

EMAKHAZENI LOCAL MUNICIPALITY



SUPPLY CHAIN MANAGEMENT POLICY

APPROVED BY COUNCIL ON: 30 MAY 2017

IMPLEMENTATION DATE: 01 JULY 2017

COUNCIL RESOLUTION NO: 29/05/2017

TABLE OF CONTENTS

CHAPTER 1

- 1 Definitions

CHAPTER 2

ESTABLISHMENT AND IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

- 2 Supply chain management policy
- 3 Amendment of supply chain management policy
- 4 Delegation of supply chain management powers and duties
- 5 Sub-delegations
- 6 Oversight role of council
- 7 Supply chain management unit

CHAPTER 3

FRAMEWORK FOR SUPPLY CHAIN MANAGEMENT

- 8 Format of supply chain management
 - Part 1: Demand management
- 9 System of demand management
 - Part 2: Acquisition management
- 10 System of acquisition management
- 11 Range of procurement processes
- 12 General preconditions for consideration of written quotations or bids
- 13 Preferential Procurement
- 14 Petty cash purchases
- 15 Written quotations
- 16 Formal written price quotations
- 17 Competitive bids

TABLE OF CONTENTS

18	Process for competitive bidding
19	Bid documentation for competitive bids
20	Public invitation for competitive bids
21	Procedure for handling, opening and recording of bids
22	Two-stage bidding process
23	Two envelope system
24	Contract Price Adjustment
25	Contracts providing for Compensation based on Turnover
26	Samples
27	Closing of bids
28	Communication with bidders before bid closing
29	Opening of Bids where a Two Envelope System (consisting of a technical proposal and a financial proposal) is followed
30	Bid Sum
31	Committee system for competitive bids
32	Bid specification committees
33	Bid evaluation committees
34	Bid evaluation
35	Bid evaluation steps
36	Recommendation to bid adjudication committee
37	Bid adjudication
38	Bid adjudication committee

TABLE OF CONTENTS

39	Adjudication and award
40	Negotiation with preferred bidders
41	Approval of Bids not recommended
42	Criteria for breaking deadlock in scoring
43	Award of contracts to tenderers not scoring highest points
44	Cancellation of tender
45	Remedies
46	Municipal Manager Powers over adjudication
47	Reconsideration of Recommendations
48	Right of appeal
49	Procurement of banking services
50	Procurement of IT related goods or services
51	Procurement of Accommodation for seminars and conferences
52	Procurement of goods and services under contracts secured by other organs of state
53	Procurement of goods necessitating special safety arrangements
54	Public-private partnerships
55	Publications in the media
56	Community based vendors
57	Proudly SA Campaign
58	Appointment of consultants
59	Procurement of Catering
60	Deviation from and ratification of minor breaches of, procurement processes

TABLE OF CONTENTS

- 61 Emergency dispensation
 - Unsolicited bids
 - Combating of abuse of supply chain management system

Part 3: Logistics, Disposal, Risk and Performance Management

- 62 Logistics management
- 63 Transport management
- 64 Vendor performance
- 65 Contract Administration
- 66 Disposal Management
- 67 Transfer or Permanent Disposal of Assets
- 68 Performance management

Part 4: Other matters

- 69 Prohibition on awards to persons whose tax matters are not in order
- 70 Prohibition on awards to persons in the service of the state
- 71 Awards to close family members of persons in the service of the state
- 72 Ethical standards
- 73 Inducements, rewards, gifts and favours
- 74 Sponsorships
- 75 Objections and complaints
- 76 Resolution of disputes, objections, complaints and queries
- 77 Contracts providing for compensation based on turnover
- 78 Payment of sub-contractors / Joint Venture Partners
- 79 Extending or varying a contract
- 80 Circulars and Guidelines

1 Introduction

1.1 Vision and value statement

It is the vision of Council to “be a developmental local municipality striving to accelerate provision of quality services to the satisfaction of our communities.

Council is committed to its mission to improve the quality of life of its citizens by providing accelerated services and creation of conducive environment for economic growth through good governance, innovation and integrated planning

The Values of the Council are:

Consultation

Service Standards

Access

Courtesy

Information

Transparency

Redress

Value for money

Responsiveness

1.2 Vision

A developmental local municipality striving to accelerate provision of quality services to the satisfaction of our communities

1.3 Mission

Emakhazeni Local Municipality exist to improve the quality of life of its citizens by providing accelerated services and creation of conducive environment for economic growth through good governance, innovation and integrated planning

CHAPTER 1

1 Definitions

In this policy, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the MFMA has the same meaning as in the MFMA.

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, close corporations and firms, unless the context clearly indicates otherwise.

Unless otherwise indicated, all amounts/limits stated in this document shall be deemed to be inclusive of all applicable taxes.

“Adjudication points”: means the points for price and points for B-BBEE contribution referred to in the Preferential Procurement Regulations, 2011 and the Preferential Procurement section of this policy, also referred to as “evaluation points”.

“All applicable taxes”: includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.

“Asset”: means a tangible or intangible resource capable of ownership.

“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.

“Capital Asset”: means:

Any immovable asset such as land, property or buildings; or

any movable asset that can be used continuously or repeatedly for more than one year in the production or supply of goods or services, for rental to others or for administrative purposes, and from which future benefit can be derived, such as plant, machinery and equipment.

“Closing Time”: means the time and day specified in the bid documents for the receipt of bids.

“Comparative Price”: means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration.

“Competitive Bidding Process”: means a competitive bidding process referred to in Regulation 12 (1) (d) of the Supply Chain Management Regulations.

“Competitive Bid”: means a bid in terms of a competitive bidding process.

“Community Based Vendor”: means a supplier of goods, services and/or construction works who resides in a target area or community, who meets the criteria for community based vendors as determined by the Director: Supply Chain Management from time to time, and who is registered as such on the municipality’s Supplier database.

“Consortium”: an association or grouping of institutions, business or financial organization, usually set up for a common purpose that would be beyond the capabilities of a single member of the group.

“Construction Industry Development Board (CIDB) Act”: means the Construction Industry Development Board Act, 38 of 2000 and includes the regulations pertaining thereto.

“Construction Works”: means any work in connection with:

the erection, maintenance, alteration, renovation, repair, demolition or dismantling of or addition to a building or any similar structure;

the installation, erection, dismantling or maintenance of a fixed plant;

the construction, maintenance, demolition or dismantling of any bridge, dam, canal, road, railway, sewer or water reticulation system or any similar civil engineering structure; or

the moving of earth, clearing of land, the making of an excavation, piling or any similar type of work.

“Consultant”: means a person or entity providing services requiring knowledge based expertise, and includes professional service providers.

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

“Contractor”: means any person or entity whose competitive bid or quotation has been accepted by the municipality.

“Contract participation goal”: the value of the participation of a specific target group that a contractor must achieve in the performance of a contract, expressed as a percentage of the bid sum less provisional sums, contingencies and VAT.

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

“Delegated Authority”: means any person or committee delegated with authority by the municipality in terms of the provisions of the Municipal Finance Management Act.

“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.

“Evaluation of Bids”: in respect of bids that exceed R200 000, shall be deemed to take place when the Bid Evaluation Committee meets to make a recommendation to the Bid Adjudication Committee.

“Evaluation Points”: also referred to as “Adjudication Points” (see clause 1.1 above).

“Exempted Capital Asset”: means a municipal capital asset which is exempted by section 14(6) or 90(6) of the MFMA from the other provisions of that section.

“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).

“ EPWP ” means an Expanded Public Works Programme

“Final Award”: in relation to bids or quotations submitted for a contract, means the final decision on which bid or quote to accept.

“Firm Price”: means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract.

“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. Also referred to as “Bids”.

“Functionality”: means the measurement according to predetermined norms, as set out in the bid or quotation documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder. “Functionality” is also referred to as “Quality”.

“Granting of Rights”: means the granting by the municipality of the right to use, control or manage capital assets in circumstances where sections 14 and 90 of the MFMA and Chapters 2 and 3 of the Municipal Asset Transfer Regulations do not apply. In other words, where the granting of such rights does not amount to “transfer” or “disposal” of the asset and which includes leasing, letting, hiring out, etc, of the capital asset.

“Green Procurement”: is defined as taking into account environmental criteria for goods and services to be purchased in order to ensure that the related environmental impact is minimised.

“Imported Content”: means that portion of the bid price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its sub-contractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port or entry.

“In the service of the state”: means:

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

an official of any municipality or municipal entity;

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;

a member of the board of directors of any municipal entity;

a member of the accounting authority of any national or provincial public entity; or

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.

“Local Content”: means that portion of the bid price which is not included in the imported content, provided that local manufacture does take place.

“Leaner Contractor”: an entity established by the EML and enrolled within its Expanded Public Works Programme (EPWP)

“Long term Contract”: means a contract with a duration period exceeding one year.

“Municipality”: means the municipality of the Emakhazeni Local or any person(s) or committee delegated with the authority to act on its behalf.

“Municipal Manager”: means the Accounting Officer as defined in the Municipal Finance Management Act.

“Municipal Asset Transfer Regulations”: means the Municipal Asset Transfer Regulations published in Government Gazette 31346 of 22 August 2008.

“Municipal Entity”: means an entity as defined in the Systems Act.

“Municipal Finance Management Act” (MFMA): means the Local Government: Municipal Finance Management Act, 56 of 2003.

“Non-compliant Contributor”: means a person who does not meet the minimum score to qualify as a status level 8 B-BBEE Contributor, or a person who is not verified in terms of the required Sector Charter.

“Non-exempted Capital Asset”: means a municipal capital asset which is not exempted by section 14(6) or 90(6) of the MFMA, from the other provisions of that section.

“Non-firm Prices”: means all prices other than “firm” prices.

“Person”: includes a natural or legal entity.

“Policy”: means this Supply Chain Management Policy as amended from time to time.

“Preference points”: mean the points for preference referred to in this Policy.

“Preferential Procurement Policy Framework Act” (PPPFA): means the Preferential Procurement Policy Framework Act, 5 of 2000.

“Preferential Procurement Regulations”: means the regulations pertaining to the PPPFA.

“Prime Contractor”: shall have the same meaning as “Contractor”.

“Promotion of Administrative Justice Act”: means the Promotion of Administrative Justice Act, 3 of 2000.

“Quality”: also referred to as “Functionality” (see clause 1.34 above).

“Rand Value”: means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties.

“Republic”: means the Republic of South Africa.

“Responsible Agent”: means either an internal project manager (being an employee of the municipality) or an external consultant (appointed by the municipality), as the case may be, who is responsible for the implementation of a project or part thereof.

“SARS”: means the South African Revenue Services.

“SITA”: means the State Information Technology Agency.

“Stipulated Minimum Threshold”: means that portion of local production and content as determined by the Department of Trade and Industry.

