant bid, in the case of an award by –
    - (i) A manager referred to in subparagraph 5 (2) (c) (ii); or
    - (ii) A bid adjudication committee of which the chief financial officer is a member.
- (5) Subparagraphs 5(3) and 5(4) of this policy do not apply to procurements out of petty cash.
- (6) This paragraph 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 paragraph 26 of this Policy.
- (7) No supply chain management decision-making powers may be delegated to an advisor or consultant.



## 7. Oversight role of council

- (1) The **Council** reserves its right to 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.
- (3) The Supply Chain Manager must, within 4 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the Chief Financial Officer, of which he must submit it within 3 days to the Accounting Officer. The Accounting Officer must within 3 days after receiving the report submit it to the Mayor.
- (4) The reports must be made public in accordance with section 21A of the Municipal Systems Act.

## **8. Supply chain management unit**

- (1) Emalahleni Municipality has established a supply chain management unit to implement this Policy.
- (2) The supply chain management unit operates under the direct supervision of the Chief Financial Officer whom this duty has been delegated in terms of section 82 of the Act.

## **9. Training of supply chain management officials**

- (1) The training of officials involved in implementing this Policy should be in accordance with any Treasury guidelines on supply chain management training.

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

**10. Format of supply chain management system**

This Policy provides systems for –

- (1) Demand management;
- (2) Acquisition management;
- (3) Logistics management;
- (4) Disposal management;
- (5) Risk management; and
- (6) Performance management.

**11. Communication with the municipality**

- (1) All correspondence with regards to this policy shall be addressed to the Manager: Supply Chain Management.

***Part 1: Demand management***

**12. System of demand management**

- (1) The accounting officer has established and implemented 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.
- (2) The demand management system -
  - (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) undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.
  - (e) provide efficient and effective provisioning and procurement systems and practices to enable the municipality to deliver the required quantity and quality of services to the communities.
  - (f) establish uniform procedures, documents and contracts and the implementation of sound systems of control and accountability.
  - (g) establish a professional supply chain management system which results in continuing improvement in affordability and value for money, based on total cost of ownership and quality of procurement as competition amongst suppliers is enhanced.
- (3) Green procurement must be incorporated as far as reasonable possible, for all specifications of goods, services and construction works.
- (4) In the development of bid specifications, innovative mechanisms should be explored to render the service or product more resource and energy efficient.

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

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

- (1) The objectives of this acquisition management system are to ensure:
  - (a) that goods and services, including construction works and consultant services are procured by the municipality only in accordance with the authorised procedures incorporated herein;
  - (b) that expenditure on goods and services, including construction works and consultant services is incurred in terms of an approved budget; and
  - (c) that the threshold values of the different procurement procedures are complied with.
  - (d) that bid documentation, evaluation and adjudication criteria, and general conditions of contract are in accordance with the requirements of relevant legislation including, the Preferential Procurement Policy Framework Act, and any conditions of the Construction Industry Development Board Act; and
  - (e) that procurement guidelines issued by the National Treasury are taken into account.
- (2) When procuring goods or services contemplated in section 110(2) of the Act, the accounting officer must make public the fact that such goods or services are procured otherwise than through the municipality's supply chain management system, including -
  - (a) The kind of goods or services; and
  - (b) The name of the supplier.
- (3) Unless otherwise indicated in the bid documents, the municipality shall not be liable for any expenses incurred in the preparation and / or submission of a bid or quotation.

- (4) Bid documentation may state that alternative bids can be submitted provided that a bid is in accordance with the bid documents is also submitted.
- (5) An alternative bid shall be submitted on a separate complete set of bid documents and shall be clearly marked "Alternative Bid" to distinguish it from the main bid offer referred to above.
- (6) Bid documentation shall state that the municipality will not be bound to consider alternative bids.
- (7) The Manager Supply Chain management may extend the bid closing date if circumstances justify the action, provided that the closing date may not be extended unless a notice is published in the same newspapers as the original advertisement prior to the original bid closing date.
- (8) The notice referred to in paragraph 13 (7) must also be posted on the municipal notice boards, the municipal website and a notice must be sent to all bidders

#### **14. Range of procurement processes**

- (1) Goods and services may only be procured by way of
  - (a) One written price quotation up to a transaction value of R 2,000 (VAT included);
  - (b) Petty cash purchases up to a transaction value of R 2,000 (VAT included) for items specified in the Petty Cash policy;
  - (c) Three written price quotations for procurements of a transaction value over R 2,000 up to R10,000 (VAT included);
  - (d) Three formal written price quotations for procurements of a transaction value over R 10,000 up to R200,000 (VAT included);and
  - (e) A competitive bidding process for–
    - (i) Procurements above a transaction value of R200 000 (VAT included); and
    - (ii) The procurement of long term contracts.

- (2) The accounting officer may, in writing lower, but not increase, the different threshold values specified in subparagraph 14(1);
- (3) For quotations (up to R 30 000) bidders are required to be registered on the municipality's supplier database prior to the acceptance of their quotation in respect of the goods or services required.
- (4) 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.

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

- (1) A written quotation or bid may not be considered unless the provider who submitted the quotation or bid –
  - (a) Has furnished that provider's –
    - (i) Full name;
    - (ii) Identification number or company or other registration number; and
    - (iii) Tax reference number and VAT registration number, if any;
    - (iv) registration number in terms of section 18(1) of the Construction Industry Development Board Act, 2000 (Act No.38 of 2000), should the provider quote or bid to undertake, carry out or complete any construction works or portion thereof;
  - (b) Has provided the municipality with an original and valid tax clearance from the South African Revenue Services confirming that the provider's tax matters are in order; and

- (c) Has indicated –
  - (i) Whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
  - (ii) if the bidder is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
  - (iii) Whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to in subparagraph (ii) is in the service of the state, or has been in the service of the state in the previous twelve months;
  - (iv) On their supplier database application form if the supplier or person is in the service of the state, that such declaration be deemed as sufficient and that the responsibility rests on the supplier to notify the supply chain management unit of any changes hereto.
  - (v) Has completed, signed and submitted a certificate of independent bid determination with their bid or quotation.
  
- (2) Laws of the Republic of South Africa shall govern contracts arising from the acceptance of bids and quotations.
  
- (3) Where the acquisition in question is likely to involve an imported component which will be subject to foreign exchange rate adjustments, the bid documentation must specify that the contractor take out a forward exchange contract in order to fix the Rand based price as soon as possible after the award.



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

- (1) The accounting officer must –
  - (a) keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements through written or verbal quotations and formal written price quotations for procurement up to R 30 000; and
  - (b) at least twice a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
  - (c) specify the listing criteria for accredited prospective providers;
  - (d) disallow the listing of any prospective supplier on the municipality's supplier database who do not comply with the accreditation requirements i.e. listing criteria and also based on standards, set by any relevant control bodies that govern or regulate the category of service or industry.
  - (e) disallow the listing of any prospective provider whose name appears on the National Treasury's List of Restricted Suppliers and/or Registered for Tender Defaulters and/or a person or business 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.

