

# CITY OF MBOMBELA



## SUPPLY CHAIN MANAGEMENT POLICY

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#### **DEFINITIONS**

1. Supply Chain Management 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-
  - 1.1 **“Adjudication points”**: means the points referred to in the Preferential Procurement Regulations, 2001 and the Preferential Procurement section of this policy also referred to as “evaluation points”.
  - 1.2 **“Bidder”**: means any person submitting a bid.
  - 1.3 **“Broad-Based Black Economic Empowerment (BBBEE) Act”**: means the Broad-Based Black Economic Empowerment Act, 53 of 2003 and Code of Good Practice thereto.
  - 1.4 **“Accounting Officer”**: means the Municipal Manager as defined in Section 60 of the Municipal Finance Management Act, 56 of 2003.
  - 1.5 **“Closure Date”**: means the time and day specified in the bid documents for the receipt of the bids.
  - 1.6 **“Competitive Bidding Process”**: means a competitive bidding process referred to in Regulation 12(1)(d) of the Supply Chain Management Regulations.
  - 1.7 **“Competitive Bid”**: means a bid in terms of a competitive bidding process.
  - 1.9 **“Construction Industry Development Board (CIDB) Act”**: means the Construction Industry Development Board Act, 38 of 2000 and includes the regulations pertaining thereto.
  - 1.10 **“Consultant”**: means a person or entity providing services requiring knowledge based expertise, and includes professional service providers.
  - 1.11 **“Contract”**: means the agreement which is concluded when the Municipality accepts, in writing, a bid or quote submitted by a provider.
  - 1.12 **“long term contract”** means a contract with a duration period exceeding one year.

- 1.13 **“Contractor”**: means any person or entity whose bid or quote has been accepted by the Municipality.
- 1.14 **“Day(s)”**: means calendar days unless the context indicates otherwise.
- 1.15 **“Delegated Authority”**: means any person or committee delegated with authority by the Municipality in terms of the provisions of the Municipal Finance Management Act, 56 of 2003.
- 1.16 **“Disability”**: means, in respect of a person, a permanent impairment of a physical, intellectual or sensory function, which results in restricted, or lack of, ability to perform an activity in the manner or in the range considered normal for a human being.
- 1.17 **“Final Award”**: in relation to bids or quotations submitted for a contract, means the final decision on which bid or quote to accept.
- 1.18 **“Formal Written Price Quotation”, “Written Price Quotation”, “Quotation” or “Quote”**: means a written or electronic offer to the Municipality in response to an invitation to submit a quotation.
- 1.19 **“In the service of the state”**: means:
- (i) a member of any municipal council, any provincial legislature or the National Assembly or the National Council of Provinces;
  - (iii) an official of any municipality or municipal entity;
  - (iv) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1 of 1999;
  - (v) a member of the board of directors of any municipal entity;
  - (vi) a member of the accounting authority of any national or provincial public entity; or
  - (vii) an employee of Parliament or a provincial legislature.
- 1.20 **“List of accredited prospective providers”**: means the list of accredited prospective providers which a municipality or municipal entity must keep in terms of Regulation 14 of the Supply Chain Management Regulations.
- 1.21 **“Municipal Entity”**: means an entity as defined in Section 1 of the Municipal System Act, 32 of 2000.
- 1.22 **“Person”**: includes a natural or juristic entity.
- 1.23 **“Preferential Procurement Policy Framework Act” (PPPFA)**: means the Preferential Procurement Policy Framework Act, 5 of 2000.
- 1.24 **“SARS”**: means the South African Revenue Services.
- 1.25 **“Supply Chain Management (SCM) Regulations”**: means the Municipal Supply Chain Management Regulations published in Government Gazette 27636 of 30 May 2005.
- 1.26 **“the Act” (MFMA)**: means the Local Government: Municipal Finance Management Act, 56 of 2003.
- 1.27 **“Treasury Guidelines”**: means any guidelines on supply chain management issued by the Minister in terms of section 168 of the MFMA;

- 1.28 **“Unsolicited Bid”**: means an offer submitted by any person at its own initiative without having been invited by the Municipality to do so.

**Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include females and words importing persons shall include companies, closed corporations and firms, unless the context clearly indicates otherwise.**

## **SUPPLY CHAIN MANAGEMENT FRAMEWORK AND PRINCIPLES**

### **Supply chain management policies**

2. (1) The City of Mbombela shall in line with Section 111 of the Municipal Finance Management Act implement a supply chain management policy, that–
- (a) gives effect to-
    - (i) section 217 of the Constitution, and
    - (ii) Part 1 of chapter 11 and other applicable provisions of the Act;
  - (b) is fair, equitable, transparent, competitive and cost effective;
  - (c) complies with-
    - (i) the regulatory framework prescribed in Chapter 2 of these 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 legislations that is, and not limited to;
    - (i) The Preferential Procurement Policy Framework Act of 2000
    - (ii) The Preferential Procurement Policy Framework Regulations of 2017
    - (iii) The Broad-Based Black Economic Empowerment Act;
    - (iv) The Construction Industry Development Board Act;
    - (v) The Local Government : Municipal Systems Act;
    - (vi) The Municipal Finance Management Act;
    - (vii) The Supply Chain Management Regulations;
    - (viii) The Promotion of Administration Justice Act;
    - (ix) The promotion of Access to Information Act,
  - (e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
  - (f) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.
- (2) The supply chain management policy of the City of Mbombela shall, in addition to complying with sub-section (1), and to the extent determined by the parent municipality, also be consistent with the supply management policy of the parent municipality. If the supply chain management policy of an entity is not consistent with the supply chain management of the parent municipality, the council of the parent municipality shall take appropriate steps to ensure consistency.
- (3) City of Mbombela may not act otherwise than in accordance with its policy when-
- (a) procuring goods or services in line with the provisions of the sourcing strategy and the procurement plans;
  - (b) disposing of goods no longer needed;
  - (c) selecting contractors to provide assistance in the provision of municipal services otherwise than in circumstances where chapter 8 of the Municipal Systems Act

- applies, or
      - (d) Selecting external mechanisms referred to in section 83 of that Act.
- (4) Unless stated otherwise, this Policy does not apply if the City of Mbombela contracts with another organ of state for;
  - (i) The provision of goods and services to the municipality,
  - (ii) The provision of a municipal service, or assistance in provision of the municipal service, or
  - (iii) The procurement of goods and services under a contract secured by other organ of state, provided that the relevant supplier has agreed to such procurement.
- (5) The Municipal Manager shall approve the utilization of a contract secured by another organ of state in accordance with Section 32 of the Policy.
- (6) The municipality may utilize contracts secured by other organs of state only if the contracts are still valid and complies with the requirements of National Treasury prescripts.

