



Supply Chain Management Policy

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| Council Resolution & Date 29 May 2019 | Resolution 030/SCM/19 |
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The Council of Senqu Municipality resolves in terms of section 111 of the Local Government Municipal Finance Management Act (No. 56 of 2003), to adopt the following as the Supply Chain Management Policy of **Senqu Municipality**.

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[1] Definitions

In this Policy and any bid documentation or directive issued in terms thereof, the singular includes the plural and vice versa, any one gender includes both genders and unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Municipal Finance Management Act, No 56 of 2003 has the same meaning as in the Act, and –

“Accounting Officer” means the manager of the municipal administration and accounting officer of the municipality appointed by the council in terms of section 54A of the Local Government Municipal Systems Act, No 32 of 2000 and includes any employee of the municipality who acts in his stead and, in the event of the municipality being subject to an intervention in terms of section 139 of the Constitution or any other applicable law, includes the “Administrator” appointed as a consequence of such intervention or in terms of the conditions pertaining thereto;

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

“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;

“Bid” means a written offer in a prescribed or stipulated form in response to an invitation to bid issued by the municipality for the procurement of goods, services or works through price quotations, advertised competitive bidding processes, limited bids or proposals or for the disposal of assets and **“tender”** has a corresponding meaning;

“Bid Committees” means the committees established in terms of this policy to prepare bid specifications, bid documentation, evaluate responsive bids and, where so authorised, to adjudicate responsive bids and any reference in section 117 of the Municipal Finance Management Act to municipal tender committees shall be construed as a reference to the aforesaid committees;

“Bidder” means any person who submits a bid or quotation to the municipality in response to an invitation to bid or quote and includes a **“tenderer”**;

“Bid documentation” means all documentation relating to or necessary in order to complete a procurement or disposal including but not limited to such specification, bidding, certification and contractual documentation as may be prescribed by National Treasury or the Construction Industry Development Board, as the case may be, for municipal supply chain management purposes and the implementation of this policy;

“Bidder” means any person who submits a bid or quotation to the municipality in response to an invitation to bid or quote and includes a **“tenderer”**;

“Bid rigging” means a prohibited collusive bidding practice in terms of which bidders that would normally be expected to compete in a procurement process either singularly or by association with other persons or firms in a horizontal relationship, secretly conspire to raise prices or lower the quality of goods and/or services or agree not to compete against each other in such process;

“Black people” is a generic term which means Africans, Coloureds and Indians;

"Broad-Based Black Economic Empowerment Act" means the Broad-Based Black Economic Empowerment Act No. 53 of 2003;

"Chief Financial Officer" means the official of the municipality designated as such in terms of section 80(2)(a) of the Municipal Finance Management Act;

"CIDB" means the Construction Industry Development Board;

"CIDB regulations" means any regulations issued in terms of the Construction Industry Development Board Act No. 38 of 2000;

"Codes of Good Practice" means 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 contained in General Notice 12 of 9 February 2007;

"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 transparent procurement method in which bids from competing contractors, suppliers or vendors are invited by openly advertising the scope, specifications, terms and conditions of the proposed contract as well as the criteria by which responsive bids received will be evaluated;

"Competitive bid" means a bid in terms of a competitive bidding process;

"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;

"Consortium or joint venture" means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;

"Construction works" or **"works"** means the provision of a combination of goods and services arranged for the development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset including building and engineering infrastructure;

"Contractor" means a person or body of persons who undertakes to execute and complete procured construction works for or on behalf of the municipality;

"Contract" means the agreement that results from the acceptance of a bid by the municipality in accordance with this policy;

"Council" means the council of **Senqu** Municipality;

"Day" unless expressly otherwise provided in this policy, means a calendar day, provided that when any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday;

"Delegating authority" means the council, a duly authorized political structure or office bearer thereof, the Accounting Officer or other employee to whom original powers are assigned in terms of legislation and, in relation to a sub-delegation of a power, that delegated body;

“Delegation” means the issuing of a written authorization by a delegating authority to a delegated body to act in his stead and, in relation to a duty, includes an instruction or request to perform or to assist in performing the duty and “delegate” and sub-delegate has a corresponding meaning;