“Sub-contract”: means the prime contractor’s assigning, leasing, making out work to, or employing, another person to support such prime contractor in the execution of part of a project in terms of the contract.

“Sub-contractor”: means any person that is assigned, leased, employed or contracted by the prime contractor to carry out work in support of the prime contractor in the execution of a contract.

“Supplier/Vendor”: are generic terms which may include suppliers of goods and services, contractors and/or consultants.

“Supplier Database”: 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.

“Supply Chain Management (SCM) Regulations”: means the Municipal Supply Chain Management Regulations published in terms of the Municipal Finance Management Act.

“Systems Act”: means the Local Government: Municipal Systems Act, 32 of 2000.

“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 defined target area.

“Targeted Enterprises”: means those enterprises (suppliers, manufacturers, service providers or construction works contractors) that own, operate or maintain premises within the target area defined in the contract, for the purposes of carrying out their normal business operations.

“Tender/Tenderer”: means “bid/bidder”.

“Term Bid”: means rates based bid for the supply of goods, services or construction works, which are of an ad-hoc or repetitive nature where the individual rates are approved for use over a predetermined period of time.

“Total Revenue”: bears the same meaning assigned to this expression 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 and promulgated in the Government Gazette on 9 February 2007.

“Transaction Value”: means the actual contract value (the bid sum or price) in South African currency, inclusive of all applicable taxes in respect of the goods, services or construction works that are contracted for.

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

“Trust”: means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person.

“Trustee”: means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

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

CHAPTER 2

ESTABLISHMENT AND IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

2 Supply chain management policy

- 2.1 The principles of the supply chain management policy are that it –
- 2.1.1 gives effect to –section 217 of the Constitution; and
Part 1 of Chapter 11 and other applicable provisions of the MFMA;
 - 2.1.2 is fair, equitable, transparent, competitive and cost effective;
 - 2.1.3 complies with –the regulatory framework prescribed in Chapter 2 of the Regulations; and
any minimum norms and standards that may be prescribed in terms of section 168 of the MFMA;
 - 2.1.4 is consistent with other applicable legislation 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
 - 2.1.5 does not undermine the objective for uniformity in supply chain management systems
between organs of state in all spheres; and
 - 2.1.6 is consistent with national economic policy concerning the promotion of investments and
doing business with the public sector.
- 2.2 The provisions of the supply chain management policy must be followed when –
- 2.2.1 procuring goods or services and construction works and consultant services ;
 - 2.2.2 disposing of goods no longer needed;
 - 2.2.3 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

- 2.2.4 selecting external mechanisms referred to in section 80(1)(b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.
- 2.3 Unless specifically stated otherwise this Policy does not apply if the Municipality contracts with another organ of state for:
 - 2.3.1 the provision of goods or services to the Municipality;
 - 2.3.2 the provision of a municipal service; or
 - 2.3.3 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. A report with shall nevertheless be submitted to the Bid Adjudication Committee seeking authority to contract another organ of state.

3 Amendment of the supply chain management policy

- 3.1 The accounting officer must –
 - 3.3.1 at least annually review the implementation of this policy; and
 - 3.3.2 when the accounting officer considers it necessary, submit proposals for the Amendment of this policy to the council.
- 3.2 If the accounting officer submits a draft policy to the council that differs from the model policy, the accounting officer must ensure that such draft policy complies with the Regulations. The accounting officer must report any deviation from the model policy to the National Treasury and the relevant provincial treasury.
- 3.3 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.

3.4 The accounting officer of the municipality must take all reasonable steps to ensure that this supply chain management policy is implemented.

4 Delegation of supply chain management powers and duties

4.1 The powers and duties to be performed in respect of the implementation of supply chain management are delegated to the accounting officer –

4.1.1 to discharge the supply chain management responsibilities conferred on accounting officers in terms of

4.1.2 Chapter 8 or 10 of the MFMA; and

4.1.3 The supply chain management policy;

4.1.4 to maximise administrative and operational efficiency in the implementation of the supply chain management policy;

4.1.5 to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of the supply chain management policy; and

4.1.6 to comply with the accounting officer's responsibilities in terms of section 115 and other applicable provisions of the MFMA.

4.2 The accounting officer may not delegate or sub-delegate any supply chain management powers or duties to a person who is not an official of the municipality or to a committee which is not exclusively composed of officials of the municipality;

4.3 The Accounting Officer shall ensure that all persons involved in the implementation of this Policy meet the prescribed competency levels, and where necessary, shall provide relevant training.

5 Sub-delegations

5.1 The accounting officer may, in terms of section 79 of the MFMA, 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 paragraph 4 and sub-paragraph 5.2 of this policy.

5.2 The power to make a final award –

above R10 million (VAT included) may not be sub-delegated by the accounting officer;
above R2 million (VAT included), but not exceeding R10 million (VAT included), may be
sub-delegated but only to -

the chief financial officer;

a senior manager; or

a bid adjudication committee of which the chief financial officer or a senior manager is a
member;

not exceeding R2 million (VAT included) may be sub-delegated but only to –

the chief financial officer;

a senior manager;

a manager directly accountable to the chief financial officer or a senior manager; or

a bid adjudication committee.

5.3 An official or bid adjudication committee to which the power to make final awards has
been sub-delegated, must within 10 working days of the end of each month submit to the
accounting officer a written report containing particulars of each final award made by
such official or committee during that month, including –

the amount of the award;

the name of the person to whom the award was made; and

the reason why the award was made to that person.

5.4 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 32 of this policy.

- 5.5 No supply chain management decision-making powers may be delegated to an advisor or consultant.
- 5.6 The accounting officer may not delegate or sub-delegate the authority to enter into negotiations in terms of paragraph 40 of this policy.

6 Oversight role of council

- 6.1 The council retains the right to oversee the implementation of this supply chain management policy.
 - 6.1.1 Section 117 of the Municipal Finance Management Act prohibits a Municipality Councilor from being a member of a bid committee or any other committee evaluating or approving quotations or bids nor may a Municipality Councilor attend any such meeting as an observer.
 - 6.1.2 The Executive Mayor must provide general political guidance over the fiscal and financial affairs of the Municipality and must monitor and oversee the exercise of responsibilities assigned to the Municipality Manager and chief financial officer in terms of the Municipal Finance Management Act.
- 6.2 For the purposes of such oversight the accounting officer must –
 - 6.2.1 within 30 days of the end of each financial year, submit a report on the implementation of the supply chain management policy of the municipality to the council of the municipality;
or
 - 6.2.2 whenever there are serious and material problems in the implementation of the supply chain management policy, immediately submit a report to the council.
- 6.3 The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the executive mayor.

6.4 The reports must be made public in accordance with section 21A of the Municipal Systems Act.

7 Supply chain management unit

7.1 A supply chain management unit was established to implement this supply chain management policy.

7.2 The supply chain management unit operates under the direct supervision of the chief financial officer or an official to whom this duty has been delegated in terms of section 82 of the MFMA.

CHAPTER 3

FRAMEWORK FOR SUPPLY CHAIN MANAGEMENT

8 Format of supply chain management

This supply chain management policy provides systems for –

- 8.1 demand management;
- 8.2 acquisition management;
- 8.3 logistics management;
- 8.4 disposal management; and
- 8.5 performance management.

Part 1: Demand management

9 System of demand management

- 9.1 To ensure that the resources required to support the strategic and operational commitments are delivered at the correct time, at the right price and at the right location and that the quantity and quality satisfy needs, the system of demand management includes the following:
 - 9.2 Acquisition and disposal of all goods required to meet the strategic goals outlined in the Integrated Development Plan must be quantified, budgeted and planned to ensure timely and effective delivery, appropriate quality at a fair cost to meet the needs of the municipality and community.
 - 9.2.1 The Municipality's Integrated Development Plan (IDP) is a comprehensive strategy document setting out how the Municipality intends to tackle its development challenges in a financial year. It is on the basis of the IDP that the resources of the municipality will be allocated and on which the budget is based.
 - 9.2.2 Critical delivery dates must be determined and adhered to as set out in the service delivery and budget implementation plan contemplated in section 69(3)(a) of the MFMA.

- 9.3 If the requirement is of a repetitive nature and there are benefits of economies of scale, a contract for a specific commodity should be arranged.
- 9.4 In order to compile the correct specifications an industry analysis / research must be regularly undertaken to ensure future needs and technology benefits are maximized.
- 9.5 In order to achieve effective demand management, the Assistant Manager: Supply Chain Management shall continuously ensure:
- 9.5.1 that efficient and effective provisioning and procurement systems and practices are implemented to enable the Municipality to deliver the required quantity and quality of services to the communities.
- 9.5.2 The establishment of uniformity in policies, procedures, documents and contract options and the implementation of sound systems of control and accountability.
- 9.5.3 The development of a world-class 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.
- 9.5.4 In dealing with suppliers and potential suppliers, that the Municipality shall respond promptly, courteously and efficiently to enquiries, suggestions and complaints.

9.6 Major Activities

- 9.6.1 Demand management lies at the beginning of the supply chain and the major activities associated with identifying demand are:
- establishing requirements;
 - determining needs; and
 - deciding on appropriate procurement strategies.
- 9.6.2 Demand management accordingly shall involve the following activities:
- understanding the future needs;
 - identifying critical delivery dates;
 - identifying the frequency of the need;
 - linking the requirements to the budget;
 - conducting expenditure analyses based on past expenditure;
 - determining requirements,

conducting commodity analyses in order to check for alternatives; and
conducting industry analyses.

Part 2: Acquisition management

10 System of acquisition management

10.1 Through operational procedures, an effective system of acquisition management is to be established to ensure:-

10.1.1 that goods and services are procured in accordance with authorised processes only, and should procurement be done without the necessary pre-approval, the Municipality will not be liable for payment of expenditure incurred;

10.1.2 that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the MFMA;

10.1.3 that the threshold values for the different procurement processes are complied with;

10.1.4 that bid documentation, evaluation and adjudication criteria as well as general conditions of contract, are in accordance with any applicable legislation;

10.2 Application

10.2.1 This acquisition management system contains the general conditions and procedures which are applicable, as amended from time to time, to all procurement, contracts, and orders for the Municipality.

10.3 Supplier Database

10.3.1 The Accounting Officer shall ensure that the Municipality's supplier database is updated at least at least once before the start of the financial year and shall be valid for that financial year, through newspapers commonly circulating locally, the website of the Municipality, and any other appropriate ways, invite prospective suppliers of goods and services, and any new commodities or types of services, construction works and consultant services to apply for listing as an accredited prospective supplier.

10.3.2 Prospective suppliers shall, however, be allowed to submit applications and Amendments for listing on the database at any time.