### **Adoption and amendment of supply chain management policies**

- 3. (1) This policy shall be effective from the date on which it is adopted by Council and the Municipal Manager shall annually review the implementation of the policy and submit proposals for the amendment of the policy to the council if deems necessary.
- (2) This policy shall ensure that the objectives of uniformity in supply chain management processes are achieved, and the supply chain management regulations published under GN868 in Government Gazette 27636 of 30 May 2005 and any National Treasury Circular or Guidelines are complied with.  
No deviations from the guidelines will be allowed, in an unlikely case such deviations happen, the municipal manager shall report to Provincial Treasury and National Treasury.
- (3) The municipal manager shall take all reasonable steps to ensure that the municipality implements a supply chain management policy in accordance with Regulation 2 of the Municipal Supply Chain Management regulations.

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

- 4. (1) Council shall delegate the municipal manager to exercise all powers and duties to enable him to;
  - (a) to discharge the supply chain management responsibilities conferred in terms of-
    - (i) Chapter 8 or 10 of the Act; and
    - (ii) the supply chain management policy of the municipality;
  - (b) to maximize administrative and operational efficiency in the implementation of the policy;
  - (c) to enforce reasonable cost-effective measures, prevention of fraud, corruption, favoritism, unfair and irregular practices in the implementation of supply chain management policy; and
  - (d) to comply with his responsibilities in terms of section 115 and other applicable provisions of the Act.

## **Sub-delegations**

5. (1) The Municipal Manager may sub-delegate in terms of Section 79 of the Act powers and duties delegated in terms of Section (1).
- (2) The Municipal Manager shall not delegate or sub-delegate any supply chain management powers or duties-
  - (a) to a person who is not an official of the City of Mbombela; or
  - (b) to a committee which is not exclusively composed of officials of the City of Mbombela; or
- (3) A senior official or bid adjudication committee to which the power to make final awards has been sub-delegated in accordance with sub-regulation (2) must within five days of the end of each month submit to the official referred to in subsection (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;
  - (c) the reason why the award was made to that person
- (4) This Section may not be interpreted 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 this Policy.

## **Oversight role of Council of City of Mbombela**

6. (1) the council of the City of Mbombela shall maintain oversight over the implementation of this supply chain management policy.
- (2) For the purposes of such oversight the Municipal manager shall –
  - (a) within 30 days of the end of each financial year, submit a report on the implementation of this policy and municipal entity under its sole or shared control, to the council of the municipality;
  - (b) whenever there are serious and material problems in the implementation of the is policy, immediately submit a report to the council.
- (3) The Municipal Manager shall, within 10 days of the end of each quarter, submit a report on the implementation of this policy to the Executive Mayor of the City of Mbombela.
- (4) The City of Mbombela shall publish and make public all the Supply Chain Management reports of the municipality in accordance with section 21A of the Municipal System Act. For the purpose of complying with section 6(4) above, All Supply Chain Management report shall be published on the municipal website 10 days after the tabling and approval by Council.

## **Supply chain management units**

7. (1) The Municipal Manager shall establish a Supply Chain Management unit to implement this policy.
- (2) The Supply Chain Management unit shall operate under the direct supervision of the Chief Financial Officer.

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

8. The training of officials involved in implementing a supply chain management policy shall be in accordance with any treasury guidelines on supply chain management.

## **CHAPTER 2 – SUPPLY CHAIN MANAGEMENT POLICY FRAMEWORK**

### **Format of supply chain management policy**

9. The supply chain management system implemented shall ensure there is effective;
  - (1) Demand management;
  - (2) Acquisition management;
  - (3) Logistics management;
  - (4) Disposal management;
  - (5) Risk management; and
  - (6) Performance management

## **PART 1 – DEMAND MANAGEMENT**

### **System of Demand management**

10. The Municipal Manager shall implement an effective system of demand management in order to ensure that the resources required to support the strategic and operational commitments of the municipality are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy the needs of the municipality.
  - (1) The following systems and procedures shall be implemented to achieve the demand management objectives;
    - (a) Procurement plans (demand management plans) in line with the service delivery budget implementation plan (SDBIP) should be in place before the start of the new financial year or revised after the approval of the adjustment budget.
    - (b) A sourcing strategy for administrative and operational goods and services must be implemented to ensure cost effectiveness and value for money.

## **PART 2 – ACQUISITION MANAGEMENT**

### **System of acquisition management**

11. (1) This policy shall provide for an effective system of Acquisition management in order to ensure –
  - (a) that goods and services are procured by the municipality in accordance with authorized processes only;



- (b) that expenditure on goods and services is incurred in term of an approved budget in terms of section 15 of the Act;
  - (c) that the threshold values for the different procurement processes are complied with;
  - (d) that the bid documentations, evaluation and adjudication criteria, and a general conditions of a contract, are in accordance with any applicable legislation; and
  - (e) that any Treasury guidelines on acquisition management are properly taken into account.
- (2) 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 municipal entity.
- (3) When procuring goods or services contemplated in section 110(2) of the Act the Municipality shall make public the fact that it procures such goods or services otherwise than through its supply chain management system, including –
- (a) the kind of goods or services; and
  - (b) the name of the supplier