“Delegated body” in relation to the delegation of a power means the person to whom a power has been delegated by the delegating authority in writing;

“Designated Official” means the official of the municipality to whom the accounting officer or the chief financial officer, as the case may be, have, in accordance with sections 79 and 82 of the Municipal Finance Management Act No. 56 of 2003 delegated or sub-delegated powers, functions and duties in connection with the application and implementation of this policy provided that a sub-delegation by the chief financial officer to an official that has not been allocated to him by the accounting officer or to a person contracted by the municipality for the work of its budget and treasury office may only be so authorized with the concurrence of the accounting officer and provided further that the said chief financial officer is satisfied that effective systems and procedures are in place to ensure control and accountability by the person concerned;

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

“Disposal” means a process of preparing, negotiating and concluding a written contract relating to the alienation or a capital asset whether movable or immovable owned by or under the control of the municipality or rights in respect thereof, by means of a sale, lease, donation or cession and **“dispose of”** has a similar meaning;

“Disability” means, in respect of a person, a permanent impairment of a physical, intellectual, or sensory function, which results in restricted or lack of ability to perform an activity in the manner or within the range considered normal for a human being;

“e-Tendering” means that you can place a tender electronically on the National Treasury website through e-tendering

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

“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 any applicable 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 a contract;

“Formal written price quotations” means quotations referred to in paragraph 12 (1) (c) of this policy;

“Functionality” means the measurement according to predetermined norms, as set out in the bid specification, 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;

“Fronting” means a deliberate circumvention or attempted circumvention of the "Broad-Based Black Economic Empowerment Act and the Codes of Good Practice;

“Functionality” means the measurement according to predetermined norms, as set out in the tender document, of a certain commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, validity and durability of a service and the technical capacity and ability of a tender;

“Head of Department” means a senior manager as defined in the Municipal Finance Management Act and who is responsible for a vote as assigned by the accounting officer;

“Historically disadvantaged individual” means a South African Citizen or any service provider:

- [a] who due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, Act No 200 of 1993 or the Constitution of the Republic of South Africa, Act No 200 of 1993 (“the Interim Constitution); and / or
- [b] who is a female; and / or
- [c] who has a disability;

Provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not to be an HDI;

“Imported content” means that portion of the bid or tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its 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 of entry;

“In the service of the state” means to be -

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

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

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

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

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

“Mayor” means the councillor elected by the council as Mayor in terms of section 48 of the Local Government: Municipal Structures Act No. 117 of 1998 read with section 58 of the Municipal Finance Management Act;

“Municipality” means the **Senqu Municipality**, a local municipality established in terms of section 12 of the Local Government: Municipal Structures Act No. 117 of 1998 and includes any employee entitled to or duly authorized to perform any function or duty in terms of this policy and/or is responsible for the implementation of this policy or any part thereof;

“Municipal Finance Management Act” means the Local Government: Municipal Finance Management Act No. 56 of 2003 and, unless otherwise stated in this policy, any reference to “the Act” shall mean a reference to this Act;

“Municipal Systems Act” means the Local Government: Municipal Systems Act No. 32 of 2000 and includes the regulations under this Act;

"Non-firm prices" means all prices other than "firm" prices;

“Other applicable legislation” means any other legislation applicable to municipal supply chain management, including but not limited to -

- [a] the Preferential Procurement Policy Framework Act No. 5 of 2000;
- [b] the Broad-Based Black Economic Empowerment Act No. 53 of 2003;
- [c] the Construction Industry Development Board Act No. 38 of 2000;
- [d] the Local Government: Municipal Systems Act No. 32 of 2000 (Municipal Systems Act);
- [e] the Promotion of Administrative Justice Act No. 3 of 2000;
- [f] the Promotion of Access to Information Act No. 2 of 2000;
- [g] the Protected Disclosures Act No. 26 of 2000;
- [h] the Competition Act No. 89 of 1998;
- [i] the Prevention and Combating of Corrupt Activities Act No. 12 of 2004;

"Person" includes an enterprise, partnership, trust, association, consortium, joint venture or a juristic person;