10.3.4 The listing criteria for accredited prospective suppliers should be listed which include:

Name of supplier / service provider;

Street address;

Postal address;

Contact person in Sales Department;

Sales Department's telephone number;

Sales Department's fax number;

Sales Department's cell number;

Sales Department's email address;

Contact person in Accounts Department;

Accounts Department's telephone number;

Accounts Department's fax number;

Accounts Department's email address;

Vat registration yes/no;

Vat registration number;

Bank details;

Type of industry;

Valid certification for specialised services;

Valid tax clearance certificate;

CIDB and CRS number registration if applicable;

Valid certification in respect of Exempted Micro Enterprises or B-BBEE Status Level of Contributor.

- 10.4 The Accounting Officer shall disallow the listing of any prospective supplier on the Municipality's supplier database who does not comply with the accreditation requirements based on standards, set by any relevant control bodies that govern or regulate the category of service or industry.
- 10.5 The Accounting Officer shall disallow the listing of any prospective supplier whose name appears on the National Treasury's List of Restricted Suppliers and/or Register for Tender Defaulters and who is therefore prohibited from doing business with the public sector.
- 10.6 For quotations (up to and including R200 000) bidders are required to be registered on the Municipality's supplier database prior to the acceptance of their quotation (the issue of an official order) in respect of the goods or services required. Procurements above R200 000 go through a competitive bidding process.

- 10.7 Where bids exceed R200 000, bidders who are not registered on the Municipality's Supplier Database are not precluded from submitting bids, but must however be registered prior to the awarding of the tender.
- 10.8 All parties to a Joint Venture or Consortium must individually comply with the requirements of clauses
10.4 and 10.5 above.
- 10.9 The provisions of clause 63.1.8 will also apply to individual joint venture or consortium members

11 Range of procurement processes

- 11.1 The procurement of goods and services through this policy is executed by way of –
petty cash purchases, up to a transaction value of R 500 (VAT included);
written quotations by the proposed supplier for procurement of a transaction value over R 500 but less than R30 000 (VAT included);
formal written price quotations for procurement of a transaction value over R30 001 (VAT included) but less than R200 000 (VAT included); and
- a competitive bidding process for–
procurement above a transaction value of R200 000 (VAT included); and
the procurement of long term contracts.
allocation of projects to leaner contractors on the EPWP programme
allocation of projects through the cooperatives policy

The accounting officer may, in writing:-

lower, but not increase, the different threshold values specified in sub-paragraph 11.1; or
direct that –

written or formal written price quotations be obtained for any specific procurement of a transaction value lower than R500 (VAT included);

formal written price quotations be obtained for any specific procurement of a transaction value lower than R30 001 (VAT included); or

a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000 (VAT included).

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.

12. General preconditions for consideration of written quotations, formal written price quotations or bids

A written quotation, formal written price quotation or bid may not be considered unless the provider who submitted the quotation or bid –

has furnished that provider's –

full name;

identification number or company or other registration number;

tax reference number and VAT registration number, if any; and

tax clearance from the South African Revenue Services that the provider's tax matters are in order; and

complying with the Central Supplier Database

has indicated –

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;

if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or

whether a spouse, life partner, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to is in the service of the state, or has been in the service of the state in the previous twelve months.

13 Preferential procurement Aim

- 13.1 The aim of this section of the Municipality's Supply Chain Management Policy is to give effect to, and to ensure compliance with, all applicable legislation and national directives in respect of preferential procurement and broad-based black economic empowerment.

The following procurement strategies are addressed in this section:

13.1.1 the application of a preference point system for Exempted Micro Enterprises and B-BBEE Contributors in terms of the Preferential Procurement Regulations, 2017.

13.1.1.1 the stipulation, in bid documentation, of minimum thresholds for local production and content in accordance with directives issued by the National Treasury and Department of Trade and Industry.

13.1.1.2 the unbundling of large projects, where appropriate, into smaller contracts to ensure that a spread of opportunities are made available to suppliers, service providers and construction contractors of various sizes.

13.1.1.3 the use of functionality/quality, where appropriate, in procurement processes in order to ensure that goods supplied are fit for purpose, or that a minimum level of experience and competence in respect of service providers or construction contractors is attained.

13.1.1.4 the increase of employment opportunities by ensuring the use of labour intensive technologies.

13.1.1.5 the targeting of labour and/or enterprises from specific areas within the boundaries of the Emakhazeni Municipal area.

13.1.1.6 Preferential procurement is further enhanced by provisions aimed at improved access to information, simplification of documentation; deduct performance from payment invoices, reduced payment cycles and good governance.

13.1.1.7 The level of B-BBEE contribution achieved by the Municipality through the application of this policy will be monitored in terms of the Supply Chain Management performance management system.

13.1.1.8 Key Principles of the Preferential Procurement System

13.2 The key principles of this system are:

13.2.1 the application of an 80/20 preference point system for procurement (competitive bids or quotations) with a Rand value of greater than R30 000 but less than or equal to R5 million;

13.2.1.1 the application of a 90/10 preference point system for procurement (competitive bids) with a Rand value greater than R50 million;

13.2.1.2 that bids may be declared non-responsive if they fail to achieve a minimum score for functionality (quality), if indicated in the bid documents.

13.2.1.3 The preference point system shall be used in the evaluation of responsive bids for the purposes of determining preferred/recommended bidders, and for the adjudication thereof.

13.2.1.4 The preference point system is not applicable to petty cash purchases.

13.3 Planning and Stipulation of Preference Point System

13.3.1 Prior to embarking on any procurement process, the Responsible Department must properly plan for, and, as far as possible, accurately estimate the cost of the goods, services or construction works for which bids are to be invited.

13.3.2 The Bid Specifications Committee shall determine the appropriate preference point system to be used in the evaluation and adjudication of bids, and shall ensure that such is clearly stipulated in the bid documentation.

13.3.3 The Bid Specification Committee shall determine whether the goods, services or construction works which are to be procured, have been designated for local production and content by the National Treasury or Department of Trade and Industry, in which case the requirements as above shall be followed.

13.3.4 Pre-qualification criteria for Preference Procurement

13.3.5 Tenders to Evaluated on Functionality

13.4 Evaluation of Bids on Functionality (Quality)

13.4.1 Functionality (otherwise known as quality) may be included in the bid evaluation process as a qualifying (eligibility) criterion.

13.4.2 If a bid is to be evaluated on functionality, this must be clearly stated in the invitation to submit a bid, and in the bid documentation.

13.4.3 The evaluation criteria for measuring functionality must be objective. When evaluating bids on functionality the:

13.4.4 evaluation criteria for measuring functionality;

weight of each criterion;

applicable values; and

minimum qualifying score for functionality, must be clearly stipulated in the bid document.

13.4.5 Closed bidding may be considered for contract management for specialised projects

13.4.6 If a bid fails to achieve the minimum qualifying score for functionality as indicated in the bid document, it must be regarded as non-responsive, and be rejected (not considered any further in the evaluation process).

13.4.7 Bids that have achieved the minimum score for functionality, and passed any other responsiveness tests, must be evaluated further in terms of the preference point system prescribed below.

13.5 Evaluation and Adjudication of Bids

13.5.1 An 80/20 preference point system is stipulated for bids with a Rand value of greater than R30 000, but less than or equal to R 50 million, and a 90/10 preference point system of procurement with a Rand value of greater than R 50 million.

13.5.2 This means that either 80 or 90 points, depending on the Rand value of the bid, will be awarded to the person who offers the lowest acceptable price, and proportionately fewer points are awarded to those with higher prices calculated as per clause. Either 20 or 10 points are then available as preference points for Exempted Micro Enterprises

13.6 Enterprises or B-BBEE contributors, as applicable Cancellation and Re-invitation of Bids
In the event that, in the application of the 80/20 preference point system as stipulated in the bid documents, all bids received exceed a value of R 50 million, the bids must be cancelled.

13.6.1 If one or more of the acceptable bids received are within the prescribed threshold of R 50 million, all bids received must be evaluated on the 80/20 preference point system.

13.6.2 In the event that, in the application of the 90/10 preference point system as stipulated in the bid documents, all bids received are equal to, or below R 50 million, the bids must be cancelled.

13.6.3 If one or more of the acceptable bids received are above the prescribed threshold of R 50 million, all bids received must be evaluated on the 90/10 preference point system.

13.6.4 Bids cancelled in terms of clauses 13.6.1 and 13.6.3 above must be re-invited, with the correct preference point system clearly stipulated in the bid documents. The 80/20 Preference Point System for the Procurement (Acquisition) of Goods, Services or Construction Works up to a Rand Value of R 50 million

13.6.5 The following formula must be used to calculate the points for price in respect of bids (including price quotations) with a Rand value of greater than R30 000 and up to a Rand value of R 50 million (all applicable taxes included):

13.6.6 $P_s = 80 [1 - (P_t - P_{min})]$

Pmin Where :

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

P_t = Comparative price (corrected, if applicable, exclusive of VAT) of the bid under consideration; and P_{min} = Comparative price (corrected, if applicable, exclusive of VAT) of lowest responsive bid.

13.6.7 The classification used in the formula above may be varied to comply with prescribed standard bid documentation, provided the formula itself is not varied.

13.6.8 Points for preference must be awarded to Exempted Micro Enterprises or to bidders having attained a B-BBEE status level of contributor in accordance with the tables below:

B-BBEE Status Level of Contributor	Number of Points for Preference
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2

Non-compliant contributor 0 or, in respect of Exempted Micro Enterprises (EMEs)

Black Ownership of EME	Deemed B-BBEE Status	Number of Point for Level of Preference
50%	3	16
50	4	12

13.6.9 The points for preference scored by a bidder in terms of clause 13.6.8 above, must then be added to the points for price scored in terms of clause 13.6.6, in order to obtain the total number of adjudication points scored for each responsive bid.

13.6.10 Subject to paragraph 41, the contract must be awarded to (and/or order placed with) the bidder that scores the highest total number of adjudication points. The 90/10 Preference Point System for the Procurement (Acquisition) of Goods, Services or Construction Works with a Rand Value above R 50 million.

13.6.11 The following formula must be used to calculate the points for price in respect of bids

with a Rand value above R 50M (all applicable taxes included):

$$P_s = 90 [1 - (P_t - P_{min})]$$

P_{min} Where :

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

P_t = Comparative price (corrected, if applicable, exclusive of VAT) of the bid under consideration; and P_{min} = Comparative price (corrected, if applicable, exclusive of VAT) of lowest responsive bid.

13.6.12 the terminology used in the formula above may be varied to comply with prescribed standard bid documentation, provided the formula itself is not varied.

13.6.13 Points for preference must be awarded to Exempted Micro Enterprises or to bidders having attained a B- BBEE status level of contributor in accordance with the tables

below.

B-BBEE Status Level of Contributor	Number of Points for Preference
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1

Non-compliant contributor 0 or, in respect of Exempted Micro Enterprises (EMEs)

Black Ownership of EME	Deemed B-BBEE Status Contributor	Number of Points for Level of Preference
50%	3	8
50%	4	5

13.6.14 The points for preference scored by a bidder in terms of clause 13.6.13 above, must then be added to the points for price scored in terms of clause 13.6.10, in order to obtain the total number of adjudication points scored for each responsive bid.