### **Range of procurement processes**

12. (1) This policy shall, subject to Section 11(2), provide for the procurement of goods and services by way of –
- (a) Petty cash purchases, up to a transaction value of R 1000 (VAT included);
  - (b) Written or verbal quotations for procurements of a transaction value over R1 000 up to R10 000 (VAT included);
  - (c) Formal written price quotations for procurements of a transaction value over R10 000 to R200 000 (VAT included); and
  - (d) 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)
- (a) The procurement of goods or services may not deliberately be split into parts or items of lesser value merely to avoid complying with the requirements of this policy, unless the split is prior approved by the Municipal Manager for the purpose of allowing local small or emerging businesses to participate on the procurement processes of the municipality in accordance with the local economic development strategy, emerging contractors incubation Programme and the implementation of regulation (4) and (9) of the Preferential Procurement Policy Framework Regulations of 2017 where EME and QSE are target for empowerment.
  - (b) The splitting indicated in (a) shall be approved by the municipal manager prior to the procurement of goods and services.
  - (c) Poor planning shall not be accepted as a reason for the motivation of the splitting of a program or a project.
  - (d) In cases whereby, a split has been approved by the municipal manager, qualifying enterprises 51% owned by different individuals will be accepted in this order of preferences
    - (i) Qualifying small enterprises 51% owned and controlled by the local individuals residing in specific ward/region where the services is required.
    - (ii) Qualifying small enterprises residing in a specific ward where the services are required,

(iii) Qualifying small enterprises residing to a specific region where the services are required

(e) The maximum threshold per split is below R 30 000 per company and the maximum threshold per project is less than R 200 000 VAT inclusive.

(f) The approval for a split as indicated in section 2 (a) shall not be interpreted as a permission granted to deviate from normal bidding processes.

(g) 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.

#### **Procedures and processes to be followed for a break down procurement.**

(a) An internal memorandum shall be generated by the requesting Department motivating for the break down procurement.

(b) The designated group e.g Youth, Women, Disabled and Military Veterans residing in the ward or region where the services is required will be identified by the requesting Department for the purposes of empowerment.

(c) The motivation must reach the municipal manager for approval twenty (20) working dates before the actual date of the event or program.

(d) The procurement of the goods or services shall only be responsibilities of the Supply Chain Management Office.

(e) Competition will only be limited to the identified designated group.

(f) The principle of Value for money will be uphold when sourcing for the goods and services, and for that reason the municipal approved Sourcing Strategy will be will used as a guidance.

(g) Companies engaging in collusive bidding will be disqualified for further participation in the procurement processes of the City of Mbombela.

#### **General preconditions for consideration of written quotations or bids**

13. The municipality shall not consider a written quotation or bid unless the service provider who submitted the quotation or bid –

(a) has furnished the municipality -

(i) full name;

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

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

(b) has authorized the municipality to obtain a tax clearance from the South African Revenue Services that the provider's tax matters are in order; and

(c) has indicated –

(i) whether the person is in the service of the state, or has been in the service of the state in the previous twelve months;

(ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholders is in the service of the state, or has been in the services 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.

13.1 in order to comply with the requirement as indicated in section 13 above, the following procedures and processes will be followed,

- (a) A CSD report will be downloaded by the Supply Chain Management Practitioners from the system to verify compliance with section 13 (a-c).
- (b) The report indicated in section 13.1(a) above shall not be more than ten (10) days prior to the sourcing of the quotations.
- (c) All quotations must be accompanied by a fully completed forms MBD 4 and if municipality is in possession of the recent (within the same financial year) fully completed MBD4 Form, such form shall not be requested from the service provider.

### **List of accredited prospective providers**

14. The municipality shall conduct business with suppliers that registered on the National Treasury Central Suppliers Database.

### **Petty cash purchases**

15. This policy stipulates the conditions for the procurement of goods by means of petty cash purchases referred to in regulation 12 (1) (a), which must include conditions –
- (a) The cash petty purchase should not exceed R1 000 (Vat included) per transaction and each petty cash holder should exceed a maximum of R2 000 petty cash expenditure per month.
  - (c) The following types of expenditures are excluded from petty cash purchases;
    - (i) Materials for building renovations or maintenance;
    - (ii) Materials and consumables kept by the municipal stores; unless materials or consumables can not be provided by the municipal stores.
    - (iii) Purchases of personal items; and
    - (iv) Donations
  - (d) The petty cash holders must when replenishing petty cash provide a reconciliation to the Chief Financial Officer, including-
    - (i) the total amount of petty cash purchases for the period; and
    - (ii) receipts and appropriate documents for each purchase.
  - (e) Approved Petty Cash Management Policy was implemented as from 01 July 2017 to manage the day to day utilization of the petty funds.

### **Written quotation**

16. (a) Written quotations shall be obtained by the Supply Chain Management Unit officials from at least three different providers registered on the National Treasury Central Suppliers Database.
- (b) The function indicated in section 16 (a) above is the sole responsibilities of the Supply Chain Management office and cannot be delegated from other Department unless compelling reasons has been provided and dully authorized by the municipal manager.
- (c) The written quotations must meet the following criteria;
- (i) Where practical shall be signed by the suppliers, with the exceptions of quotations received by electronic mail;
  - (ii) have both physical and postal address of the supplier, company name and registration, VAT number, if applicable;
  - (iii) Costs clearly broken down ( itemized bill); and
  - (iv) The details of the information on the quotation must be similar to the details captured on the National Treasury Central Suppliers Database.

- (d) Where it is not possible to obtain at least three quotations, the reasons must be recorded and reported to the Chief Financial Officer for approval.

### **Formal written price quotation**

- 17. (a) Formal written price quotations must be obtained from at least three different providers whose names appear on the National Treasury Central Suppliers Database.
- (e) The written quotations must meet the following criteria;
  - (i) Where practical it must be signed by the suppliers, with the exceptions of quotations received by electronic mail;
  - (ii) Have both physical and postal address of the supplier, company name and registration, VAT number, if applicable;
  - (iii) Costs clearly broken down ( itemized bill); and
  - (iv) The details of the information on the quotation must be similar to the details captured on the National Treasury Central Suppliers Database.
- (f) Where it is not possible to obtain at least three quotations, the reasons must be recorded and reported to the Chief Financial Officer for approval.

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

- 18. (a) Procurement of goods and services that 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 regulation 17, be advertised for at least seven (7) days on the municipal website and an official notice board of the of the municipality;
- (b) When using the list of accredited prospective providers the Municipal Manager must promote ongoing competition amongst providers, including by inviting providers to submit quotations on a rotation basis;
- (c) The Municipal Manager shall take all reasonable steps to ensure that the procurement of goods and services through written or verbal quotations or formal written price quotations is not abused;
- (d) The Municipal Manager or Chief Financial Officer must on a monthly basis be notified in writing of all written or verbal quotations and formal written quotations accepted by an official acting in terms of a sub-delegation; and
- (e) The Supply Chain Management Unit must keep proper record.