## **17. Petty cash purchases**

Petty cash purchases must be done according to the Petty Cash policy. The conditions for the procurement of goods by means of petty cash purchases referred to in paragraph 14 (1) (b) of this Policy, are as follows–

- (a) The Accounting Officer may delegate the responsibility for petty cash to an official directly or indirectly reporting to the CFO;
- (b) No item that is an approved stores item might be purchase by means of a petty cash transaction;
- (c) No fixed asset of whatever value may be purchase through petty cash;
- (d) The nature of petty cash transactions that can be processed as petty cash transactions are listed in paragraph 5 of the Petty Cash policy;
- (e) The Council will determine annually the maximum amount of petty cash expenditure per month as referred to in paragraph 6 of the petty cash policy;
- (f) A monthly reconciliation report must be provided to the chief financial officer, within five days of the end of each month containing particulars of each final award made by an official during that month, including:
  - (i) The total amount of petty cash purchases for that month; and
  - (ii) Receipts and appropriate documents for each purchase.

## **18. Written Price quotations**

- (1) The conditions for the procurement of goods or services through written price quotations are as follows:
  - (a) All requirements below R2 000.00 (VAT incl.) which are not covered by the Petty Cash policy, one written price quotation must be obtained from providers who are listed as accredited prospective service providers.
  - (b) All requirements between R2 000.00 (VAT incl.) and R 10 000.00 (VAT incl.) three written price quotations must be obtained from

providers who are listed as accredited prospective service providers.

#### **19. Formal written price 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;
  - (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer, and
  - (d) The Chief Financial Officer must record the names of the potential providers and their written quotations.
- (2) A designated official referred to in subparagraph 19 (1) (c) must within three days of the end of each month report to the chief financial officer on any approvals given during that month by that official in terms of that subparagraph.

#### **20. Procedures for procuring goods or services through written or verbal quotations and formal written price quotations**

- (1) The procedure for the procurement of goods or services through written quotations or formal written price quotations is as follows:
  - (a) When using the list of accredited prospective providers the accounting officer must promote on-going 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 paragraph 19, be advertised for at least seven days on the website and official notice boards of the municipality;

- (c) Offers received must be evaluated on a comparative basis taking into account unconditional discounts;
- (d) the accounting officer or chief financial officer must on a monthly basis be notified in writing of all written quotations and formal written price quotations accepted by an official acting in terms of a sub delegation;
- (e) Offers below R30 000 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;
- (f) Acceptable offers, which are subject to the preference points system (PPPFA and Preferential Procurement Regulations of 2011), must be awarded to the bidder who scored the highest points;
- (g) Comply with all requirements for proper record keeping.

## 21. Competitive bids

- (1) Goods or services above a transaction value of R200 000 (VAT included) and long term contracts may only be procured through a competitive bidding process, subject to paragraph 13(2) of this Policy.
- (2) No requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.
- (3) The accounting officer may split unduly large quantities of work into smaller contracts (units) to provide opportunities for emerging entrepreneurs and make it manageable. This may only be done when it is technically, logistically and financially feasible.

## **22. Process for competitive bidding**

- (1) The procedures for the following stages of a competitive bidding process are as follows:
  - (a) Compilation of bidding documentation as detailed in paragraph 23
  - (b) Public invitation of bids as detailed in paragraph 24;
  - (c) Site meetings or briefing sessions as detailed in paragraph 25;
  - (d) Handling of bids submitted in response to public invitation as detailed in paragraph 27;
  - (e) Evaluation of bids as detailed in paragraph 36;
  - (f) Award of contracts as detailed in paragraph 37;
  - (g) Administration of contracts -
    - (i) After approval of a bid, the accounting officer and the bidder must enter into a written agreement.
  - (h) Proper record keeping -
    - (i) Original / legal copies of written contracts agreements should be kept in a secure place for reference purposes.

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

- (1) The criteria to which bid documentation for a competitive bidding process must –
  - (a) Take into account –
    - (i) The general conditions of contract and any special conditions of contract, if specified;
    - (ii) Any Treasury guidelines on bid documentation; and
    - (iii) The requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
    - (iv) And clearly indicate the terms and conditions of contract,

specifications, criteria for evaluation and adjudication procedures to be followed where applicable, and include if and where site meetings/ briefing sessions are compulsory.

- (b) include the preference points system to be used , goals as contemplated in the Preferential Procurement Regulations 2011;
- (c) Compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (d) Provide for an appropriate contract and / or delivery period;
- (e) stipulate if the value of the transaction is expected to exceed R5 million (VAT included), require bidders to furnish–
  - (i) If the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
    - (aa) for the past three years; or
    - (bb) since their establishment if established during the past three years;
  - (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
  - (iii) Particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
  - (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and

- (f) Stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.
- (g) Not be aimed at hampering competition, but rather to ensure fair, equitable, transparent, competitive and cost effective bidding, as well as the protection or advancement of persons or categories of persons.

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

- (1) The procedure for the invitation of competitive bids is as follows:
  - (a) **On completion of the bid specification process the municipality shall publicly invite bids.**
  - (b)** Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the municipality or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin);
  - (c) The notice may require a payment of a non-refundable bid fee by bidders who require bid documents. The bid documentation fee shall be determined by the accounting officer from time to time
  - (d) The information contained in a public advertisement, must indicate –
    - (i) The title of the proposed bid;
    - (ii) The bid number;
    - (iii) The date, time and location of any site meeting/ briefing session and whether such meetings/ session are compulsory;
    - (iv) Whether functionality is required;
    - (v) The place where the bid documentation is available for collection and the times between which bid documents may be collected;
    - (vi) The bid documentation fee;

- (vii) The place where bids must be submitted;
  - (viii) The closing date and time for submission of bids; and
  - (ix) The required CIDB contractor grading for construction work, if applicable.
- (e) The closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R4 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph 22(2) of this policy;
- (f) A statement that bids may only be submitted on the bid documentation provided by the municipality, must be included.
- (2) The accounting officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.
- (3) Bids submitted must be sealed and must clearly indicate the bid number and bid title for which the bid is being submitted.
- (4) Details of all prospective bidders who have been issued with bid documents must be recorded by the Supply Chain Management Unit and shall remain confidential for the duration of the bid period. Details of prospective bidders must, wherever possible, include the full name of the person drawing documents, the name of the company for whom the bid documents are, a contact person, a contact telephone, a fax number and a postal and email address.



- (5) A bidder that did not pay the prescribed bid document fee, will be disqualified from the bidding process.
- (6) The municipality may require bidders to submit section(s) of their bid in electronic format, but only after the bid closing date. If the electronic copy differs from the original hard copy, the original hard copy will be binding.