13.6.15 Subject to paragraph 41, the contract must be awarded to (and/or order placed with) the bidder that scores the highest total number of adjudication points.

13.7 BEE Status Level Certificates

13.7.1 In order to qualify for preference points in terms of clauses 13.6.8 to 13.6.13 above, Exempted Micro Enterprises must have submitted, to the Municipality, a certificate issued by a registered auditor, accounting officer (as contemplated in section 60(4) of the Close Corporation Act, 1984 (Act No. 69 of 1984) or an accredited verification agency, confirming their status as such.

13.7.2 Bidders other than Exempted Micro Enterprises must submit, to the Municipality, their original and valid B-BBEE status levels verification certificate, or a certified copy thereof, substantiating their B-BBEE status level of contributor.

13.7.3 The submission of such certificates must comply with the requirements of instructions and guidelines issued by the National Treasury and be in accordance with notices published by the Department of Trade and Industry in the Government Gazette.

13.7.4 Bidders who fail to submit the required certificates, or certified copies thereof, will be deemed to be non-compliant contributors.

13.7.5 Where specific sector charters have been gazetted in terms of the B-BBEE Act, bid documentation for procurement from within such sectors, must specify that only persons verified in terms of the particular sector charter (or Code of Good Practice), or Exempted Micro Enterprises, will qualify for a preference. A status level of contributor in respect of generic Codes of Good Practice will not, in such circumstances, qualify for any preference.

13.7.6 Where no specific sector charter has been gazetted, persons other than Exempted Micro Enterprises must be verified in terms of the gazetted generic

13.8 Codes of Good Practice in order to qualify for a preference.

13.8.1 For the purposes of transparency, bidders shall, in respect of all competitive bids (over R200 000), be required to claim, in their bid submission, a preference in accordance with their B-BBEE status.

13.8.2 Notwithstanding what is contained in the bid submission, preference points will be allocated during the bid evaluation process in accordance with the verified B-BBEE status level (or deemed status level) of contributor.

13.9 Conditions Relating to the Granting of Preferences

13.9.1 Bidders must, in the manner stipulated in the bid documentation, declare that:

the information provided is true and correct;

the signatory to the bid document is duly authorised; and

documentary proof regarding any bidding issue will, when required, be submitted to the satisfaction of the Municipality.

- 13.9.2 Only bidders who have completed and signed the necessary declarations may be considered.
- 13.9.3 The Bid Evaluation Committee must, when calculating comparative prices, take into account any discounts which have been offered unconditionally.
- 13.9.4 A discount which has been offered conditionally must, despite not being taken into account for evaluation purposes, be implemented when payment is effected.
- 13.9.5 A trust or joint venture will qualify for preference points for their B-BBEE status level as a legal entity, provided that the entity has submitted its verified B-BBEE status level certificate (or certified copy thereof) to the Municipality.
- 13.9.6 A trust or joint venture will qualify for preference points for their B-BBEE status level as an unincorporated entity, provided that the entity has submitted its consolidated B-BBEE scorecard as if it is a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 13.9.7 The consolidated B-BBEE scorecard must be submitted in the form of a certificate issued by an accredited verification agency (or a certified copy thereof).
- 13.9.10 A bidder may not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that the bidder qualifies for, unless the intended sub-contractor is an Exempted Micro Enterprise that has the capability and ability to execute the sub-contract.
- 13.9.11 A bidder that has been awarded a contract may not sub-contract more than 25% of the value of the contract to enterprises that do not have an equal or higher B-BBEE status level than the bidder concerned, unless the sub-contractors are Exempted Micro Enterprises that have the capability and ability to execute the sub-contract. Compliance with this particular requirement must be monitored by the Responsible Agent during the

execution of the contract.

13.9.12 30% of the Subcontracting is should be made compulsory to local people/companies (EML) irrespective where the main contractor is coming.

13.9.13 If a service is required that can only be provided by tertiary institutions, such services must be procured through a bidding process from the identified tertiary institutions. The tertiary institutions referred to in paragraph 13.9.11 above, must submit their B-BBEE status in terms of the specialized scorecard contained in the B-BBEE

13.10 Codes of Good Practice

13.10.1 If a service is required that can be provided by one or more tertiary institutions or public entities and enterprises from the private sector, the appointment of a service provider/contractor must be done by means of a competitive bidding process.

13.10.2 Public entities must submit their B-BBEE status in terms of the specialized scorecard contained in the gazetted B-BBEE Codes of Good Practice.

13.11 Subcontracting as a Condition of Tender

13.11.1 If feasible to subcontract for a contract above R30 million, an organ of state must apply subcontracting to advance designated groups.

13.11.2 If an organ of state applies subcontracting as contemplated in subregulation (1), the organ of state must advertise the tender with a specific tendering condition that the successful tenderer must subcontract a minimum of 30% of the value of the contract to-

- (a) an EME or QSE
- (b) an EME or QSE which is at least 51% owned by black people;
- (c) .an EME or QSE which is at least 51% owned by black people who are youth;
- (d) an EME or QSE which is at least 51% owned by black people who are women;
- (e) an EME or QSE which is at least 51% owned by black people with disabilities;
- (f) an EME or QSE which is at least 51% owned by black people living in rural or

underdeveloped areas or township;

(g) a cooperative which is at least 51% owned by black people;

(h) an EME or QSE which is at least 51% owned by black people who are military veterans; or

(i) more than one of the categories referred to in paragraphs (a) to (h)

13.11.3 the organ of state must make available the list of all suppliers registered on the Database approved by the National Treasury to provide the required goods or services in respect of the applicable designated groups mentioned in subregulation (13.11.2) from which the tenderer must select a supplier.

13.12 Subcontracting after Award of Tender

13.12.1 a person awarded a contract may only enter into a subcontracting arrangement with the approval of the organ of state.

13.12.2 a person awarded a contract in relation to a designated sector, may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

13.12.3 a person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless the contract is subcontracted to an EME that has the capacity and ability to execute the subcontract.

13.13 Targeted Labour and/or Targeted Enterprises

13.13.1 The targeting of labour and/or enterprises from specific areas within the boundaries of the Emakhazeni Local Municipal area may be achieved, where appropriate, by specifying in the bid documents, a minimum level of participation (a contract participation goal) that must be achieved in respect of targeted labour and/or targeted enterprises in

the performance of the contract.

13.13.2 Specified contract participation goals must be measurable and achievable, and the performance in respect of which must be monitored by the Responsible Agents during the execution of the contract.

13.13.3 Where a minimum contract participation goal has been specified in respect of targeted labour and/or enterprises, the contractor is obliged to meet that goal, and must be penalised if he or she does not.

13.13.4 Contract participation goals in respect of targeted labour and/or enterprises may not be introduced into the preference point system used for the evaluation of bids.

13.14 Remedies

13.14.1 Action in Respect of Fraud or Non-performance

13.14.1.1 The Accounting Officer must, upon detecting that the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis, or that any of the conditions of the contract have not been fulfilled, act against the bidder or person awarded the contract.

13.14.1.2 The Accounting Officer may, in addition to any other remedy that he may have against the bidder or person awarded the contract:

cancel the contract and claim any damages which the Municipality has

disqualify the person from the bidding process;

recover all costs, losses or damages it has incurred or suffered as a result of that

person's conduct; suffered as a result of having to make less favourable arrangements due to such cancellation; Expanded Public Works Programme

restrict the bidder or contractor, its shareholders and directors, or only the

shareholders and directors who acted on a fraudulent basis and or non performance,

from obtaining business from the Municipality for a period not exceeding 10 years, after

the audi alteram partem (hear the other side) rule has been applied; and forward the matter for criminal prosecution.

13.15 Calculation of Penalties

13.15.1 Penalties for failure to comply with specific terms and conditions of the contract must be clearly stipulated in the bid/contract document and must be applied should the terms or conditions not be met.

13.15.2 The penalty to be applied for sub-contracting more than 25% of the value of a contract to enterprises that do not qualify for at least the preference points that the prime contractor qualified for (unless the sub-contractors are Exempted Micro Enterprises) shall be as provided for in any prescribed standard contract documentation, failing which the following formula shall be stipulated:

Penalty = $0.5 \times E (\%) \times P^*$ Where:

E = The value of work (excluding VAT), executed by sub-contractors that do not qualify for at least the preference points that the prime contractor qualified for, expressed as a percentage of P^* , less 25%

P^* = Accepted bid sum less provisional sums, contingencies and VAT.

13.15.3 The penalty to be applied for non-compliance with specified contract participation goal, is as follows: Penalty = $(CPG - CPG^a) \times P^*$ s a

Where:

CPG = The minimum Contract Participation Goals specified (expressed as a percentage). CPG^a = The Contract Participation Goal achieved (expressed as a percentage).

P^* = Accepted bid sum less provisional sums, contingencies and VAT. Documentation

13.15.4 Within the context of preferential procurement, one of the strategies to encourage and assist entry into Local Government procurement by emerging businesses is to simplify and/or standardise bid/contract documentation wherever possible.

13.15.5 To this end, the Municipality will prepare a suite of standard documentation and, where appropriate, simplified bid/contract documents for use in the Municipality's procurement process as and where applicable.

13.15.6 Where standard bid/contract documentation is prescribed in terms of legislation (the CIDB Standard for Uniformity, for example) such standard documentation must be used for the procurement of goods, services and/or construction works, as applicable.

13.16 Guarantees for Due Performance

13.16.1 Main contractors must ensure that when performance guarantee is required, payment of such guarantee covers the subcontractor

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

In respect of a Rand value less than or equal to R 500 000: 2, 5% may be waived in respect of PE / EME (that is, no performance guarantee is required);

In respect of a Rand value exceeding R 500 000, but less than or equal to R1 000 000 : 5% of the bid sum;

In respect of a Rand value exceeding R 500 000, but less than or equal to R1 000 000 : 5% of the bid sum;

In respect of Goods/ Services and professional services exceeding the R10 000 000, a 12% professional indemnity will be required

The value of the performance guarantee for projects above R 10 000 000 may be increased with approval of the

13.17 Retention

13.17.1 Retention for procurement of goods and services (including consultant services) will not generally be called for, but where required, will be in accordance with the limits set for construction works below:

13.17.2 The value of retention to be deducted in respect of construction works contracts shall be as follows:

- 13.17.3 In respect of a Rand value less than or equal to R0 - R500 00: No retention is called for;
- 13.17.4 In respect of a Rand value exceeding R500 000, but less than or equal to R 1 000 000: 5% of the value of work carried out with no limit, reducing by half for the duration of the defects liability period;
- 13.17.5 In respect of a Rand value exceeding R1 000 000 : 10% of the value of work carried out with no limit, reducing by half for the duration of the defects liability period; unless otherwise provided for in the standard conditions of contract prescribed.
- 13.18 Where consultant services are to be completed at the end of the defects liability period in respect of a goods/and or services rendered, the value of this work (typically 5%) may be invoiced at the end of the project period, but shall be held as retention until the completion of the service (typically, an end of defects liability period inspection and the preparation of the final account). Alternatively, the value of this work must be budgeted for in the following financial year.