### **Competitive bids**

- 19. (a) The procurement of goods or services above a transaction value of R200 000 (VAT included) and long-term contracts shall be done by the municipality only through a competitive bidding process, subject to Section 11(2) of this Policy.
- (b) 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 to avoid complying with the requirements of the policy.
- (c) A sub-contracting of up to thirty (30%), where it is possible as stipulated on the bid document, is mandatory on all projects of a contract value of more than R30 million to the local service providers within the jurisdiction of the City of Mbombela.
- (d) The process of identifying and appointing of the sub-contractor(s) in line with section 19 (c) above must be competitive, transparent, fair and equitable and the sub-contractor must be registered on the CSD as an EME or QSE with 51% or more ownership.
- (e) The process of appointment of the sub-contractor should be undertaken by a project steering committee comprising of Main Contractor, Consultant, and Project Manager. The final decision on awards shall rest with the main contractor as the risk owner. Supply Chain

Management Practitioner will provide a link from the CSD of all targeted EME or QSE for selection by the Main Contractor.

(f) The enterprises owned by designated groups such as youth, women and people living with disabilities and Military veterans must be given preference in line with the PPPFA regulations number 5 of 2017 as amended.

(g) The sub-contracting entity must meet all statutory requirements in terms of legal registrations which includes but not limited to Central Suppliers Database, Construction Industry Development Board, Tax registration with South African Revenue Services.

### **Process for competitive bidding**

20. This policy provides procedures for a competitive bidding process for each of the following stages:

- (a) the compilation of bidding documentation;
  - (i) A standardized bid documents will be utilized when procuring goods and services for the municipality. In case of construction related projects, the CIDB standardized document will be utilized.
  - (ii) Suppliers will be at their own costs download the document from the National Treasury Central Suppliers Database tender e-portal system in the prescribed format determined by the Bid Specification Committee and approved by the Municipal Manager or delegated official.
  - (iii) The functionality evaluation criteria shall apply consistently for all categories or classes of construction works, including non-construction related bids for goods or services as approved by the Municipal Manager. Where functionality is used as criteria to evaluate bids, a minimum of two officials with a thorough knowledge of the subject matter will be required to do technical evaluations.
  - (iv) Section 20 (a)(iii) above will not be applicable in cases whereby the awarding of functionality points is not subjective, especially in cases whereby a checklist format is utilized to score points for functionality. E.g in situations whereby a bidder has been requested to attached evidential proof to claim points.
  - (v) The implementation of the functionality evaluation criteria such be in line with the requirements of the PPPFA regulations of 2017.
- (b) Site meetings/briefing sessions will be held only if the project necessitates such clarification and physical inspections of the site and it shall be stated on the advertisement of the bid.
- (c) Two officials from Supply Chain Management Unit shall be responsible for collecting of the bids from tender box and opening of the bids in public and where practical the prices of bids received will be announced, including the name of the bidder and the B-BBEE status of the bidder. All bids will be opened at 11h00 on the prescribed date and the clock as demonstrated on the municipal wall will be utilized for that purpose. The municipality will endeavor where practical to keep the clock accurate at all times.
- (d) Evaluation of bids
  - (i) Bids will be evaluated in accordance with the criteria as stipulated in the bid document.
  - (ii) No deviations will be allowed unless duly approved by the Municipal Manager and reasons provided for such deviations.
  - (iii) Only bids download as per the prescribed format will be accepted.

- (iv) The following evaluation methods will be adopted by City of Mbombela.
  - (aa) Method 2: Financial offer and preference
  - (ab) Method 3: Financial offer and quality
  - (ac) Method 4: Financial offer, quality, and preference
- (e) Contracts or bids will only be awarded to companies that complies in all respects to the applicable evaluation criteria set out on the bid documents.
- (f) a standardized functionality evaluation criteria guideline has been developed and approved by the Municipal Manager for implementation.
- (g) Administration of contracts; and
  - (i) The administration of contracts will be done in accordance with the approved Contract Management policy adopted by council.
  - (ii) Accurate and up to date contract register must be kept.
  - (iii) A contract or service level agreement shall be entered into with all service providers appointed in terms of this Policy for any contract or agreement value of more than R200 000 or contracts or agreement of long term nature.
  - (iv) Should there a need arises that a contract or agreement procured through this Policy must be amended by the parties, the contract or agreement must be amended after the following processes has been concluded;
    - (aa) the reasons for the proposed amendment have been tabled in the council;
    - (ab) the local community has been given reasonable notice of the intention to amend the contract or agreement; and
    - (ac) the local community has been invited to submit representations to the municipality.
  - (v) Sub-section (iii) above will not apply if a contract or an agreement is expanded or varied for not more than as per guidelines provided by MFMA Circular 62;
  - (vi) Expired contracts will not be eligible for extension.
    - (aa) 20% of the initial contract amount for all contracts with a threshold of less than R 30 million. Feasibility study has to be undertaking prior to sub-contracting. The entire value chain must be considered in the implementation of the sub-contracting clause.
    - (ab) 30% of the initial contract amount for all contracts with a threshold of more than R 30 million. Feasibility study has to be undertaking prior to sub-contracting. The entire value chain must be considered in the implementation of the sub-contracting clause.

### **Bid documentation for competitive bids**

- 21. (a) The bid documentation for competitive bidding must take into account –
  - (i) the general conditions of contract;
  - (ii) any Treasury guidelines on bid documentation; and
  - (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
  - (iv) the Preferential Procurement regulations of 2017.
- (b) The bid documentation must include the pre-qualification requirements ( if applicable), evaluation and adjudication criteria, including any criteria required by other applicable legislation;

- (c) it compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish-
  - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statement –
    - (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.
  - (v) 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.
- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or when unsuccessful, in a South African court of law.