**25. Site meetings/ bid clarification Meetings**

- (1) Site meetings/ bid clarification meetings will, in general, not be compulsory. In exceptional circumstances however, a site meeting/ bid clarification meeting may be made compulsory with the approval of the relevant director.
- (2) If site meetings/ bid clarification meeting are to be held, full details must be included in the bid notice and the bid document, including whether or not the site meeting/ bid clarification meeting is compulsory.
- (3) Where site meetings/ bid clarification meetings are made compulsory, the date for the site meetings/ bid clarification meeting shall be not less than 7 (seven) days after the bid has been advertised.
- (4) Site meetings/ bid clarification meeting will be chaired by a duly authorised representative from the Supply Chain Management Unit. The relevant line manager responsible for a specific bid or the duly appointed consulting engineering firm employee must be present at the site meetings/ bid clarification meeting in order to provide technical information and to answer technical related questions that might arise from the prospective bidders.

- (5) The chairperson of the site meeting/ clarification meeting must explain the way how the site meetings/ bid clarification will be conducted and must exclude prospective bidders that arrive after the meeting has been opened.
- (6) Prospective bidders present at the site meetings/ bid clarification meeting, will be required to confirm their attendance by signing the attendance register as provided by the Supply Chain Management Unit.
- (7) In instances where bid documentation provides for an attendance certificate, such a certificate must be signed by the representative of the Supply Chain Management Unit who was present at the site meetings/ bid clarification meeting and submitted with the bid document.
- (8) If at a site meetings/ bid clarification meeting, any additional information is provided or clarification of vague points is given, such additional information or clarification must be conveyed to all bidders in writing within a time frame as determined by the municipality, but not later than 7 (seven) days before the bid closing date.
- (9) Drawings and other supplements to bid documents may be provided to prospective bidders at the site meetings/ bid clarification meeting.
- (10) A bidder who failed to attend a compulsory site meeting/ bid clarification meeting will be disqualified from the bidding process.

## **26. Submission of bids**

- (1) Bids must be submitted before the closing time, at the address and in accordance with the directives in the bid documents.
- (2) Each bid must be in writing using non-erasable ink and must be submitted on the official Form of Bid/Offer issued with the bid documents.

- (3) The bid must be submitted in a separate sealed envelope with the name and address of the bidder, the bid number and title, the bid box number (where applicable), and the closing date indicated on the envelope. The envelope may not contain documents relating to any bid other than that shown on the envelope. Only sealed bids will be accepted.
- (4) The onus shall be on the bidder to place the sealed envelope in the official, marked and locked bid box provided for this purpose, at the designated venue, not later than the closing date and time specified in the bid notice.
- (5) No bids forwarded by telegram, facsimile or similar apparatus shall be considered.
- (6) A bid is late if it is not placed in the relevant bid box by the closing time and date of such bid.
- (7) A late bid shall not be admitted for consideration and shall be returned unopened (where feasible) to the bidder with the reason for the return thereof endorsed on the envelope.

**27. Procedure for handling, opening and recording of bids and formal written price quotations in excess of R 30 000**

- (1) The procedures for the handling, opening and recording of bids and formal written price quotations in excess of R 30 000, are as follows:
  - (a) At least two officials, of which one must be the delegated Supply Chain Management representative, must at all times administer the opening of bids.
  - (b) At the specified closing time on the closing date the applicable bid box shall be closed.
  - (c) The bid box shall be opened in public as soon as practical after the closing time of the bid.

- (d) Immediately after the opening of the bid box, all bids that are clearly marked shall be opened.
  - (e) The Supply Chain Management representative as delegated, shall read out the name of the bidder and if practical the bid amount. No other information shall be read out at the bid opening.
  - (f) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price;
  - (g) No information, except the provisions in subparagraph (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
  - (h) The Supply Chain Management representative that is delegated to open the bids must –
    - (i) stamp the bid document with the official municipal stamp together with the two signatories administering the bid opening
    - (ii) record in a register all bids received in time;
    - (iii) sign the register as well as the official assisting at the bid opening.
    - (iv) Make the register available for public inspection; and
    - (v) Publish the entries in the register and the bid results on the website.
    - (vi) No councillor may be present at the opening of bids.
- (2) Bids shall be invalid, and shall be endorsed and recorded as such in the bid opening record by the responsible official to open the bid, in the following instances:

- (a) If the bid is not sealed;
  - (b) if the bid, including the bid price amount, where applicable is not submitted on the official Form of Bid/Offer;
  - (c) if the bid is not completed in non-erasable ink;
  - (d) if the Form of Bid/Offer is signed, but the name of the bidder is not stated, or is indecipherable; or
  - (e) if in a two envelope system is followed, the bidder fails to submit both a technical proposal and a separate sealed financial offer/bid.
- (3) A bid will not be invalidated if the amount in words and the amount in figures do not correspond, in which case the amount in words shall be read out at the bid opening and shall be deemed to be the bid amount.
- (4) The Manager Supply Chain Management may, in compliance with paragraph 63 of this policy, provide a reasonable opportunity to a bidder who made an innocent error and/ or omission in his/ her bid document, to correct the innocent error and/ or omission, provided that such opportunity will not unduly prejudice any of the other bidders.
- (5) Bidders shall be afforded no longer than 48 hours from time of notification to correct such innocent errors and/ or omissions. If no response is received from such bidders at the deadline, the bid may be invalidated.
- (6) When bids are declared invalid at the bid opening, the bid sum of such bids shall not be read out. However, the name of the bidder and the reason for the bid having been declared invalid shall be announced.

**28. Procedure for the opening of bids where a two envelope system is followed**

- (1) If a two envelope system is followed, only the technical proposal will be opened at the bid opening.
- (2) The unopened envelope containing the financial proposal shall be stamped and endorsed with the opening official's signature, and be retained by him/her for safekeeping.
- (3) When required the financial offers/bids corresponding to responsive technical proposals, shall be opened by the opening officials in accordance with paragraph 27 (1) (a)
- (4) All bidders who submitted responsive technical proposals must be invited to attend the opening of the financial offers/bids.
- (5) Envelopes containing financial offers/bids corresponding to non-responsive technical proposals shall be returned unopened along with the notification of the decision of the Bid Adjudication Committee in this regard.

**29. Communication with bidders before bid closing**

- (1) The Manager Supply Chain Management may, if necessary, communicate with bidders prior to bids closing.
- (2) Such communication shall be in the form of a notice issued to all bidders by the Manager Supply Chain Management by either e-mail, facsimile, or registered post as may be appropriate. A copy of the notice together with a transmission verification report/proof of posting shall be kept for record purposes. Notices should be issued at least one week prior to the bid closing date, where possible, except in terms of paragraph 13 (7).

- (2) Notwithstanding a request for acknowledgement of receipt of any notice issued, the bidder will be deemed to have received such notice if the procedures in paragraph 29 (2) have been complied with.