The above retention limits may be increased with the approval of the Accounting Officer.

Financial guarantees in lieu of retention are, in general, not acceptable and an Insurance of works shall be provided for all works carried out or services rendered.

Payment Terms

Payments for works undertaken or Goods and services rendered be paid upon receipt of correct payment Certificate in terms of the Cash and Investment Policy of Council.

14 Petty cash purchases

- 14.1 Petty cash purchases up to R 500,00 (VAT included) may be purchased where it is impractical, impossible or not cost-effective to follow the official procurement process, but still in accordance to the petty cash policy.
- 14.2 All cash advances or petty cash purchase should be done in accordance to the Petty Cash Policy of ELM.

15 Written quotations

- 15.1 The conditions for the procurement of goods or services from R2 001 to R30 000, through written quotations, are as follows –
- 15.1.1 quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the municipality, provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria in this supply chain management policy;
- 15.1.2 providers must be requested to either submit or confirm such quotations in writing;
- 15.1.3 if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the accounting officer:
- 15.1.4 the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices.

16 Formal written price quotations

- 16.1 The conditions for the procurement of goods or services through formal written price quotations valued from R30 001 to R200 000, are as follows-
- 16.2 There must be an advertisement for at least seven (7) days on the website and notice board of the Municipality
- 16.3 Evaluation must then be done based on the 80/20 principle in paragraph 12 of this policy
- 16.4 when using the list of accredited prospective providers the accounting officer must promote ongoing competition amongst providers, including by inviting providers to submit quotations on a rotation basis;
- 16.5 the accounting officer must take all reasonable steps to ensure that the procurement of goods and services through written quotations or formal written price quotations is not abused;

- 16.6 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, and;
- 16.7 the chief financial officer must set requirements for proper record-keeping of written quotations and final written price quotations.

17 Competitive bids

- 17.1 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, with reference to paragraphs 13 of this policy on Preferential Procurement; and
- 17.2 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.

18 Process for competitive bidding

- 18.1 The procedures for a competitive bidding process are as follows:
 - the compilation of bidding documentation;
 - 18.1.1 the public invitation of bids on E-TENDER;
 - 18.1.2 site meetings or briefing sessions, if applicable;
 - 18.1.3 the handling of bids submitted in response to public invitation;
 - 18.1.4 the evaluation of bids;
 - 18.1.5 the award of contracts;
 - 18.1.6 the administration of contracts; and
 - 18.1.7 proper record-keeping.
- 18.2 Bid documentation for competitive bids

19 The criteria to which bid documentation for a competitive bidding process must comply,

must –

take into account –

the general conditions of contract;

any Treasury guidelines on bid documentation; and

the requirements of the Construction Industry Development Board (CIDB),

in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure; that the offer must be within range include evaluation and adjudication criteria, including any criteria required by other applicable legislation; compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;

19.1 if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish–

19.1.1 if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements for the past three years or since their establishment if established during the past three years;

19.1.2 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;

19.1.3 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;

19.1.4 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

- 19.1.5 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.
- 19.2 A non-refundable charge as determined by the accounting officer shall be raised for bid forms, plans, specifications, samples and any other bid documentation, depending on the nature, magnitude and value of technical information or samples provided by the municipality.
- 19.3 Auditing of bidding processes for bids in excess of R 10 million (all applicable taxes included)
- 19.3.1 The competitive bidding process for all bids in excess of R10 million must be audited to ensure its compliance with the prescribed norms and standards.
- 19.3.2 The auditing process may be performed by the internal or external auditors and the audit is aimed at minimizing the risk of possible fraud, corruption and/or litigation.
- 19.3.3 A certificate must be issued by the auditors to the effect that all prescribed requirements have been adhered to before the contract is awarded.

20 Public invitation for competitive bids

- 20.1 The procedure for the invitation of competitive bids, are as follows:
- 20.1.1 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 way (which may include an advertisement in the Government Tender Bulletin); and E-TENDER
- 20.1.2 the information contained in a public advertisement, must include –
- the closing date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper
- a statement that bids may only be submitted on the bid documentation provided by the municipality; and

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

- 20.2 The accounting officer may determine a closing 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.
- 20.3 The closing date may be extended if requested by a minimum of 50% of the bidders on approval by the Municipal Manager.
- 20.4 Bids submitted must be sealed.
- 20.5 Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

21 Procedure for handling, opening and recording of bids

The procedures for the handling, opening and recording of bids, are as follows:

- 21.1 All bids –
 - must be opened only in public; and
 - must be opened at the same time and as soon as possible after the period for the submission of bids has expired;
- 21.2 the bid/proposal shall be stamped with the official stamps, and endorsed with the opening official's signature;
- 21.3 the name of the bidder, and where possible, the bid sum shall be recorded in a bid opening record kept for that purpose; and
- 21.4 the responsible official who opened the bid shall forthwith place his/her signature on the bid opening record.
- 21.5 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 (except where two-envelope is involved); and

21.6 The accounting officer must – record in a register all bids received in time; make the register available for public inspection; and publish the entries in the register and the bid results on the website.

22 Two-stage bidding process

22.1 A two-stage bidding process is allowed for –

22.1.1 large complex projects;

22.1.2 projects where it may be undesirable to prepare complete detailed technical specifications; or

22.1.3 long term projects with a duration period exceeding three years.

22.2 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.

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

23 Two Envelope System

23.1 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.

23.2 Validity Periods

23.2.1 The period for which bids are to remain valid and binding must be 90 days and must be indicated in the bid documents.

23.2.2 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.

23.2.3 This period of validity may be extended by the Accounting Officer, 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.

23.2.4 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.

23.2.5 The Accounting Officer must ensure that all bidders are requested to extend the validity period of their bids where necessary in order to ensure that the bids remain valid throughout the 21 day appeal period

23.2.6 In the event that an appeal is received, the validity period is deemed to be extended until finalisation of the appeal.

24 Contract Price Adjustment

24.1 Contract price adjustment shall only be applicable if specified in the contract and only for long term contract and must be specified in the bid documents.

24.2 In general, if contract periods do not exceed one year, the bid shall be fixed price bid and not subject to contract price adjustment.

24.3 If the bid validity period is extended, then contract price adjustment may be applied.

24.4 Contract price adjustment shall be implemented in accordance with the general conditions of contract

25 Contracts providing for Compensation Based on Turnover

25.1 If a service provider acts on behalf of the Municipality to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for the service or the amount collected, the contract between the service provider and the Municipality must stipulate;

25.2 a cap on the compensation payable to the service provider; and that such compensation must be performance based.

26 Samples

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 addressee mentioned in the bid documents.

- 26.1 Bids may not be included in parcels containing samples.
- 26.2 If samples are not submitted as required in the bid documents or by the closing date within any further time stipulated by the Chairperson of the Bid Evaluation Committee in writing, then the bid concerned may be declared non-responsive.
- 26.3 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.
- 26.4 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.

27 Closing of Bids

- 27.1 Bids shall close on the date and at the time stipulated in the notice.
- 27.2 For bids (excluding quotations) for goods and services the bid closing date must be at least 14 (fourteen) days after publication of the notice.
- 27.3 For bids (excluding quotations) for construction works the bid closing date must be at least 21 (twenty one) days after publication of the notice.
- 27.4 Notwithstanding the above, if the estimated contract value exceeds R10 million, or if the contract is of a long term nature with a duration period exceeding one year, then the bid closing date must be at least 30 (thirty) days after publication of the notice.
- 27.5 For banking services, the bid closing date must be at least 60 (sixty) days after

publication of the notice.

- 27.6 For proposal calls using a two envelope system, the bid closing date must be at least 30 (thirty) days after publication of the notice.
- 27.7 The bid closing date may be extended by the Accounting Officer if circumstances justify this action; provided that the closing date may not be extended unless a notice is published in the print media and website of the municipality prior to the original bid closing date. This notice shall also be posted on the official notice boards designated by the Accounting Officer, and a notice to all bidders to this effect shall be issued.
- 27.8 The Accounting Officer may determine a closing date for the submission of bids which is less than any of the periods specified in clauses above, 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.

28 Communication with bidders before bid closing

- 28.1 The Accounting Officer or his/her nominee may, if necessary, communicate with bidders prior to bids closing.
- 28.2 Such communication shall be in the form of a notice issued to all bidders by the Accounting Officer, by either e-mail, facsimile, or registered post as 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.
- 28.3 Notwithstanding a request for acknowledgement of receipt of any notice issued, the bidder will be deemed to have received such notice if the procedures above have been complied with.
- 28.4 Late Bids
- 28.4.1 Bids or quotations arriving after the specified closing time shall not be considered and

where practicable and cost effective shall be returned to the bidder unopened with a letter explaining the circumstances.

28.4.2 Where it's necessary to open a late bid or quotation to obtain the name and address of the sender, each page of the document shall be stamped "late bid" before the bid is returned to the bidder. The envelope must be stamped and initialed in like manner and must be retained for record purposes

28.5 Amendment of bids before closing

28.5.1 The Municipality is entitled to amend any bid condition, validity period, specifications or plan, or extend the closing date of such a bid or quotation before the closing date, provided that such Amendments or extensions are advertised and/or that all bidders to whom bid documents have been issued, are advised in writing per registered post or by fax of such Amendments or of the extension clearly reflecting the new closing date and time. For this reason, employees issuing bids shall keep a record of the names, addresses and contact numbers of the persons or enterprises to whom bid documents have been issued

28.6 Dealing with bids and quotations if the closing date thereof has been extended

28.6.1 Where the closing date of a bid or quotation is extended, the notice which makes known such extensions shall also mention the bids or quotations already received, will be retained unopened in the bidding box and be duly considered after the expiry of the extended period, unless the bidder requests that such bid or quotation to be returned to the bidder or unless the bidder cancels it by submitting a later dated bid or quotation before the extended closing date.

28.7 Amendments after closing date

28.7.1 No Amendments after the closing date allowed. The municipality is not entitled to amend any bid condition, validity period, specification or plan after the closing date of the bid and before the acceptance of a bid or quotation has been notified.

29. Opening of Bids where a Two Envelope System (consisting of a technical proposal and a financial proposal) is followed

If a two envelope system is followed, only the technical proposal will be opened at the bid opening.