“Preferential Procurement Regulations” means the Preferential Procurement Regulations, 2017 contained in Government Notice R 32 of 20 JANUARY 2017 promulgated in Government Gazette No. 34350 of this date;

“Procurement” means the processes leading to the negotiation and conclusion of contracts whether in writing or verbally for the acquisition of goods, services or construction works or any combination thereof or the disposal of assets whether movable or immovable or any rights in such assets by means of purchase, sale, lease or donation and includes the preparation of all associated bid and contractual documentation and **“procured”** or **“procuring”** has a similar meaning;

“Quotation” means a stated price that a supplier expects to receive for the provision of specified services, goods or works;

“Responsive bid” means a bid that complies in all material aspects with the requirements set out in or contained in an invitation to bid including the applicable specification;

"Small enterprise" means a separate and distinct business entity, together with its branches or subsidiaries, if any, including cooperative enterprises, managed by one owner or more predominantly carried on in any sector or sub-sector of the economy mentioned in column 1 of the Schedule to the National Small Business Act No. 102 of 1996 which is contained in Annexure B to this policy and classified as a micro-, a very small, a small or a medium enterprise by satisfying the criteria mentioned in columns 3, 4 and 5 of the said schedule;

“ Security Session” means that the Municipality will secure funds in writing to the manufacturer;

"Stipulated minimum threshold" means that portion of local production and content as determined by the Department of Trade and Industry from time to time;

"Sub-contract" means the primary contractor's assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of a contract;

"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;

“SANAS” means the South African National Accreditation System;

"Total revenue" bears the same meaning assigned to this expression in the Codes of Good Practice;

"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;

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

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

“Verbal Quotations” means a verbal process of inviting quotations from an identified limited number of potential suppliers for the supply goods, services and/or works;

"Verification Certificate" means a B-BBEE certificate issued in compliance with the B-BBEE Codes of Good Practice and all Sector Codes issued in terms of Section 9(1) of the Broad-Based Black Economic Empowerment Act;

“Written quotations” means quotations referred to in paragraph [16] of this policy.

CHAPTER 1

IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

[2] Supply chain management policy

- [1] All officials and other role players in the supply chain management system of the municipality must implement this Policy in a way that –
- [a] gives effect to –
 - [i] section 217 of the Constitution; and
 - [ii] Part 1 of Chapter 11 and other applicable provisions of the Act;
 - [b] is fair, equitable, transparent, competitive and cost effective;
 - [c] complies with –
 - [i] the Regulations; and
 - [ii] any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
 - [d] is consistent with other applicable legislation and guidelines, being:

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| Banks Act, 1990, Act No.94 of 1990 |
| The Constitution of the Republic of South Africa, 1996, Act No 108 of 1996 |
| Public Finance Management Act, 1999, Act No 1 of 1999 |
| Preferential Procurement Policy Framework Act, 2000, Act No 5 of 2000 |
| Local Government: Municipal Systems Act, 2000, Act No 32 of 2000 |
| Construction Industry Development Board Act, 2000, Act 38 of 2000 |
| Preferential Procurement Regulations, 2017, Pertaining to the Preferential Procurement Framework Act – Notice 22549 of 10 August 2001 – Gazette No 7134 |
| Broad-Based Black Economic Empowerment Act, 2003, Act No 53 of 2003 |
| Municipal Finance Management Act, 2003, Act No 56 of 2003 |
| National Treasury: MFMA Circular No. 2 – Supply Chain Management – 20 July 2004 |
| Prevention and Combating of Corruption Activities Act, Act No 12 of 2004. |
| Local Government: Municipal Finance Management Act, 2003 – Municipal Supply Chain Management Regulations – Notice 868 of 2005 |
| National Treasury: MFMA Circular No. 22 – Model Supply Chain Management Policy – 25 August 2005 |
| Code of Conduct for Supply Chain Management Practitioners and Other Role Players - August 2005. |
| Municipal Supply Chain Management Model Policy – August 2005. |
| National Treasury: MFMA Circular No.25 – Supply Chain Management Guide, General Conditions of Contract and Municipal Bidding Documents – 3 October 2005. |
| A Guide for Accounting Officers of Municipalities and Municipal Entities – October 2005 |
| General Conditions of a Contract – October 2005. |
| Senqu Municipality: Supply Chain Management Policy Ver. 1 – 1 January 2006. |
| Government Notice 44 – Exemptions from Supply Chain Management Regulations – 18 January 2006. |
| National Treasury: MFMA Circular No. 29 – Supply Chain Management Issues – 31 January 2006. |
| National Treasury: MFMA Circular No.33 – Supply Chain Management Issues – 27 March 2006. |