### **30. Negotiations with preferred bidders**

- (1) The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation –
- (a) Does not allow any preferred bidder a second or unfair opportunity;
  - (b) is not to the detriment of any other bidder; and
  - (c) Does not lead to a higher price than the bid as submitted.
- (2) Minutes of such negotiations must be kept for record purposes.

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

- (1) A two-stage bidding process is allowed for –
- (a) Large complex projects;
  - (b) Projects where it may be undesirable to prepare complete detailed technical specifications; or
  - (c) Long term projects with a duration period exceeding three years subject to section 33 of the Act.
- (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.

- (4) A two envelope system differs from a two-stage (prequalification) bidding process in that a technical proposal and the financial offer are submitted in separate envelopes at the same place and time. The financial offers will only be opened once the technical proposals have been evaluated.

### **32. Validity periods**

- (1) The period for which bids are to remain valid and binding must be indicated in the bid documents.
- (2) The validity period is calculated from the bid closure date and bids shall remain in force and binding until the end of the final day of that period.
- (3) This period of validity may be extended by the Manager: Supply Chain Management, provided that the original validity period has not expired, and that all bidders are given an opportunity to extend such period. Any such extension shall be agreed to by a bidder in writing.
- (4) Bidders who fail to respond to such a request before the validity of their bid expires, or who decline such a request shall not be considered further in the bid evaluation process.
- (5) In the event that an appeal is received, the validity period is deemed to be extended until finalisation of the appeal.

### **33. Samples**

- (1) Bid documents may require samples that must be submitted.
- (2) Where samples are called for in the bid documents, samples (marked with the bid and item number as well as the bidder's name and address) shall be delivered separately (to the bid) to the Supply Chain Management representative mentioned in the bid document before the bid closing date.



- (3) A register will be kept by the Supply Chain Management representative of samples received from prospective bidders. An acknowledgement of receipt shall be issued to the prospective bidder as proof of delivery.
- (4) Bids may not be included in parcels containing samples.
- (5) If samples are not submitted as required in the bid documents then the bid concerned must be declared non-responsive.
- (6) Samples shall be supplied by a bidder at his/her own expense and risk. The municipality shall not be obliged to pay for such samples or compensate for the loss thereof, unless otherwise specified in the bid documents, and shall reserve the right not to return such samples and to dispose of them at its own discretion.
- (7) If a bid is accepted for the supply of goods according to a sample submitted by the bidder, that sample will become the contract sample. All goods/materials supplied shall comply in all respects to that contract sample. If not, it might be deemed as a breach in contract.

**34. Committee system for competitive bids**

- (1) A committee system for competitive bids is hereby established, consisting of the following committees for procurement or cluster of procurements 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) A neutral or independent observer, appointed by the accounting officer, must attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.
- (4) The committee system must be consistent with –
  - (a) Paragraph 35, 36 and 37 of this Policy; and
  - (b) Any other applicable legislation.
- (5) The accounting officer may apply the committee system to formal written price quotations.

### **35. Bid specification committees**

- (1) A bid specification committee must compile the specifications for procurement of goods or services by the municipality.
- (2) Specifications –
  - (a) Must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
  - (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or 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 rather than in terms of descriptive characteristics for design;
  - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification;

- (e) may not make reference to any particular 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 the points system to be utilised 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 accounting officer prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.**
- (3) A bid specification committee must be composed of one or more officials of the municipality preferably the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.
- (4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.

### **36. Bid evaluation committees**

- (1) A bid evaluation committee must –
  - (a) **Evaluate bids in accordance with –**
    - (a) the specifications for a specific procurement; and
    - (b) **The points system set out in terms of paragraph 35 (2) (f).**
  - (b) Evaluate each bidder’s ability to execute the contract;
  - (c) Check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, and;

- (d) Submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
- (2) A bid evaluation committee must as far as possible be composed of-
  - (a) Officials from departments requiring the goods or services; and
  - (b) At least one supply chain management practitioner of the municipality.
- (3) The accounting officer may sub-delegate its power in terms of paragraph 63 of this policy to the bid evaluation committee.

### **37. 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 final award or a recommendation to the accounting officer to make the final award; or
    - (ii) Make another recommendation to the accounting officer how to proceed with the relevant procurement.
- (2) **A bid adjudication committee must consist of at least four senior** Managers of the municipality which must include –
  - (a) The Chief Financial Officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer;
  - (b) at least one senior supply chain management practitioner who is an official of the municipality or the municipal entity; and

- (c) a technical expert in the relevant field who is an Director of the municipality or municipal entity, if the municipality or municipal entity has such a expert
- (3) A quorum is of 50 % plus 1, with the Chief Financial Officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer being, at all times one of the quorum-forming members:
- (4) The accounting officer may appoint the CFO as chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting and will be documented in the minutes.
- (5) 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.
- (6) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –
  - (a) check in respect of the preferred bidder whether that bidder’s municipal rates and taxes and municipal service charges are not in arrears, and;
  - (b) Notify the accounting officer.
  - (c) The accounting officer may –
    - (i) After due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a)-(b); 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.

(7) 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.

(8) The accounting officer must comply with section 114 of the Act within 10 working days

(9) If the Bid Adjudication Committee or other delegated official has resolved that a bid be accepted, the successful and unsuccessful bidders shall be notified in writing of this decision

(10) Every notification of decision shall be sent via registered mail and either faxed or sent via electronic mail to the address chosen by the bidder, with a copy of proof of transmission kept for record purposes, or shall be delivered by hand, in which case acknowledgement of receipt must be signed and dated on a copy of such notification and kept for record purposes.

(11) Members of the bid specification committee, bid evaluation committee and technical advisors may attend the bid adjudication committee to provide clarity, but has no decision making rights pertaining to the award.

(12) The accounting officer may sub-delegate its power in terms of paragraph 63 of this policy to the bid evaluation committee, the bid adjudication committee and the Manager Supply Chain Management.

**38. Procurement of banking services**

- (1) A contract for banking services –
  - (a) Must be procured through competitive bids;
  - (b) Must be consistent with section 7 or 85 of the Act; and
  - (c) May not be for a period of more than five years at a time.
  
- (2) The process for procuring a contract for banking services must commence at least **nine months before** the end of an existing contract.
  
- (3) The closure date for the submission of bids may not be less than 60 Days from the date on which the advertisement is placed in a newspaper in terms of paragraph 22(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

**39. Procurement of IT related goods or services**

- (1) The accounting officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.
  
- (2) Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.
  
- (3) The accounting officer must notify SITA together with a motivation of the IT needs if –
  - (a) the transaction value of IT related goods or services required in any financial year will exceed R50 million (VAT included); or
  - (b) The transaction value of a contract to be procured whether for one or more years exceeds R50 million (VAT included).