#### **Public invitation for competitive bids**

22. (1) (a) The public will be invited through the advertisement of the bids on the National Treasury tender e-portal, municipal website, notice boards and Construction Industry Development Board I-tender if the bid is relating to construction works.
  - (b) the closing date for the submission of bids may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long-term nature, or 14 days in any other case, from the date on which the advertisement. All projects awarded on rates bases shall be capped below the threshold on (ten) R 10 million, unless such bid was advertised for a period as not less than 30 days.
- (2) This policy shall allow the Municipal manager to 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 cases. Reasons for such motivation should be recorded for audit purposes and poor planning cannot be provided as a reason for the deviation.
- (3) Bids submitted to the municipality must be sealed in an envelope as no bids will be accepted if it is not properly sealed.
- (4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.
- (5) The bids submitted by the service providers must be valid for a period of ninety (90) days and the validity period may be extended for further period of 30 days. The following procedures and processes shall be followed in extension of the validity date.
  - (a) Requests for the extension of validity dates must be extended to all service providers.
  - (b) Proof should be provided that all services providers shown interests in the bid have been contacted.

- (c) Service providers have consented on the extension.
- (d) That any prices changes resulting from the extension of the validity date shall be taken into considerations when evaluating bids.
- (e) The request for the extension for the validity date extended to interested service providers shall have a(seven) 7 working dates respond period.
- (f) Every case will be treated on its own merit, however, the none response from the services providers does not render the entire project null and void.

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

23. This policy determines the procedure for the handling, opening and recording of bids –
- (a) stipulate that bids –
    - (i) may be opened only in public at 11h00 on the day of closing; and
    - (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired;
  - (b) confer on any bidder or member of the public the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price; and
  - (c) require the Municipal manager –
    - (i) to record in a register all bids received in time as per the clock as displaced on the municipality building;
    - (ii) to make the register all bids received in time;
    - (iii) to publish the entries in the register and the bid results on the website of the municipality.

### **Negotiations with preferred bidders**

24. (1) The Municipal Manager may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidder, 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 provided the rates have been adjusted by the municipal manager or delegated committee to complies with legislative requirements or to standardize prices/ rates for various service providers appointed for the very same scope of works.
- (2) Minutes of such negotiations must be kept for record purposes.
  - (3) Negotiations on the prices shall be in line with the approved Municipal Sourcing Strategy.
  - (4) The municipal manager or the relevant bid committee may nominate a task team to negotiate on the behalf of the municipality.
  - (5) Should the negotiations deadlock based on any reason of mutual interest, the task team may recommend to the Municipal Manager to bypass the service provider.
  - (6) Value for money requirement should always be a primary matter in the negotiation.
  - (7) A decision to bypass a service provider is rests with the municipal manager and it cannot be delegated.
  - (8) Regulation 11(1) of the Preferential Procurement regulations will be applicable in cases the municipal manager decides to make an award to a service provider not scoring the highest points in terms of the Act.

### **Two-stage bidding process**

25. (1) This policy allow a two stage bidding process for-
- (a) large complex projects;



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

### **Committee system for competitive bids**

26. (1) (a) The following bid committees shall be established by the Municipal Manager;
- (i) a bid specification committee;
  - (ii) a bid evaluation committee; and
  - (iii) a bid adjudication committee;
  - (iv) Objections Committee
- (b) the appointment by the Municipal manager of the members of each committee, taking into account section 117 of the Act;
- (b) the committee members will serve into the committees for a period of not exceed one financial year.
- (c) Attendances by appointed members is compulsory.
- (d) the Municipal Manager reserves the right to extend the membership of the members if deems necessary.
- (e) an attendance or oversight process by a neutral or independent observer appointed by the Municipal manager when this is appropriate for ensuring fairness and promoting transparency.
- (2) the committee system must be consistent with Section 27, 28, 29 and any other applicable legislation.
- (3) This policy may allow the Municipal manager to apply the committee system to formal written price quotations.

### **Bid specification committees**

27. (1) A bid specification committee shall compile the specifications for each procurement of goods or services by the municipality above a threshold value of R200 000 VAT inclusive.
- (2) The specifications –
- (a) shall be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
  - (b) shall take account of any accepted standards such as those issued by Standards the South Africa, the International Standards Organization, or an authority accredited or recognized by the South African National Accreditation System with which the equipment or material or workmanship should comply;
  - (c) where possible, be described in terms of performance required rather than in term of performance required rather than in terms of descriptive characteristics for design;
  - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing, and test methods, packaging, marking or labeling of conformity certification;

- (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the words “equivalent”;
  - (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the supply chain management policy of the municipality or municipal entity; and
  - (g) must be approved by the Municipal manager or any delegated official prior to publication of the invitation for bids.
- (3) A bid specification committee must be composed of one or more officials of the municipality or municipal entity; preferable the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.

**Bid evaluation committees**

28. (1) A bid evaluation committee shall –
- (a) evaluate bids in accordance with –
    - (i) the specifications for a specific procurement; and
    - (ii) the points system as must be set out in the supply chain management policy of the municipal in terms of Section 27(2)(f) of this Policy and as prescribed in terms of the Preferential Procurement regulations of 2017;
  - (b) evaluate each bidder’s ability to execute the contract;
  - (c) check in respect of the recommended whether municipal rates and taxes and service charges are not in arrears; and
  - (d) submit to the adjudication committee a report and recommendations regard 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) in relation to section 28(1)(b)(d) above, any matter deferred by a specific evaluation committee must be concluded by that particular committee. In exceptional cases whereby the project must be concluded by a different committee, the committee members must take into consideration matters raised by the previous committee prior to making determination.

**Bid adjudication committee**

29. (1) A bid adjudication committee shall –
- (a) consider the report and recommendations of the bid evaluation committee; and
  - (b) either –
    - (i) depending on its delegations, make a final ward or a recommendation to the Municipal manager to make the final award; or
    - (ii) make another recommendation to the Municipal manager how to proceed with the relevant procurement.
- (2) A bid adjudication committee shall comprise of all General Managers and Deputy Municipal Manager of the municipality which must include –

- (i) the chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office and designated by the chief financial officer and designated by the chief financial officer;
  - (ii) at least one senior supply chain management practitioner who is an official of the municipality; and
  - (iii) a technical expert in the relevant field who is an official of the municipality has such an expert.
- (3) The Municipal manager must appoint the 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.
- (4) The quorum of the meeting will be formed by four members and the Chairperson (four plus one members)
- (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) (a) If a 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 award the bid –
  - (i) check in respect of the preferred bidder whether that bidder’s municipal rates and taxes and municipal service charges are not in areas; and
  - (ii) notify the Municipal Manager in writing.
- (b) The Municipal Manager may –
  - (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
  - (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (6) The Municipal Manager may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (7) The Municipal manager must comply with section 114 of the Act within 10 working days.