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| Senqu Municipality: Supply Chain Management Policy Ver. 2 – 1 January 2007. |
| National Treasury: MFMA Circular No.34 – Supply Chain Management Issues – 28 June 2006 |
| National Treasury: MFMA Circular No.43 – SCM Restriction of Suppliers 25 May 2007 |
| Government Procurement: General Conditions of a Contract – 25 May 2007 |
| National Treasury: MFMA Circular No.46 – Checking the prohibition status of recommended bidders – 17 March 2008 |
| National Treasury: MFMA Circular No.52 – Prohibition of restrictive practices – 30 July 2010 |
| National Treasury: MFMA Circular No.53 – Amended guidelines on functionality or evaluation of bids – 03 September 2010 |
| National Treasury: MFMA Circular No.62 – SCM enhancing compliance and accountability – 20 August 2012 |
| National Treasury: MFMA Circular No.68 – Unauthorised, Irregular, Fruitless and Wasteful Expenditure – 10 May 2013 |
| National Treasury: MFMA Circular No.69 – SCM on Local Production and Content – 22 May 2013 |
| National Treasury: MFMA Circular No. 77 – Model SCM Policy for Infrastructure Procurement and Delivery Management – 26 October 2015 |
| National Treasury: MFMA Circular No.81 – Web Based Central Supplier Database (CSD) – 18 March 2016 |
| National Treasury: MFMA Circular No. 83 – eTender Portal – 18 July 2016 |
| National Treasury: MFMA Circular No. 90 – Tax Compliance Status – 30 January 2018 |

- [e] does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
 - [f] is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.
- [2] The municipal entity must, in addition to complying with subparagraph (1), apply this Policy, to the extent determined by the parent municipality, in a way that and that is consistent with supply chain management policy of the parent municipality.
- [3] This Policy applies when the municipality –
- [a] procures goods or services;
 - [b] disposes goods no longer needed;
 - [c] selects contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
 - [d] selects external mechanisms referred to in section 80 (1)(b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.
- [4] This Policy, except where provided otherwise, does not apply in respect of the procurement of goods and services contemplated in section 110 (2) of the Act, including –
- [b] electricity from Eskom or another public entity, another municipality or a municipal entity;
 - (c) fuel and diesel;
 - (d) government advertising;
 - (e) communication to local community in terms of section 21 and 21A of Municipal Systems Act 32 of 2000.

- [5] Notwithstanding anything to the contrary in this policy, the municipality shall not award a contract to a contractor in respect of the undertaking, carrying out or completion of any construction works or a portion thereof in terms of a competitive bidding or quotation process provided for in this policy unless such contractor is registered with the Construction Industry Development Board established by section 2 of the Construction Industry Development Board Act No. 32 of 2000 and holds a valid registration certificate issued by such Board or is exempted from such registration either in terms of this Act or the “CIDB Regulations”.

[3] **Amendment of the supply chain management policy**

- [1] The accounting officer must –
- [a] at least annually review the implementation of this Policy; and
 - [b] when the accounting officer consider it necessary, submit proposals for the amendment of this Policy to the council of the municipality.
- [2] If the accounting officer submits proposed amendments to the council of the municipality that differs from the model policy issued by the National Treasury, the accounting officer must –
- [a] ensure that such proposed amendments comply with the Regulations; and
 - [b] report any deviation from the model policy to the National Treasury and relevant provincial treasury.
- [3] When amending this supply chain management policy the need for uniformity in supply chain practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.