- (4) If SITA comments on the submission and the municipality 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.

**40. 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) Subparagraphs (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.

**41. Procurement of goods necessitating special safety arrangements**

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



- (2) Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership, cost advantages and environmental impact and **must be approved by the accounting officer.**

#### **42. Proudly SA Campaign/Local content**

- (1) **The municipality supports the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services**
- (2) Bids in respect of services, works or goods that have been designated for local production and content, must contain a specific bidding condition that only locally produced goods, services or works or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered
- (3) The National Department of Trade and Industry is empowered to designate industry sectors, in line with national development and industrial policies for local production, where only locally produced goods, services or construction works, or locally manufactured goods that meet a stipulated minimum threshold for local production and content, may be used.
- (4) In the case of designated sectors, where in the award of bids, local production and content is of critical importance, such bids must be advertised with a specific condition of bidding, that only locally produced goods, services or construction works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.

- (5) Any instructions, circulars and guidelines issued by National Treasury in the above regard must be complied with.
- (6) Where there is no designated sector, bids may include, as a specific condition of bidding, that only locally produced goods, services or construction works, or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered, on condition that such prescript and threshold(s) are in accordance with the specific directives issued for this purpose by the National Treasury in consultation with the Department of Trade and Industry.
- (7) Every bid where local production and content are used, it must be measurable and audited.
- (8) Bids must be evaluated in terms of the evaluation criteria stipulated in the bid documents. The amendment of the stipulated minimum threshold for local production and content after the closure of bids is not allowed as this may jeopardise the fairness of the process.

#### **43. Appointment of consultants**

- (1) the accounting officer may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.
- (2) Consultancy services must be procured through competitive bids if
  - (a) The value of the contract exceeds R200 000 (VAT included); or
  - (b) The duration period of the contract exceeds one year.

- (3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of –
  - (a) all consultancy services provided to an organ of state in the last five years; and
  - (b) Any similar consultancy services provided to an organ of state in the last five years.
  
- (4) The accounting officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the **municipality**.

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

- (1) The accounting officer may –
  - (a) Dispense with the official procurement processes established by this Policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only –
    - (i) In an emergency;
    - (ii) If such goods or services are produced or available from a single provider only;
    - (iii) For the acquisition of special works of art or historical objects where specifications are difficult to compile;
    - (iv) Acquisition of animals for zoos and/or nature and game reserves; or
    - (v) In any other exceptional case where it is impractical or impossible to follow the official procurement processes; and

- (b) Ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.
- (2) The conditions warranting procurement in an emergency dispensation should include, where time of the essence, the existence of one or more of the following:
- (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; and
  - (g) the possibility that the security of the state could be compromised.
- (3) The accounting officer must record the reasons for any deviations in terms of subparagraphs (1) (a) and (b) of this policy and report them to the next meeting of the council and include as a note to the annual financial statements.
- (4) Paragraph 44 (3) of this policy does not apply to the procurement of goods and services contemplated in paragraph 13(2) of this policy.

#### 45. Unsolicited bids

- (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- (2) The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if –
  - (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
  - (b) The product or service will be exceptionally beneficial to, or have exceptional cost advantages;
  - (c) The person who made the bid is the sole provider of the product or service; and
  - (d) The reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
- (3) If the accounting officer decides to consider an unsolicited bid that complies with subparagraph 45(2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with –
  - (a) Reasons as to why the bid should not be open to other competitors;
  - (b) An explanation of the potential benefits if the unsolicited bid were accepted; and
  - (c) An invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) The accounting officer must submit all written comments received pursuant to subparagraph (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 seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality to the bid may be entered into or signed within 30 days of the submission.

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

- (1) The accounting officer must–
  - (a) Take all reasonable steps to prevent abuse of the supply chain management system;
  - (b) Investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this 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 willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - (iv) Has been listed in the Register for Tender Defaulters in terms 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 paragraphs 46 (1) (b) (i)-(ii) of this policy.



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

#### **47. Logistics management**

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

- (1) The accounting officer must establish and implement an effective system of logistics management, which must include –
  - (a) **Placing of orders:**
    - (i) Purchase orders will be created with reference to requisitions where the supply source is either bids or quotations.
    - (ii) All purchase orders will be captured on the municipality's financial system
  - (b) **Receiving of goods:**
    - (i) Goods received must be captured on the municipality's financial system via a goods receive note with reference to the relevant purchase order number.
    - (ii) Deliveries of goods may not exceed the order quantity. Short deliveries will keep the purchase order open until the balance of the order is received or when the order is cancelled.

(c) Expediting orders:

- (i) The purchasing expeditor will be required to monitor and expedite the transport of goods and outstanding purchase orders.
- (ii) Reminder letters can be communicated automatically to vendors based on the reminder levels (days before delivery due date) that are set in the bid or quotation.

(d) Stores / warehouse management

- i. Stock is valued at the weighted average. FIFO or LIFO costing method per item and is VAT exclusive.
- ii. Regular monitoring of spending patterns on types or classes of goods must be performed, where practical.
- iii. Each item must have a unique stock item number.
- iv. A formal stock count must be done on a quarterly basis and any surpluses, deficits, losses, damaged stock and obsolete stock must be reported by the Manager Supply Chain Management to Council.
- v. Each stock item must have a minimum, maximum and re-order level which must be captured on the financial system.
- vi. Stock items must be systematically replenished using the re-order point as per the financial system.
- vii. Goods in transit must be taken into account during the replenishment of stock

- viii. Stock levels must be revisited on an annual basis
- ix. The financial system must indicate lead times for stock items
- x. Before payment is approved, certification by the Storekeeper 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
- xi. The Storekeeper must ensure appropriate standards of internal control and warehouse management are adhered to, to ensure that goods placed in stores are secure, safe and only used for the purpose for which they were purchased
- xii. The Storekeeper must perform regular spot-checking of stock items to ensure that the items are on the correct shelving space and that the physical quantities correspond with the quantities as per the financial system. Any differences found must be reported to the Manager Supply Chain Management.
- xiii. Items listed as stock, may not be procured outside of the stock system.
- xiv. Where user departments require higher quantities of stock, a demand forecast must be provided to the Storekeeper in advance, taking lead time into consideration, to enable the Storekeeper to procure the requested quantities on time.

## 48. Contract management

- 1) Contract administration includes all administrative duties associated with a contract that has arisen through the acquisition/procurement processes described in this policy.
- 2) All contracts must be administered by a contract manager, who will be an internal official assigned to ensure the effective administration of the contract.
- 3) The contract manager will typically be the internal project manager assigned to the project as a whole, but may also be a cost centre owner or other responsible official.
- 4) A contract manager must be assigned to each contract and, where possible, should be involved from the earliest stages of the acquisition process.
- 5) The contract manager's duties and powers shall be governed by the conditions of contract and the general law.
- 6) In administering a contract, the contract manager will be required to form opinions and make decisions which, while in the Emalahleni Municipality's best interests, must be fair to all parties concerned.
- 7) Directors shall be responsible for ensuring that contract managers are:
  - (a) assigned to all contracts within the Director's area of responsibility; and
  - (b) adequately trained so that they can exercise the necessary level of responsibility in the performance of their duties.