## **Cancellation of tender**

### **30.**

1. This policy allows the municipal manager, before the award of a tender, cancel a tender invitation if-
  - (a) due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;
  - (b) funds are no longer available to cover the total envisaged expenditure;
  - (c) no acceptable tender is received; or
  - (d) there is a material irregularity in the tender process.
- (2) The decision to cancel a tender invitation in terms of subregulation (1) must be published in the same manner in which the original tender invitation was advertised.

- (3) The municipality will finalise all tenders within the specific validity period and cancellation of tenders will be of the last resort.
- (3) The municipality will only re-advertised a tender that has been cancelled twice upon receiving an approval from National Treasury.

**Procurement of banking service**

- 31. (1) A contract for the provision of banking services to a municipality-
  - (a) must be procured through competitive bids;
  - (b) must be consistent with sections 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 regulation 22(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

**Procurement of IT related goods or services**

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

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

- 33. (1) The Municipal Manager may procure goods or services for the municipality 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) the municipality has no reason to believe that such contract was not validly procured;
  - (c) there are demonstrable discount or benefits for the municipality to do so; and
  - (d) that other organ of state and the provider have consented to such procurement in writing.

- (2) the municipality may only participate in contracts that are still valid and the term of the appointment will not exceed the actual contract period from the consenting organ of state.
- (3) the municipality will only give approval for participation to other organs of state for contracts that are still valid and the approval period will not exceed the actual contract period.
- (4) Request for participation on a specific contract will be acceptable only if it is addressed to the municipal manager. No request from the service providers will be accepted by the municipality.

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

34. (1) The policy must restrict the acquisition and storage of goods in bulk (other than water) which necessitate special safety arrangements, including gasses and fuel.
- (2) Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership and cost advantages for the municipality or municipal entity.

### **Proudly SA Campaign and Local production and content**

35. (1) The Municipal Manager must ensure compliance with the Proudly South African campaign on the procurement of goods or services using this Policy and following products must be procured from companies manufacturing such products in South Africa;
- (a) Electrical power supply cables;
  - (b) Traffic official Uniforms;
  - (c) Protective clothing;
  - (d) Furniture;
  - (e) Tyres;
  - (f) Prepaid meters;
  - (g) Postpaid meters; and
  - (h) Other commodities as prescribed by Department of Trade and Industry (DTI) from time to time
- (2) The conditions of the DTI with regard to the proudly SA products must be adhered to when procurement of good or services is initiated.
- (3) This policy will allow the municipal manager to advertise the invitation to tender with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered.
- (4) This policy further allows the municipal manager to include as a special conditions of tender that bidders failing to meet the minimum stipulated threshold for local production and content is an unacceptable tender

### **Appointment of consultants**

36. (1) The Municipal Manager may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.
- (2) A contract for the provision of consultancy services to a municipality or 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 these Regulations for competitive bids, bidders must furnish the municipality or municipal entity with 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 Municipal Manager may establish a database of professional consultants following a competitive bidding process and the use of the professional consultants must be on a rotational basis
- (5) The database referred to in Section (4) above must be valid and utilized for a period of three years.
- (6) The municipality must ensure that copyright in any documents 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.

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

37. (1) The municipal manager is allowed;
  - (a) to dispense with the official procurement processes established by the 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; or
    - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
  - (b) to 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 Municipal Manager must record the reasons for any deviations in terms of Subsection (1)(a) and (b) and report them to the next meeting of the council, or board of directors in the case of a municipal entity, and include as a note to the annual financial statements.
- (3) Subsection (2) does not apply to the procurement of goods and services contemplated in Section 11(2) of this Policy.
- (4) The municipality will establish a deviations committee to adjudicate on all deviations received by the municipality. The terms of references for the deviations committee will be approved by the municipal manager.

### **Unsolicited bids**

38. (1) The municipality is in terms of section 113 of the Act not obliged to consider unsolicited bids received outside a normal bidding process.
- (2) If municipality decides in terms of section 113(2) of the Act to consider an unsolicited bid, it may do so 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 for, the municipality or municipal entity;
  - (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 Municipal manager.
- (3) If the municipality decides to consider an unsolicited bid that complies with subsection (2), the municipality must make its decision public in accordance with section 21A of the Municipal System Act, together with –
- (a) its reasons as to why the bid should not be open to other competitors;
  - (b) an explanation of the potential benefits for the municipality were it to accept the unsolicited bid; and
  - (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) Once the municipality has received written comments pursuant to subsection (3), it must submit such comments, 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 Municipal manager, depending on its delegations.
- (6) A meeting of the adjudication committee to consider and 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 Municipal manager must submit to the Auditor General, the relevant provincial treasury and those recommendations.
- (9) Such submissions must be made within seven days after the decisions on the award of the unsolicited bid is taken, but no contract committing the municipality or municipal entity to the bid may be entered into or signed within 30 days of submission.

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

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

- (c) 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 municipal entity, or to any other municipality or municipal entity, are in areas 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 municipal entity 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;
  - (g) to 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 municipal entity 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 other public sector contract during the past five years; or
    - (iv) has been listed in the Register for Tender Defaulters in terms section 29 of the Prevention and Combating of Corrupt Activities Act (No12 of 2004).
- (2) The Municipal manager must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subregulation (1) (b) or (f).

## **PART 3 – LOGISTICS, DISPOSAL, RISK AND PERFORMANCE MANAGEMENT**

### **Logistics management**

40. This policy provides for an effective system of logistics management in order to provide for the setting of inventory levels, placing of orders, receiving and distribution of goods, stores and warehouse management, expediting orders, transport management, vendor performance, and maintenance and contract administration.
- (1) Inventory management system
    - (a) Stock items shall be systematically replenished using the economic quantity ordering system.