- 29.1 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.
- 29.2 When required the financial offers/bids corresponding to responsive technical proposals, shall be opened by the opening official.
- 29.3 All bidders who submitted responsive technical proposals must be invited to attend the opening of the financial offers/bids.
- 29.4 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.
- 29.5 After being recorded in the bid opening record, the bids/technical proposals shall be handed over to the official responsible for the supervision of the processing thereof and that official shall acknowledge receipt thereof by signing the bid opening record.

30 Bid Sum

- 30.1 A bid will not necessarily 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.
- 30.2 All rates, with the exception of rates only bids and proprietary information are confidential and shall not be disclosed.

31 Committee system for competitive bids

The following committees should be in place – bid specification committees;

- 31.1 a bid evaluation committee; and a bid adjudication committee;
- 31.2 The accounting officer appoints the members of each committee, taking into account section 117 of the MFMA; and
- 31.3 The accounting officer must provide for an attendance or oversight process by a neutral or independent observer, appointed by the accounting officer, when this is appropriate for ensuring fairness and promoting transparency.
- 31.4 The committee system must be consistent with –
Paragraphs 34, 35,36, 37 and 38 of this policy; and any other applicable legislation.
The accounting officer may apply the committee system to formal written price quotations.

32 Bid specification committees

- 32.1 The appropriate bid specification committee must, depending on the department involved, compile the specifications for each procurement of goods or services by the municipality.
- 32.2 Specifications –
 - 32.2.1 must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
 - 32.2.2 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;
 - 32.2.3 where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;

- 32.2.4 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;
- 32.2.5 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”;
- 32.2.6 must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2011 and paragraph 9 of this policy; and
- 32.2.7 must be approved by the accounting officer prior to publication of the invitation for bids in terms of paragraph 21 of this policy.
- 32.2.8 Where specifications are based on standard documents available to bidders, a reference to those documents is sufficient
- 32.3 The bid specification committee appointed by the accounting officer or his delegated authority, taking into account section 117 of the MFMA, must be composed of one or more officials of the municipality, preferably the manager responsible for the function involved as well as at least one Supply Chain Management practitioner of the municipality, and may, when appropriate, include external specialist advisors.
- 32.3.1 Where appropriate a representative of Internal Audit and/or Legal Services and/or other specialist advisors (internal or external) may form part of this committee.
- 32.4 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.
- 32.4.1 Green procurement must be incorporated as far as reasonable possible, for all specifications of goods, services and construction works.
- 32.4.2 In the development of bid specifications, innovative mechanisms should be explored to

render the service or product more resource and energy efficient.

- 32.4.3 Bid Specification Committee meetings must be conducted in accordance with the applicable Terms of Reference, Rules of Order and Implementation Guidelines Regulating the Conduct of Meetings of Bid Specification, Evaluation and Adjudication Committees

33 Bid evaluation committees

- 33.1 The bid Evaluation Committee appointed by the accounting officer or his delegated authority taking into account.
- 33.2 The Bid Evaluation Committee shall be comprised of at least three Municipality Officials, an appointed Chairperson (who may be the same person as the Chairperson of the Bid Specification Committee), a responsible official and at least one Supply Chain Management Practitioner of the Municipality.
- 33.3 Municipality Manager, or his delegated authority, shall, taking into account section 117 of the MFMA, appoint the members of the Bid Evaluation Committees.
- 33.4 Bid Evaluation Committee meetings must be conducted in accordance with the applicable Terms of Reference, Rules of Order and Implementation Guidelines Regulating the Conduct of Meetings of Bid Specification, Evaluation and Adjudication committees.

34 Bid Evaluation

- 34.1 The SCM Unit carry out a preliminary evaluation of all valid bids received and shall submit a draft bid evaluation report to the Bid Evaluation Committee for consideration.

- 34.2 Any evaluation of a bid shall consider the bids received and shall note for inclusion in the evaluation report, a bidder:

whose bid was endorsed as being invalid by the Municipality official presiding over the bid opening;

whose bid does not comply with the provisions for combating abuse of this policy;

who has failed to submit a certificate of independent bid determination, either with the bid, or within such time for submission stated in the Municipality's written request to do so.

whose bid does not comply with the general conditions applicable to bids and quotations of this Policy;

whose bid is not in compliance with the specification;

whose bid does not meet the minimum score for functionality, if applicable;

whose bid is not in compliance with the terms and conditions of the bid documentation;

who is not registered and verified on the Municipality's supplier database;

who, in the case of construction works acquisitions, does not comply with the requirements of the Construction Industry Development Board Act regarding registration of contractors;

who has failed to submit an original and valid tax clearance certificate from the South African Revenue Services (SARS) certifying that the taxes of the bidder are in order or that suitable arrangements have been made with SARS, and who fails to comply with any applicable Bargaining Council agreements.

Bids shall be evaluated according to the following as applicable:

35 Firstly functionality i.e. the bidder's ability to execute the contract; then:

bid price, excluding VAT (corrected if applicable and brought to a comparative price where necessary),

the unit rates and prices,

any qualifications to the bid,

the bid ranking obtained in respect of preferential procurement as required by this Policy,

the financial standing of the bidder, including its ability to furnish the required institutional guarantee, where applicable,

any other criteria specified in the bid documents.

No bidder may be recommended for an award unless the bidder has demonstrated that it has the necessary resources and skills required to fulfill its obligations in terms of the bid document.

35.1 The Bid Evaluation Committee shall check in respect of the recommended bidder

- whether municipal rates and taxes and municipal service charges are not in arrears.
- 35.3 Additional information or clarification of bids may be called for if required but only in writing.
- 35.4 Alternative bids may be considered, provided that a bid free of qualifications and strictly in accordance with the bid documents is also submitted. The Municipality shall not be bound to consider alternative bids.
- 35.5 If a bidder requests in writing, after the closing of bids, that his/her bid be withdrawn, then such a request may be considered and reported in the bid evaluation report for decision by the Bid Adjudication Committee.
- 35.6 Adjudication points calculated in terms of the preference point system described in this policy must be rounded off to the nearest two decimal places.
- 35.7 The responsive bid that scores the highest number of adjudication points must be recommended for acceptance unless objective criteria, in addition to those specific goals contemplated in section 2 of the PPPFA, justify the acceptance of another bid
- 35.8 If, after bids have been brought to a comparative price, two or more score equal total adjudication points, the recommended bidder shall be the one scoring the highest number of preference points for B- BBEE.
- 35.9 When functionality is part of the evaluation process and two or more bids have scored equal points, including equal preference points for B-BBEE, the recommended bidder shall be the one scoring the highest score for functionality.
- 35.10 All disclosures of a conflict of interest shall be considered by the Bid Evaluation Committee and shall be reported to the Bid Adjudication Committee.

36 Recommendation to Bid Adjudication Committee

- 36.1 The Bid Evaluation Committee shall, having considered the Responsible Department's draft bid evaluation report, submit a report, including recommendations regarding the

award of the bid or any other related matter, to the Bid Adjudication Committee for ward.

37 Bid Adjudication

- 37.1 The Municipality shall not be obliged to accept any bid.
- 37.2 For goods and services bids, the Municipality shall have the right to accept the whole bid or part of a bid or any item or part of an item or accept more than one bid.

38 Bid Adjudication Committee

- 38.1 The Bid Adjudication Committee shall comprise at least four senior managers, and shall include:
 - 38.1.1 the Chief Financial Officer or, if the chief financial officer is not available, another senior finance official heading either of the budget or treasury offices, reporting directly to the chief financial officer and designated by the chief financial officer; and
 - 38.1.2 at least one senior supply chain management practitioner of the Municipality; and
 - 38.1.3 a technical expert in the relevant field who is an official of the Municipality, if the Municipality has such an expert.
- 38.2 The Accounting Officer shall appoint the members and chairperson of the Bid Adjudication Committee. If the chairperson is absent from a meeting, the members of the committee who are present shall elect one of the committee members to preside at the meeting.
- 38.3 Neither a member of a Bid Evaluation Committee, nor an advisor or person assisting such committees, may be a member of a Bid Adjudication Committee.

39 Adjudication and Award

- 39.1 The Bid Adjudication Committee shall consider the report and recommendations of the Bid Evaluation Committee and make a recommendation to the Accounting Officer on

how to proceed with the relevant procurement.

40 Negotiations with preferred bidders

40.1 The accounting officer may, subject to paragraph 4.5 of this policy, negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation –

40.1.1 does not allow any preferred bidder a second or unfair opportunity; is not to the detriment of any other bidder; and

40.1.2 does not lead to a higher price than the bid as submitted. Minutes of such negotiations must be kept for record purposes

41 Approval of Bid not Recommended

41.1 If a Bid Adjudication Committee decides to recommend a bid other than the one recommended by the Bid Evaluation Committee, the Bid Adjudication Committee must, prior to recommending the bid:

41.1.1 check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears;

41.1.2 check in respect of the preferred bidder that it has the necessary resources and skills required to fulfill its obligations in terms of the bid document.

41.1.3 notify the accounting officer

42 Criteria for breaking deadlock in scoring

42.1 If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest point for BBBEE.

42.2 If functionality is part of the evaluative process and two or more tenderers score equal total points and equal preference points for BBBEE, the contract must be awarded to the

tenderer that scored the highest points for functionality.

- 42.3 If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots

43 Award of contracts to tenderers not scoring highest points

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

44 The Accounting Officer may:

- 44.1 after due consideration of the reasons as pointed per clause 41.1. above, accept or reject the decision of the Bid Adjudication Committee referred to above.
- 44.1.1 If the decision of the Bid Adjudication Committee is rejected, refer the decision of the adjudication committee back to that committee for consideration.
- 44.2 If a bid other than the one recommended in the normal course of implementing this Policy is approved, then the Accounting Officer must, in writing and within ten working days, notify the Auditor-General, the Provincial and the National Treasury of the reasons for deviating from such recommendation.
- 44.3 The requirement of above does not apply if a different bid was approved in order to rectify an irregularity.

45 Reconsideration of Recommendations

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

46 Resolution of disputes, objections, complaints and queries

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

46.1.1 To assist in the resolution of disputes between the municipality and other persons regarding –

46.2 any decisions or actions taken in the implementation of the supply chain management system; or any matter arising from a contract awarded in the course of the supply chain management system.

46.3 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

46.3.1 The person appointed must – strive to resolve promptly all disputes, objections, complaints or queries received; and

46.3.2 submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.

46.4 A dispute, objection, complaint or query may be referred to the relevant provincial treasury if – the dispute, objection, complaint or query is not resolved within 60 days; or

46.4.1 no response is forthcoming within 60 days.

46.4.2 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.

46.5 This paragraph must not be read as affecting a person's rights to approach a South African court of law at any time

46.6 Cancellation of Tender

46.6.1 An organ of state may, before the award of a tender, cancel a tender invitation if-

46.6.1.1 due to changed circumstances, there is no longer a need for the goods or services specified in the Invitation;

46.6.1.2 funds are no longer available to cover the total envisaged expenditure;

46.6.1.3 no acceptable tender is received; or

46.6.1.4 there is a material irregularity in the tender process.