8)

**The contract manager must:**

- (a) ensure that all the necessary formalities in signing up the contract and/or issuing the purchase order(s) are adhered to;
- (b) ensure that purchase order are captured on the municipality's financial system in the form in accordance with the pricing schedule;
- (c) ensure that all original contract documentation is lodged with the Supply Chain Management Unit for record purposes;
- (d) monitor on a monthly basis the performance of the contractor in order to ensure that all of the terms and conditions of the contract are met;
- (e) regularly report to the accounting officer on the management of the contract and the performance of the contractor
- (f) conduct contract risk assessments for contracts longer than 3 months as stated in paragraph 49(4)(iii)(iv)
- (g) where necessary, take appropriate action where a contractor is underperforming or is in default or breach of the contract and to report such failures promptly to the accounting officer;
- (h) where appropriate, authorise payments due in terms of the contract by processing payment certificates (if applicable), and ensuring that the necessary Service Entry Sheets or Goods Received Notes are captured on the municipality's financial system;

- (i) contract variation or change procedures are approved by the accounting officer in writing which must be in line with the applicable general conditions of contract and this policy;
- (j) administer disputes, in consultation with the Supply Chain Management Unit, in terms of this policy and the applicable conditions of contract;
- (k) conduct, as appropriate, post contract reviews;
- (l) maintain adequate records (paper and/or electronic) in sufficient detail on an appropriate contract file to provide an audit trail;
- (m) act with care and diligence and observe all accounting and legal requirements;
- (n) inform the Asset Management section of the location of newly procured assets for asset register and insurance purposes; and
- (o) provide contract information to the Supply Chain Management Unit, as determined by the unit, after a contract has ended.

**49. Disposal management**

(1) Subject to the provisions of the Municipal Asset Transfer Regulations:

- (a) moveable assets may be sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous to the municipality;

(b) immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise;

(c) in the case of the free disposal of computer equipment, the provincial department of education must first be approached to indicate within 30 days whether any of the local schools are interested in the equipment;

(d) in the case of fire arms, the National Conventional Arms Control Committee must approve any sale or donation of firearms to any person within or outside the Republic.

(e) where assets are traded in for other assets, the highest possible trade in price is negotiated

(2) The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act; are as follows:

(A) *A municipality may not transfer ownership as a result of sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.*

(B) *A municipality may transfer ownership or otherwise dispose of capital asset other than one contemplated in subsection (1), but only after the municipal council, in a meeting open to the public-*

*(a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and*

*(b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset*

(3) *Immovable property may only be let at market related rates except when the public interest or the plight of the poor demands otherwise and provided that all charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;*

*(a) Except for compliance with paragraph 48(3) above, this policy shall not apply to the letting of immovable property unless decided otherwise by council.*

(4) Assets may be disposed of by –

- (i) Transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
- (ii) Transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
- (iii) Selling the asset; or
- (iv) Destroying the asset.

## **50. Risk management**

(1) The accounting officer has established and implemented an effective system of risk management for the identification, consideration and avoidance of potential risks in the supply chain management system.

(2) Risk management include –

- (a) The early and systematic identification of risks on a case-by-case basis;
- (b) The allocation and acceptance of risks to the party best suited to manage such risks;



- (c) Acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
  - (d) The management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
  - (e) The assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.
- (3) Due care must be taken in the bid administration and management process to minimise the risks of:
- (a) litigation by unsatisfied service providers
  - (b) mis-interpretation of municipal needs
  - (c) overstatement or understatement of municipal needs
  - (d) selecting or delivery of inappropriate goods and services
  - (e) poor value for money
  - (f) appointing inappropriate suppliers
  - (g) unethical conduct of suppliers and other official involved in the supply chain management process
  - (h) uneconomical, uncompetitive and inequitable procurement
- (4) To give effect to paragraph 3 above, the municipality will identify risk inherent to a particular bid
- (a) Risks may be identified for all bids during the specification stage of the bid process.
  - (b) Risks identified in (i) above may cover the entire life cycle of a contract from initiation to completion of the goods/services
  - (c) For contracts with a life cycle in excess of 3 months, the risks may be reviewed at least monthly by the contract manager as referred to in paragraph 48(1)(e)(iii)
  - (d) The contract manager in conducting the review of the bid risks during the life cycle of the contract may add new or emerging risks when identified

- (5) A risk table may be included at specification stage for each bid that may set out:
- (a) Risk description
  - (b) Background to the risk
  - (c) Impact
  - (d) Likelihood
  - (e) Inherent risk
  - (f) Current controls
  - (g) Perceived control effectiveness
  - (h) Residual risk
  - (i) Risk owner
  - (j) Actions to improve management of the risk
  - (k) Time scale
- (6) The risk rating methodology will be in accordance with the Emalahleni Municipality's risk management policy.
- (7) The Evaluation and Adjudication Committee may review risks of bids received against the predetermined risk as identified at the bid specification stage and may in conducting the review of the bid add new or emerging risks and mitigating strategies when identified.
- (8) At the debriefing session with the successful bidder in terms of paragraph 66 of this policy:
- (a) Risks identified during the Bid specification, Bid evaluation and Bid adjudication process that pertains to the contract for goods or services may be disclosed to the successful bidder to improve mitigating factors.
  - (b) New and emerging risks identified may be added
  - (c) Risks identified by the successful bidder may be added to the

contract risks if agreed to by the municipality.

## **51. Performance management**

- (1) The accounting officer must establish and implement an internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes were followed and whether the objectives of this Policy were achieved.
- (2) The quarterly report and annual report on the implementation of this policy, the monitoring of the service delivery and budget implementation plan (SDBIP) and the Annual Report may be used as tools to perform a retrospective analysis of supply chain management processes.
- (3) **Vendor performance**
  - (a) Each project manager shall monitor the supplier's compliance and performance to the set of specifications.
  - (b) If the supplier fails to perform in accordance with the specification requirements, the project manager must report such failure to the supplier in writing immediately upon becoming aware of such non-compliance for them to correct the situation.
  - (c) The above information will be kept and made available for future evaluation purposes, contract negotiations and regular feedback to vendors.
  - (d) If vendors fail to deliver in terms of paragraph 23 (1) (a) of the General conditions of contract, the municipality reserves the right to make use of remedies at its disposal in terms of applicable law.