- (b) A combination of the first in first out system will be used for issuing of the inventory and the weighted average system will be for the valuation of the inventory on hand.
- (2) This policy allows the municipal manager to keep all the scrap materials at a central place for either disposal or fixing of the items for future use.
- (3) The logistic section of the municipality will develop procedures on how repairable stock items can be accounted for in terms of the applicable GRAAP requirements.

## Disposal management

41. (1) This policy provides for an effective system of disposal management for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to section 14 and 90 of the Act.
- (2) This policy must –
- (a) specify the ways in which assets may be disposed of, including by –
    - (i) transferring the asset to another organ of state in terms of a 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
    - (v) destroying the asset;
  - (b) stipulate that –
    - (i) immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
    - (ii) movable assets may be sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous to the municipality or municipal entity;
    - (iii) in the case of the disposal of computer equipment, the provincial department of education must first be approached to indicate within 30 days whether any of the local schools are interested in the equipment; and
    - (iii) in the case of the disposal of firearms, the National Conventional Arms Control Committee has approved any sale or donation of firearms to any person institution within or outside the Republic;
  - (b) provide that –
    - (i) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise; and
    - (ii) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed; and
    - (iii) in the case of the free disposal of computer equipment, the provincial department of education must first be approached to indicate within 30 days whether any of the local schools are interested in the equipment; and
    - (iv) in the case of the disposal of firearms, the National Conventional Arms Control Committee has approved any sale or donation of fire arms to any person or institution within or outside the Republic;

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

### **Risk management**

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

### **Performance management**

- 43. This policy provides for an effective internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorized supply chain management processes are being followed and whether the desired objectives are being achieved.

## **PART 4 - OTHER MATTERS**

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

- 45. (1) this policy of a municipality, irrespective of the procurement process followed, state that the municipality or may not make any award above R15 000 to a person whose tax matters have not been declared by the south African Revenue Service to be in order.
- (2) Before making an award to a person, a municipality will first check with SARS portal whether that person's tax matters are in order.
- (3) The municipality have an obligation of paying all the services providers who tax matters become non-compliant on the CSD after an official purchase order has been issued by the municipality and the services has been rendered.

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

- 45. This policy must, irrespective of the procurement process followed, state that the municipality may not make any award to a person;
  - (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 stake holder is a person in the service of the state; or
  - (c) who is an advisor or consultant contracted with the municipality or municipal entity.
  - (d) the municipality will utilise the CSD as its sole available resource to check if directors, managers, principal shareholders are in the employment of the state.

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

- 46. The notes to the annual financial statements of a municipality must disclose particulars of any award of more than R2 000 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 a 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

## **Ethical standards**

47. (1) this policy established a code of ethical standards complying with subsection (2) for officials and other role players in the supply chain management system in order to promote;
- (a) mutual trust and respect; and
  - (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
- (2) A municipal code of ethical standards must stipulate that an official or other role player involved in the implementation of the supply chain management policy of the municipality;
- (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;
  - (d) notwithstanding subregulation (2)(c), must declare to the Municipal manager 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 Municipal manager details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the municipality or municipal entity;
  - (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 other close family member, partner or associate, has any private or business interest;
  - (g) must be scrupulous in his or her use of property belonging to the municipality or municipal entity;
  - (h) Must assist the Municipal manager in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management;
  - (i) must report to the Municipal manager 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 Section 47(1); or
    - (iii) any alleged breach of the code of ethical standards.
- (3) This policy must;
- (a) determine that all declarations in terms of subsection (2)(d) and (e) must be recorded in a register which the Municipal manager must keep for this purpose;
  - (b) determine that all declarations by the Municipal manager must be made to the mayor of the municipality or the board of directors of the municipal entity who must ensure that such declaration are recorded in the register; and
  - (c) contain measures to ensure that appropriate action is taken against any official or other role player who commits a breach of the code of ethical standards.
- (4) this policy must take into account the National Treasury's code of conduct for supply chain management practitioners and other role players involved in supply chain management.
- (5) A municipality may adopt the National Treasury's code of conduct for supply chain management practitioners and other role players involved in supply chain management. When

adopted, such code of conduct becomes binding on all officials and other role players involved in the implementation of the supply chain management policy of the municipality or municipal entity.

(6) Subsection (2)(c) does not apply to gifts less than R350 in value.

### **Inducements, rewards, gifts and favours to municipalities, municipal entities, officials and other role players**

48. (1) No person who is a provider or prospective provider of goods or services to a municipality or municipal entity, or recipient or prospective recipient of goods disposed of by a representative or intermediary promise, offer or grant;

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

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

(i) any official of the municipality or municipal entity; or

(ii) any other role player involved in the implementation of the supply chain management policy of the municipal entity.

(2) The municipal manager of City of Mbombela must promptly report any alleged contravention of subregulation (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such 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) Subsection (1) does not apply to gifts less than R350 in value.

### **Remedies**

49. This policy allows the municipal manager that:

(1) Upon detecting that a tenderer submitted false information regarding its BBBEE status level of contributor, local production and content, false declarations on any MBD forms or any other matter required in terms of these Regulations which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any subcontracting arrangements, the municipality shall-

(a) inform the tenderer accordingly;

(b) give the tenderer an opportunity to make representations within 14 days as to why-

(i) the tender submitted should not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part;

(ii) if the successful tenderer subcontracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and

(iii) the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state; and

(c) if it concludes, after considering the representations referred to in subregulation (1)(b), that-

- (i) such false information was submitted by the tenderer-
  - (aa) disqualify the tenderer or terminate the contract in whole or in part;
  - (bb) if applicable, claim damages from the tenderer; or
  - (ii) the successful tenderer subcontracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.
- (2) The municipality shall-
- (i) inform the National Treasury, in writing, of any actions taken in terms of subregulation (1); provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and
  - (iii) submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.
- (b) The National Treasury may request an organ of state to submit further information pertaining to subregulation (1) within a specified period.
- (3) The National Treasury must-
- (a) after considering the representations of the tenderer and any other relevant information, decide whether to restrict the tenderer from doing business with any organ of state for a period not exceeding 10 years; and
  - (b) maintain and publish on its official website a list of restricted suppliers.

### **Sponsorship**

50. The municipal manager of City of Mbombela must promptly disclose to the National Treasury and the relevant provincial treasury any sponsorship promised. Offered or granted to the municipality, whether directly or through a representative or intermediary, by any person who is –
- (a) a provider or prospective of goods or services to the municipality; or
  - (b) a recipient or prospective recipient of goods disposed or to be disposed, of by the municipality.