46.6.2 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.

46.6.3 An organ of state may only with the prior approval of the relevant treasury cancel a tender invitation for the second time.

46.7 Remedies

46.7.1 Upon detecting that a tenderer submitted false information regarding its BBBEE status level of contribution, local production and content, or any other matter required in terms of these Regulations which will affect or affected the evaluation of a tender, or where a tenderer has failed to declare any subcontracting arrangements, the organ of state must-

46.7.1.1 inform the tenderer accordingly;

46.7.1.2 give the tenderer an opportunity to make a representation within 14 days as to why –

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

46.7.1.3 if it concludes, after considering the representation referred to in subregulation (46.7.1.2) that-

- (i) such false information was submitted by the tenderer-
 - (a) disqualify the tenderer or terminate the contract in whole or in part; and

- (b) if applicable, claim damages from the tenderer; or
- (ii) the successful tenderer subcontracted a portion of the tender to another person without disclosing penalise the tenderer up to 10 percent of the value of the contract.

46.7.2 An organ of state must-

- (i) inform the National Treasury, in writing, of any actions taken in terms of subregulation (46.7.1);
- (ii) provide written submission 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.

46.7.3 The National Treasury may request an organ of state to submit further information pertaining to Subregulation (46.7.1) within a specified period.

46.7.4 The National Treasury must-

- (i) 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
- (ii) maintain and publish on its official website a list of restricted suppliers.

47 Procurement of banking services

Subject to section 33 of the Municipal Finance Management Act, any contract for the provision of banking services –

must be procured through competitive bids;

must be consistent with section 7 or 85 of the MFMA; and

may not be for a period of more than 5 years at a time.

47.1 Bids shall be restricted to banks registered in terms of the Banks Act, 94 of 1990.

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

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 21.1. Bids must be restricted to banks registered in terms of the Banks Act 94 of 1990.

48 Procurement of IT related goods or services

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.

Both parties must enter into a written agreement to regulate the services rendered by, as well as the payments to be made to, SITA.

The accounting officer must notify SITA together with a motivation of the IT needs if –

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

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

- 48.1 If SITA comments on the submission and the municipality disagrees with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the relevant provincial treasury and the Auditor General.

49 Procurement of accommodation for seminars and conferences

- 49.1 The accounting officer may procure accommodation for council business on attendance of conferences/seminars/workshop/meetings outside the Local in the following manner:

- 49.2 Where feasible, three quotations must be sought for accommodation within a reasonable radius from the seminar/meeting/workshop or conference venue. The ruling is in the spirit of not getting a venue that is too far from the conference venue as this can result in getting accommodation too far from the venue.

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

- 50.1 The accounting officer may procure goods or services under a contract secured by another organ of state, but only if –

- 50.1.1 the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
- 50.1.2 there is no reason to believe that such contract was not validly procured;
- 50.1.3 there are demonstrable discounts or benefits to do so; and
- 50.1.4 that other organ of state and the provider have consented to such procurement in writing.

51 Procurement of goods necessitating special safety arrangements

- 51.1 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.
- 51.2 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.

52 Public-Private Partnerships

- 52.1 Part 2 of chapter 11 of the MFMA applies to the procurement of public-private partnership agreements. Section 33 also applies if the agreement will have multi-year budgetary implications for the Municipality within the meaning of that section.

53 Publications in the Media

- 53.1 In respect of any contract relating to the publication of official and legal notices and advertisements in the media by or on behalf of the Municipality, there is no requirement for a competitive bidding process to be followed.

54 Community Based Vendors

- 54.1 The Head of Supply Chain Management may request quotations directly from Community Based Vendors in a specific area or from a specific community for the procurement of goods and services for amounts less than R30 000 (including construction works). Range of Procurement Processes
- 54.2 Goods and services, including construction works and consultant services shall be procured through the range of procurement processes as set out

54.3 ELM being a CRDP Municipality is aiming at promoting local suppliers by meeting the following targets:

52.3.1 Local Youth-Owned suppliers	40%
52.3.2 Local Women-Owned suppliers	30%
52.3.3 Local Disabled persons-Owned suppliers	30%

55 Proudly SA Campaign

The Proudly SA Campaign is supported to the extent that, all things being equal, preference is given to procuring local goods and services from:

Firstly – suppliers and businesses within the municipality or Local;

Secondly – suppliers and businesses within Mpumalanga;

Thirdly – suppliers and businesses within the Republic of South Africa.

The principles set out in sub-paragraph 54.1 must be reflected in the preferential procurement points.

Appointment of consultants

When evaluating bids for the rendering of consultancy services to the council, functionality shall be considered before price.

The accounting officer may procure consulting services provided that any Treasury guidelines and CIDB requirements in respect of consulting services are taken into account when such procurements are made.

Consultancy services must be procured through competitive bids if-

the value of the contract exceeds R200 000 (VAT included); or

the duration period of the contract exceeds one year.

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

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

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

The accounting officer must ensure that copyright in any document produced, as well as 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.

The following criteria are used to evaluate bids for the rendering of consultancy services to the council:

Description of quality criteria and sub-criteria		Maximum number of bid evaluation points	
Specific project applicable expertise			20
*	Infrastructure of firm	10	
	Specific project experience by proposed	10	
Approach and methodology (work plan)			20
	Understanding of the terms of reference /brief	5	
*	Approach and work plan	15	
Track record (Average of previous three projects of Company where proposed project team manager			30
*	Completion of assignment on time	8	
	Quality of work and accuracy reports submitted	6	
*	Response and attendance of meetings	6	
*	Communication with stakeholders	5	
	Application & adherence of conditions of contract	5	

56 Procurement of catering services

Catering cost be determined by the Accounting Officer annually there will be 3-4 caterers that will be there only for emergency purposes

The accounting officer must record the reasons for any deviations in terms of subparagraphs 55.1.1 and 55.1.2 of this policy and report them to the next meeting of the council and include it as a note to the annual financial statements.

Paragraph 55.2 does not apply to the procurement of goods and services contemplated for water and electricity from DWA and ESKOM respectively.

57 Emergency Dispensation

57.1 The conditions warranting Emergency dispensation should include the existence of one or more of the following:

57.2 the possibility of human injury or death;

57.3 the prevalence of human suffering or deprivation of rights;

57.4 the possibility of damage to property, or suffering and death of livestock and animals;

57.5 the interruption of essential services, including transportation and communication facilities or support services critical to the effective functioning of the Municipality as a whole;

57.6 the possibility of serious damage occurring to the natural environment;

57.7 the possibility that failure to take necessary action may result in the Municipality not being able to render an essential community service; and

57.8 the possibility that the security of the state could be compromised.

The prevailing situation, or imminent danger, should be of such a scale and nature that it could not readily be alleviated by interim measures, in order to allow time for the formal procurement process. Emergency dispensation shall not be granted in respect of circumstances other than those contemplated above.

Where possible, in an emergency situation, three quotes in accordance with general acquisition management principles should be obtained and a report submitted, via the Bid Adjudication Committee, to the Municipality Manager for approval. However, where time is of the essence, the emergency shall be immediately addressed, and the process formalised in a report to the Municipality Manager as soon as possible thereafter.

Emergency procurement process:

All emergency related procurement must be pre-approved by the Municipal Manager.

All emergency repairs sourcing occurred over the after hours/weekends/ holidays are to be reported to Supply Chain Management within 48 hours; or the next working day.

Failure to adhere to the above (1), a penalty of 50% of the works amount suffered by Emakhazeni shall be imposed and deducted on the salaries of the Municipal Employees who sourced for the service concern on the next pay date (salary).

58 Deviation from, and ratification of minor breaches of, procurement processes

The accounting officer may –

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 –

in an emergency;

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

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

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

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.

59 Unsolicited bids

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

The accounting officer may decide in terms of section 113(2) of the MFMA to consider an unsolicited bid, only if:–

the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;

the product or service will be exceptionally beneficial to, or have exceptional cost advantages for the municipality and the community;

the person who made the bid is the sole provider of the product or service; and

the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.

If the accounting officer decides to consider an unsolicited bid that complies with sub-paragraph 57.2, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with

reasons as to why the bid should not be open to other competitors;

an explanation of the potential benefits if the unsolicited bid were accepted; and

an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.

All written comments received pursuant to sub-paragraph 57.3, including any responses from the unsolicited bidder, must be submitted to the National Treasury and the relevant provincial treasury for comment.

The bid adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, depending on its delegations.

A meeting of the bid adjudication committee to consider an unsolicited bid must be open to the public.

When considering the matter, the bid adjudication committee must take into account –

any comments submitted by the public; and

any written comments and recommendations of the National Treasury or the relevant provincial treasury.

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 such recommendations.

Such submission must be made within 7 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.

60 Combating of abuse of supply chain management system

60.1 The following measures are established to combat the abuse of the supply chain management system: The accounting officer must–

- 60.1.1 take all reasonable steps to prevent abuse of the supply chain management system;
- 60.1.2 investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this supply chain management policy and, when justified –
- 60.1.3 take appropriate steps against such official or other role player; or
- 60.1.4 report any alleged criminal conduct to the South African Police Service;
- 60.1.5 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;
- 60.1.6 reject any bid from a bidder –
- if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality, or to any other municipality or municipal entity, are in arrears for more than three months; or
 - 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 its performance was unsatisfactory;
- 60.1.7 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;
- 60.1.8 cancel a contract awarded to a person if –
- the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
 - 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
- 60.1.9 reject the bid of any bidder if that bidder or any of its directors –
- has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;
 - has been convicted for fraud or corruption during the past five years;
 - has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or

has been listed in the Register for Tender Defaulters in terms section 29 of the Prevention and Combating of Corrupt Activities Act 12 of 2004.

- 60.2 reject the bid of any bidder tendering as part of a joint-venture, whose bid otherwise be rejected individually or otherwise.

The accounting officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of sub-paragraphs 58.1.7 of this policy.

Part 3: Logistics, Disposal, and Performance Management

61 Logistics management

- 61.1 The accounting officer must implement an effective system of logistics management which must include the following:

61.1.1 monitoring of spending patterns on types or classes of goods and services which should, where practical, incorporate the coding of items to ensure that each item has a unique number for the purposes of monitoring;

61.1.2 setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;

61.1.3 placing of manual or electronic orders for all acquisitions other than petty cash;

61.1.4 before payment is approved, certification from the responsible officer that the goods and services have been 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 or in terms of a contract;

61.1.5 appropriate standards of internal control and warehouse management to ensure goods placed in stores are secure and only used for the purpose for which they were purchased;

61.1.6 regular checking to ensure that all assets, including official vehicles, are properly managed, appropriately maintained and only used for official purposes; and

61.1.7 monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for a particular good or service.