**Part 4: Other matters**

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

- (1) No award above R15 000 may be made in terms of this policy to a person whose tax matters have not been declared by South African Revenue Service to be in order.
- (2) Before making an award to a person the accounting officer must first check with SARS whether that person's tax matters are in order.
- (3) If SARS does not respond within 7 days such person's tax matters may for purposes of subparagraph (1) be presumed to be in order.
- (4) It is the supplier's responsibility to provide the municipality with a valid and original tax clearance certificate.

**53. 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) If that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
    - (c) A person who is an advisor or consultant contracted with the municipality with the purpose of assisting the municipality with the defining of requirements, drafting of specifications or the evaluation of the bids.
- (2) Persons and business must declare their interest as stated in 52(1)(a)-(c) of this policy when completing their supplier database application forms and bid documents. Failure to do so may lead to disqualification.

- (3) The municipality may utilise mechanisms at its disposal to determine whether a person is in the service of the state.

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

(1) The municipality does not encourage the awarding of contract by employees in decision-making positions to close family members or friends. To this extent the municipality requires all employees to make full disclosures of businesses owned by close family members and/ or friends and it is further expected that such individuals must not directly or indirectly be involved in the awarding of such business

(2) The accounting officer must ensure that the notes to the annual financial statements disclose particulars of any award of more than R2000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –

(a) The name of that person;

(b) The capacity in which that person is in the service of the state; and

(c) The amount of the award.

#### **55. Ethical standards**

(1) A code of ethical standards as set out in the “National Treasury’s code of conduct for supply chain management practitioners” is hereby established for officials and other role players in the supply chain management system of the municipality 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) A breach of the code of ethics must be dealt with as follows -
  - (a) in the case of an employee, in terms of the disciplinary procedures of the **municipality** envisaged in section 67(1)(h) of the Municipal Systems Act;
  - (b) In the case a role player who is not an employee, through other appropriate means in recognition of the severity of the breach.
  - (c) In all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act.

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

- (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
  - (a) any inducement or reward to the **municipality** for or in connection with the award of a contract; or
  - (b) Any reward, gift, favour or hospitality to –
    - (i) Any official; or
    - (ii) Any other role player involved in the implementation of this Policy.
- (2) The accounting officer must promptly report any alleged contravention of subparagraph 55 (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.

(3) Subparagraph 55 (1) does not apply to gifts less than R350 in value.

**57. Sponsorships**

(1) The accounting officer must promptly disclose to the National Treasury and the relevant provincial treasury any sponsorship promised, offered or granted, whether directly or through a representative or intermediary, by any person who is –

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

**58. Objections and complaints**

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

**59. Resolution of disputes, objections, complaints and queries**

(1) The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes –

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

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

**60. 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
    - (i) That such compensation must be performance based.



**61. Compliance with Ethical standards**

(1) In order to create an environment where business can be conducted with integrity and in a fair and reasonable manner, this Policy will strive to ensure that the accounting officer and all representatives of the Emalahleni Municipality involved in supply chain management activities shall act with integrity and in accordance with the highest ethical standards. All supply chain management representatives shall adhere to the code of conduct of municipal staff contained in schedule 2 of the Systems Act, the code of conduct for supply chain management practitioners and other role players (annexure A to this policy) and the Ethical code of suppliers (annexure B to this policy).

**62. Handling of proprietary information**

- (1) All information designed and prepared for the municipality is deemed as proprietary. No such information may be distributed, modified or customised for third parties without the written permission of the accounting officer.
- (2) All supplier information shall be treated as confidential
- (3) In appropriate instances, the municipality may require security clearance and confidentiality agreements to be entered into with suppliers.

**63. Non-compliance with peremptory requirements of bids**

(1) The accounting officer is empowered to condone non-compliance with peremptory requirements of bids in cases where the condonation is not incompatible with public interest and promote the values of fairness, competitiveness and cost-effectiveness which are listed in Section 217 of the Constitution.

#### **64. Right of Appeal**

- (1) In terms of Section 62 of the Systems Act, a person whose rights are affected by a decision taken by the municipality, in terms of a delegated authority, in the implementation of its supply chain management system, may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of receipt of the notification of the decision.

Bid documents must state that any appeal in terms of paragraph 64 must be submitted to the Municipal Manager, and must contain the following:

- (a) reasons and/or grounds for the appeal;
- (b) the way in which the appellants rights have been affected; and
- (c) the remedy sought by the appellant.

- (2) The Municipal manager shall establish an appropriate appeal authority in terms of section 62 of the Systems Act, to consider appeals received in terms of paragraph 64(1) above
- (3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision

#### **65. Unsuccessful bidder debriefing**

- (1) The unsuccessful bidder debriefing service is offered by the municipality to unsuccessful bidders upon request.
- (2) During the debriefing unsuccessful bidders can find out how their proposal scored against required criteria and obtain comments from the evaluation team on their bid.
- (3) The debriefing should be a positive and constructive experience that explains how bidders can improve future submissions.

- (4) The debriefing an opportunity for unsuccessful bidders to:
  - (a) Learn more about the procurement and evaluation process in an informal setting.
  - (b) Find out how their proposal scored against the required criteria.
  - (c) Hear the overall comments from the evaluation team on your bid.
  - (d) Gather information on how future submissions may be improved.
- (5) The debriefing is not part of the Supply Chain complaint or appeal process in terms of paragraph 58 or 64 of this policy.
- (6) The debriefing is not legal proceeding and no legal representation is permitted at the debriefing.
- (7) At the debriefing session the unsuccessful bid is not compared to other bids, nor will information be provided to the unsuccessful bidder about other bids.
- (8) In scheduling bidders debriefings session upon the request of the unsuccessful bidder, the municipality must:
  - (a) Confirm the date and time of the debriefing session in writing;
  - (b) Conduct separate debriefings with each vendor;
  - (c) Ensure that proper minutes are kept of each debriefing session;
  - (d) Retain all correspondence and documentation relevant to the debriefing session as part of the procurement documentation.
- (9) In conducting bidders debriefings, the municipality may:
  - (a) Provide a general overview of the evaluation process set out in the bid documents;
  - (b) Discuss the strengths and weaknesses of the bidder's submission in relation to the specific evaluation criteria and the bidders evaluated score.
  - (c) Provide suggestions on how the supplier may improve future submissions;
  - (d) Address specific questions and issues raised by the supplier in relation to their submission.

**66. Successful bidder briefing**

- (1) The notification to the successful bidder in terms of paragraph 37(8) may require of the successful bidder to attend a compulsory briefing session with the municipality before commencement of the contract at no cost to the municipality.
  