### **Objections and complaints**

50. This policy allow persons aggrieved by decisions or actions taken by the municipality or municipal entity in the implementation of its supply chain management system, to lodge within 14 days of the decision or action a written objection or complaint to the municipality or municipal entity against the decision or action.

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

51. (1) The Municipal Manager may establish a dispute resolution committee of officials that do not participate or are not directly involved in the supply chain management processes of the municipality –
- (a) to assist in the resolution of disputes between the municipality other persons regarding –
    - (i) any decisions or actions taken by the municipality or municipal entity in the implementation of its supply chain management system; or
    - (ii) any matter arising from a contract awarded in the course of its 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 Municipal manager, or another official designated by the Municipal manager, 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 Municipal manager 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 received from the municipality or municipal entity 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) The municipal manager has appointed an Objections Committee deal with all the complaints, disputes, objections or queries.
- (7) the activities of the committee are monitored as per the terms of references of the committee.

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

52. 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 or the amount collected, the contract between the service provider and the municipality must stipulate –
  - (a) a cap on the compensation payable to the service provider; and
  - (b) that such compensation must be performance based
53. Empowerment of EME's, QSE and other designated group through preferential procurement.
  1. This policy allows the municipal manager to utilise preferential procurement as a vehicle to empower to EME's, QSE and other designated groups as defined in the preferential procurement regulations of 2017.
  2. the municipality will implement the empowerment initiatives in three folds, namely:
    - (a) Pre-qualification of EME's, QSE and designated group.
    - (b) Mandatory sub-contracting
    - (c) Mandatory increase of the procurement threshold from of 80/20 from R1 Million to R 50 Million.
    - (d) Financial Empowerment through direct payments and or cession agreements. 30% direct payments or cession agreements to all designated group, EME's and QSE's
    - (e) Implementation of an early payment initiative- less than 30 days payment scheme for EME's, QSE and other designated group.
  3. The municipality will develop a strategy on how the empowerment initiative will be implement.
  4. The strategy will form part of the SCM procedures and processes once approved by the municipal manager.
  5. The municipality may allow the implementation of variation orders. Such variation orders will de done inline with circular 62 of the MFMA issued by National and General Condition of Contracts.

- 5.1 A maximum of 20% of the original bid price may be allowed on all constructions and infrastructure projects and a maximum of 15 % of the original bid price may be allowed on all other projects related the goods and services.
- 5.2 The nature and scope of works should be similar to the original contract and allows natural progression of the contract.
- 5.3 Variation Orders shall not be used as vehicle to circumvent the normal Supply Chain Management Policy and undermines the threshold of bids and the Systems of Delegated Powers e.g ( 20% or 15 % variation orders will not be allowed on bids within the contracts of R9 9000 000.00 due to the fact that the additional 20% variation order will exceed the threshold of R 10 Million and different procurement methods is applicable) ( 14 days bid adverts vs 30 days bid adverts) similarly to written quotations within the threshold of R 200 000.00 VAT inclusive) ( 7 days adverts vs 14 days adverts)
- 5.3 The approval of variation orders should be kept within the approved threshold on the contract.
- 5.4 Poor planning shall not be permissible as a reason for implementing variation orders. The Project Managers must submit a motivation on how the contingency fees have been utilized prior to the approval.
- 5.5 The approval for the variation orders must be recommended by the Chief Financial Offer and be approved as per the system of delegated powers. No Variation order will be approved without the recommendations of the Chief Financial Officer.

### **Commencement**

53. The policy will come into effect after the approval by the municipal council.

A(3). FINANCIAL MANAGEMENT: REPORT ON FINAL BUDGET RELATED POLICIES FOR THE 2018/19 FINANCIAL YEAR

The Leader of Government Business, Councillor P V Mkhathshwa, requested that a report on all the proposed amendments which emanated from the workshops arranged for Councillors on the budget related policies, be included on the agenda for the next Ordinary Council meeting, which was scheduled for 28 June 2018.

Councillor L Maseko indicated that sufficient time had not been allowed at the workshops for Councillors on 4 and 25 May 2018, to deliberate on the budget related policies. He said that Councillors could therefore not make meaningful inputs on the policies at those workshops.

The Speaker, Councillor M J Msibi, referring to the amendment requested by the Leader of Government Business, as per the first paragraph of the preamble above, informed Councillor Maseko that Councillors would be afforded an opportunity to make inputs on the policies when the report on the inputs made by Councillors during the workshops, was considered by Council.

RESOLVED

THAT

- (a) the contents of the report be noted;
- (b) Council take note of the following policies, with the proposed amendments as set out in the report, and approve same as budget related policies for the 2018/2019 financial year:
  - (i) Budget policy
  - (ii) Fleet Management policy
  - (iii) Indigent policy
  - (iv) Property Rates policy
  - (iv) Supply Chain Management policy
  - (v) Virement policy;
- (c) the following policies, to which there are no proposed amendments, be approved for the 2018/2019 financial year:
  - Asset Management policy
  - Cash Management policy
  - Deposits and Refund policy
  - Funding and Reserves policy
  - Payroll policy
  - Proof of Residence policy
  - Recruitment, Selection and Induction policy
  - Supplier Performance Monitoring policy
  - Liquidity policy;
- (d) it be noted that there are no proposed amendments to the following policies and by-laws, as promulgated in the Mpumalanga Provincial Gazette no 2835 dated 28 July 2017 and that these policies will therefore still be applicable for enforcement in the 2018/2019 financial year:



- (i) Credit Control and Debt Collection policy and by-law
  - (ii) Solid Waste Management by-law
  - (iii) Tariff policy and by-law
  - (iv) Electricity Supply by-law
  - (v) Water Supply Services by-law
  - (vi) Waste Water and Industrial Effluent by-law;
- (e) the Property Rates by-law be further promulgated and Gazetted through the relevant legal processes for enforcement in the 2018/2019 financial year;
- (f) a report on all the proposed amendments which emanated from the workshops arranged for Councillors on the budget related policies, on 4 and 25 May 2018, be included on the agenda for the next Ordinary Council meeting.