62 Transport Management

- 62.1 The Municipality's fleet management policy must be adhered to at all times.

63 Vendor Performance

- 63.1 The accounting system will enable system-based evaluation, based on the vendors' performance with regard to certain pre-determined criteria.
- 63.2 This information will be available for future evaluation purposes, contract negotiations and regular feedback to the vendors.

64 Contract Administration

- 64.1 Contract administration includes all administrative duties associated with a contract that has arisen through one of the acquisition/procurement processes described in this policy.
- 64.2 All contracts must be administered by a contract manager, who will be an internal official assigned to ensure the effective administration of the contract. 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.
- 64.3 A contract manager must be assigned to each contract and, where possible, should be involved from the earliest stages of the acquisition process.
- 64.4 The contract manager's duties and powers shall be governed by the conditions of contract and the general law.
- 64.5 In administering a contract, the contract manager will be required to form opinions and make decisions which, while in the Municipality's best interests, must be fair to all parties concerned.
- 64.6 Departmental Heads (Directors) shall be responsible for ensuring that contract managers:
 - 64.6.1 are assigned to all contracts within the Department Head's area of responsibility;
 - 64.6.2 are adequately trained so that they can exercise the necessary level of responsibility in the performance of their duties.
 - 64.6.3 The contract manager shall:
 - 64.6.4 ensure that all the necessary formalities in signing up the contract and/or issuing the purchase order(s) are adhered to;
 - 64.6.5 ensure that contracts related to the procurement of goods and services are captured on the Municipality's accounting system in the form of a price schedule;
 - 64.6.6 ensure that all original contract documentation is lodged with the Supply Chain Management Department for record purposes;

- 64.6.7 monitor the performance of the contractor in order to ensure that all of the terms and conditions of the contract are met;
- 64.6.8 where necessary, take appropriate action where a contractor is underperforming or is in default or breach of the contract;
- 64.6.9 manage contract variation or change procedures;
- 64.6.10 administer disputes where necessary, in terms of this policy and the applicable Conditions of Contract; conduct, as appropriate, post contract reviews;
- 64.6.11 maintain adequate records (paper and/or electronic) in sufficient detail on an appropriate contract file to provide an audit trail;
- 64.6.12 act with care and diligence and observe all accounting and legal requirements.

65 Disposal management

65.1 The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to section 14 of the MFMA, are as follows:

65.1.1 Movable assets:

the asset is uneconomical to repair;

the asset is irreparable;

the relevant department has no further use for the asset; and

no other department requires the asset.

65.1.2 Immovable assets:

the relevant department has no further use for the asset;

no other department requires the asset;

a member of the public wishing to acquire the asset can utilize the asset to the advantage of the community; or

where the assets were specifically created for the sale or rental thereof to the public.

65.2 The disposal of assets must–

be by one of the following methods:

transferring the asset to another organ of state in terms of a provision of the MFMA enabling the transfer of assets;

transferring the asset to another organ of state at market related value or, when appropriate, free of charge;

selling the asset; or

destroying the asset;

trading in the asset.

provided that –

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

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;

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 in the case of the disposal of firearms, the National Conventional Arms Control Committee has approved any sale or donation of firearms to any person or institution within or outside the Republic

65.3 When letting or disposing of an asset it must be ensured that –

immovable property is let at market-related rates except when the public interest or the plight of the poor demands otherwise;

all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed; and

where assets are traded in for other assets, the highest possible trade-in price is negotiated.

66 Transfer or Permanent Disposal of Assets and the Granting of Right

66.1 Non-exempted capital assets shall be transferred or permanently disposed of strictly in accordance with Chapter 2 of the Municipal Asset Transfer Regulations.

66.2 Exempted capital assets shall be transferred strictly in accordance with Chapter 3 of the Municipal Asset Transfer Regulations.

66.3 The granting of rights (where sections 14 and 90 of the MFMA do not apply) by the Municipality, shall be executed strictly in accordance with Chapter 4 of the Municipal Asset Transfer Regulations.

67 Performance management

67.1 The accounting officer must ensure that an effective internal monitoring system is implemented in order to determine, on the basis of retrospective analysis, whether the authorised supply chain management processes were followed and whether the measurable performance objectives linked to and approved with the budget and the service delivery and budget implementation plan, were achieved.

67.2 Performance management shall accordingly be characterised by a monitoring process and retrospective analysis to determine whether:

value for money has been attained;

proper processes have been followed;

desired objectives have been achieved;

there is an opportunity to improve the process;

suppliers have been assessed and what that assessment is; and

there has been deviation from procedures and, if so, what the reasons for that deviation are.

67.3 The performance management system shall accordingly focus on, amongst others:

achievement of goals;

compliance to norms and standards;

savings generated;

cost variances per item;

non-compliance with contractual conditions and requirements; and

the cost efficiency of the procurement process itself.

Part 4: Other matters

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

- 68.1 The accounting officer must ensure that, irrespective of the procurement process followed, no award is given to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- 68.2 Before making an award to a provider or bidder, a tax clearance certificate from South African Revenue Service must first be provided as contemplated in paragraph 12.1.1.

69 Prohibition on awards to persons in the service of the state

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

- 69.1 who is in the service of the state; or
- 69.2 if that person is not a natural person, of which any director, manager, majority shareholder or majority stakeholder is a person in the service of the state; or
- 69.3 who is an advisor or consultant contracted with the municipality in respect of a contract that would cause a conflict of interest.

70 Awards to close family members of persons in the service of the state

- 70.1 The notes to the annual financial statements must disclose particulars of any award of more than R2 000 to a person who is a spouse, life partner, 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 –
 - 70.1.1 the name of that person;
 - 70.1.2 the capacity in which that person is in the service of the state; and
 - 70.1.3 the amount of the award.

71 Ethical standards

- 71.1 A code of ethical standards is in place, for officials and other role players in the supply chain management system in order to promote –
 - 71.1.1 mutual trust and respect; and

- 71.1.2 an environment where business can be conducted with integrity and in a fair and reasonable manner.
- 71.1.3 An official or other role player involved in the implementation of the supply chain management policy –
- 71.1.4 must treat all providers and potential providers equitably;
- 71.1.5 may not use his/her position for private gain or to improperly benefit another person;
- 71.1.6 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;
- 71.2 notwithstanding sub-paragraph 69.2.3, 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;
- 71.3 must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by the municipality;
- 71.4 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;
- 71.5 must be scrupulous in his/her use of property belonging to the municipality;
- 71.6 must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
- 71.7 must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –
- 71.7.1 any alleged fraud, corruption, favoritism or unfair conduct;
- 71.7.2 any alleged contravention of paragraph 70.1 of this policy; or
- 71.7.3 any alleged breach of this code of ethical standards.

Declarations in terms of paragraphs 71 must be declared to the accounting officer
must be recorded in a register which the accounting officer must keep for this purpose;

- 71.8 by the accounting officer must be made to the executive mayor who must ensure that such declarations are recorded in the register.
- 71.9 The National Treasury's code of conduct must also be taken into account by supply chain management practitioners and other role players involved in supply chain management. A copy of the National Treasury code of conduct is available on the website www.treasury.gov.za/mfma located under "legislation".
- 71.10 A breach of the code of conduct adopted by the municipality must be dealt with in accordance with Schedule 2 of the Local Government: Municipal Systems Act 32 of 2000.

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

- 72.1 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 –
- 72.1.1 any inducement or reward to the municipality for or in connection with the award of a contract; or
- 72.1.2 any reward, gift, favour or hospitality to –
- any official; or
- any other role player involved in the implementation of the supply chain management policy.
- 72.2 The accounting officer must promptly report any alleged contravention of sub-paragraph 72.1.2 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.
- 72.3 Sub-paragraph 72.1 does not apply to gifts less than R350 in value.

73 Sponsorships

- The accounting officer must promptly disclose to the National Treasury and the relevant provincial treasury any sponsorship promised, offered or granted, whether directly or through a representative or intermediary, by any person who is –
- 73.1 a provider or prospective provider of goods or services; or

73.2 a recipient or prospective recipient of goods disposed or to be disposed.

74 Objections and complaints

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

75 Resolution of disputes, objections, complaints and queries

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

75.1.1 To assist in the resolution of disputes between the municipality and other persons regarding –

any decisions or actions taken in the implementation of the supply chain management system; or

any matter arising from a contract awarded in the course of the supply chain management system.

75.1.2 to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.

75.2 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.

75.3 The person appointed must –

75.3.1 strive to resolve promptly all disputes, objections, complaints or queries received; and

75.3.2 submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.

75.4 A dispute, objection, complaint or query may be referred to the relevant provincial treasury if –

75.4.1 the dispute, objection, complaint or query is not resolved within 60 days; or

75.4.2 no response is forthcoming within 60 days.

75.5 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.

75.6 This paragraph must not be read as affecting a person's rights to approach a South African court of law at any time.

76 Contracts providing for compensation based on turnover

If a service provider acts on behalf of the municipality to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for the service or the amount collected, the contract between the service provider and the municipality must stipulate –

76.1 a cap on the compensation payable to the service provider; and

76.2 that such compensation must be performance-based.

77 Payment of sub-contractors or joint venture partners

The chief financial officer or an official designated by the chief financial officer may consent to the direct payment of sub-contractors or joint venture partners by way of:

77.1 an approved cession; or

77.2 an agreement for direct payment.

78 Extending or varying a contract

78.1 Subject to sub-paragraph 77.2, the municipality on its own initiative or upon receipt of an application from the person, body, organisation or corporation supplying goods or services to the municipality in terms of this policy, may resolve to extend or vary a contract if:-

78.1.1 the circumstances as contemplated in paragraph 55.1.1 prevail; or

78.1.2 with due regard to administrative efficiency and effectiveness, the accounting officer deems it appropriate.

78.2 The municipality may not extend or vary a contract:-

78.2.1 more than once;

78.2.2 for a period exceeding the duration of the original agreement; or

78.2.3 for an amount exceeding 20 percent of the original bid value for construction related goods, services and or infrastructure project and 15 percent for all other goods and or services

78.3 Within 1 month of the decision referred to in sub-paragraph 77.1, the matters specified in sub-paragraph 77.4 must be:-

78.3.1 published by the municipality at least in an appropriate newspaper circulating within the boundaries of the municipality; and

78.3.2 displayed on the notice board of the municipality.

78.4 The matters to be published or displayed are:-

78.4.1 the reasons for dispensing with the prescribed procedure;

78.4.2 a summary of the requirements of the goods or services; and

78.4.3 the details of the person, body, organisation or corporation supplying the goods or services.

79. Circulars and Guidelines

79.1 The National Treasury may issue-

79.1.1 a circular to inform organs of state of any matter pertaining to these Regulations; or

79.1.2 a guideline to assist organs of state with the implementation of any provision of these Regulations.