- (2) The purpose of the briefing session is to:
  - (a) Introduce the municipal contract manager allocated to the specific contract in terms of paragraph 48 and to meet the successful bidders contract manager;
  - (b) Examine and analyse the bid document and contractual conditions to ensure that specific expectations of the municipality and the obligations of the successful bidder are well understood;
  - (c) Discuss the strengths and weaknesses of the bidder's submission in relation to the specific evaluation criteria and the bidders evaluated score.
  - (d) Communicate and document the anticipated contract risks and challenges as perceived by both the municipality and the successful bidders;
  - (e) To develop mitigating strategies to address and mitigate the contract risk and challenges; and
  - (f) Communicate the contract administration process as stated in paragraph 48 of this policy.
  - (g) Formally sign the bid contract
  
- (3) The following persons must attend the briefing sessions:
  - (a) The municipal contract manager
  - (b) The authorised municipal supply chain official
  - (c) The successful bidders authorised contract signatory
  - (d) The successful bidders contract manager

- (4) The notification to the successful bidder refer to in paragraph 66(1) must state the date, time and place of the briefing session in writing.
  - (a) Proper minutes must be kept of each briefing session;
  - (b) All correspondence and documentation in relation to the debriefing session must be maintained as part of the procurement documentation.

**67. Acceptance of offers**

- (1) At the invitation of bids, or quotations;
  - (a) the municipality is not obliged to accept the lowest or any offer;
  - (b) The municipality may, where an offer relates to more than one item, accept such offer in respect of or any specific item or items.
  - (c) The municipality may accept any offer notwithstanding the fact that the offer does not comply with the bid invitation in respect of which the offer has been made subject to the conditions of paragraph 63 of this policy.

**68. Commencement**

This Policy takes effect on 1 July 2013

## **ANNEXURE A**

### **EMALAHLENI MUNICIPALITY**

#### **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**

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.

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.

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 –

- (a) must treat all providers and potential providers equitably;
- (b) may not use his or her position for private gain or to improperly benefit another person;
- (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
- (d) must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
- (e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process, or in any award of a contract by the **municipality**;
- (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
- (g) must declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest;
- (h) should not place him/herself under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties; and
- (i) Should not take improper advantage of their previous office after leaving their official position.

### **3. Accountability**

Practitioners are accountable for their decisions and actions to the public.

Practitioners should use public property scrupulously.

Only accounting officers or their delegates have the authority to commit the **municipality** to any transaction for the procurement of goods and / or services.

All transactions conducted by a practitioner should be recorded and accounted for in an appropriate accounting system. Practitioners should not make any false or misleading entries into such a system for any reason whatsoever.

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

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.

Any declarations made must be recorded in a register which the accounting officer must keep for this purpose. Any declarations made by the accounting officer must be made to the **Mayor** who must ensure that such declaration is recorded in the register.



#### **4. Openness**

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**

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 / contractors personal rights.

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**

**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.**

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.

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.

No person should-

- (i) Interfere with the supply chain management system of the **municipality**; or
- (ii) 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:

- (i) Suggestions to fictitious lower quotations;
- (ii) Reference to non-existent competition;
- (iii) Exploiting errors in price quotations / bids;
- (iv) Soliciting price quotations / bids from bidders / contractors whose names appear on the Register for Tender Defaulters.

## **ANNEXURE B**

### **Emalahleni Municipality's Supply Chain Management: Supplier's Code of Conduct**

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.

ELM is committed to high standards of business ethics and integrity as reflected in this ELM Code of Conduct. ELM expects all of its suppliers to adhere to similar good working standards and business ethics. The Supplier is expected to comply with the requirements set out in this ELM Supplier Code of Conduct. In addition, ELM and the Supplier may agree on further standards in supply agreements.

#### **1. Human Rights**

This Bill of Rights, as enshrined in Constitution Act 108 of 1996, is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom. The Constitution obliges municipalities to respect, protect, promote and fulfill the rights in the Bill of rights. To this end, when service providers provide services to and on behalf of the ELM they are also obliged to respect, protect, promote and fulfill the rights in the Bill of rights insofar as it is relevant to their business.

In accordance with the aforementioned ethics and standards, ELM require the following business practices from Suppliers:

- To not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

- To respect the right of everyone to inherent dignity and the right to have their dignity respected and protected.
- To respect the right of every person not to be subjected to slavery, servitude or forced labour.
- To respect everyone's right to freedom of conscience, religion, thought, belief and opinion.

## **2. Fair Labour Conditions and Child Labour**

The Supplier will ensure fair labour conditions. In particular, the supplier will:

- refrain from employment discrimination based on gender, colour, ethnicity, religion, disability, union membership, political affiliation or sexual orientation;
- respect the rights of employees to freely associate and bargain collectively;
- comply with all applicable laws on employment and in particular the Basic Conditions of Employment Act 75 of 1997 and the Labour relations Act 66 of 1995.
- not use any forced or compulsory labour or involuntary prison labor and give all employees the choice to leave their employment freely upon reasonable notice;
- compensate employees fairly and adhere to the Basic Conditions of Employment Act 75 of 1997, sector specific minimum wages and / or collective agreements and where these do not exist, compensate employees so they can at the least meet their basic needs; and
- The Supplier will protect children from exploitative labour practices and in particular they will not require or permit children to perform work or provide services that-
  - are inappropriate for a person of that child's age; or

- place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;

**3. Occupational Health and Safety**

The Supplier will strive to provide a safe and healthy workplace for all of its employees and strive to adhere to the requirements of Occupational Health and Safety Act 85 of 1993.

**4. Environmental Responsibility**

The Supplier is committed to environmental protection and will conduct its business in an environmentally sensitive way.

**5. Business Ethics**

The Supplier will conduct its business in an ethical manner in accordance with all applicable rules and regulations. In particular, the Supplier will

- refrain from any and all forms of extortion and bribery;
- adhere to anti-trust and other competition laws, e.g. not participating in price fixing or bid-rigging; and
- disclose to ELM information about any principal shareholder, directors in the service of the state
- The Supplier will protect all confidential information provided by ELM and its respective business partners.

**6. Conflict of Interest**

The Supplier must disclose to ELM information about conflict of interest of any ELM employee, or close family member of an employee that have an interest in any of the Supplier's business.

Suppliers must not use their position for private gain or to improperly benefit any person or company.

Suppliers must not offer any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of a ELM employee, irrespective of the value of the gift, reward, favour, hospitality or benefit.

Suppliers must declare to the accounting officer of ELM details of any private or business interest which an employee of ELM, 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 ELM;

Suppliers must not place ELM employees under any financial or other obligation that might seek to influence ELM employees in the performance of their official duties; and

Suppliers must not take improper advantage of previous ELM employees to unfairly benefit the supplier by using the information or knowledge of previous employees of ELM after leaving office.

## **7. Business Continuity Planning**

The Supplier shall maintain appropriate insurance and or policies to mitigate exposures to business risk, business threats, terrorism, crime, pandemics, natural disasters and related major accident exposures.

## **8. Procurement by Supplier**

ELM expects the Supplier to obtain confirmation from each of its sub-suppliers providing goods or services directly or indirectly to ELM that the sub-supplier acts in compliance with this ELM Supplier Code of Conduct.