[4] **Delegation of supply chain management powers and duties**

- [1] The council of the municipality hereby delegates all powers and duties to the accounting officer which are necessary to enable the accounting officer –
- [a] to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
 - [i] Chapter 8 or 10 of the Act; and
 - [ii] this Policy;
 - [b] to maximize administrative and operational efficiency in the implementation of this Policy;
 - [c] to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this Policy; and
 - [d] to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- [2] Sections 79 and 106 of the Act apply to the sub-delegation of powers and duties delegated to an accounting officer in terms of sub-paragraph (1).
- [3] The accounting officer may not sub-delegate any supply chain management powers and duties to a person who is not an official of the municipality or to a committee which is not exclusively composed of officials of the municipality.

- [4] This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph [26] of this Policy.
- [5] **Sub-delegations**
- [1] The accounting officer may in terms of section 79 or 106 of the Act sub delegate any supply chain management powers and duties, including those delegated to the accounting officer in terms of this Policy, but any such sub delegation must be consistent with subparagraph (2) of this paragraph and paragraph 4 of this Policy.
- [2] The power to make a final award –
- [a] above R 10 million (VAT included) may not be sub delegated by the accounting officer;
 - [b] above R 2 million (VAT included), but not exceeding R 10 million (VAT included), may be sub delegated but only to a bid adjudication committee of which the chief financial officer or senior manager is a member;
 - [c] above R 200 000 (VAT included), but not exceeding R 2 million (VAT included) may be sub delegated but only to a bid adjudication committee of which the chief financial officer or senior manager is a member.
- [3] The bid adjudication committee to which the power to make final awards has been sub delegated in accordance with subparagraph (2) must within ten days of the end of each quarter submit to the official referred to in subparagraph (4) a written report containing particulars of each final award made by such official or committee during that month, including -
- [a] the amount of the award;
 - [b] the name of the person to whom the award was made; and
 - [c] the reason why the award was made to that person.
- [4] A written report referred to in subparagraph (3) must be submitted –
- [a] to the accounting officer, in the case of an award by –
 - [i] the chief financial officer;
 - [ii] a senior manager; or
 - [iii] a bid adjudication committee of which the chief financial officer or a senior manager is a member; or
 - [b] to the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by -
 - [i] a manager referred to in subparagraph (2) (c); or
 - [ii] a bid adjudication committee of which the chief financial officer or senior manager is not a member.
- [5] Subparagraphs (3) and (4) of this policy do not apply to procurements out of petty cash.
- [6] This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.
- [7] No supply chain management decision-making powers may be delegated to an advisor or consultant.
- [8] All delegations should be in writing. The accounting officer's accountability in terms of section 60 of the Municipal Finance Management Act, Act No 56 of 2003 cannot be delegated.

[6] Oversight role of council

- [1] Section 117 of the Municipal Finance Management Act prohibits Councillor from being a member of a bid committee or any other committee evaluating or approving quotations or bids nor may a Councillor attend any such meeting as an observer. Council, however, has an oversight role to ensure that the Municipal Manager implements this Supply Chain Management Policy.
- [2] The council must maintain oversight over the implementation of this policy to ensure that the accounting officer implements all supply chain management activities in accordance therewith.
- [3] For the purposes of such oversight the accounting officer must –
 - [a] in the case of the municipality –
 - [i] within 30 days of the end of each financial year, submit a report on the implementation of this Policy and the supply chain management policy of any municipal entity under sole or shared control of the municipality, to the council of the municipality; and
 - [ii] whenever there are serious and material problems in the implementation of this Policy, immediately submit a report to the council; and
 - [b] in the case of a municipal entity -
 - [i] within 20 days of the end of each financial year, submit a report on the implementation of this Policy to the board of directors, who must then submit the report to the accounting officer of the parent municipality for submission to the council; and
 - [ii] whenever there are serious and material problems in the implementation of this Policy, immediately submit a report to the board of directors, who must then submit the report to the accounting officer of the parent municipality for submission to the council.
- [4] The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the mayor.
- [5] The reports must be made public in accordance with section 21A of the Municipal Systems Act.

[7] Supply chain management unit

- [1] A supply chain management unit is hereby established to implement this Policy.
- [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 79 of the Act.

[8] Training of supply chain management officials

The training of officials involved in implementing this Policy should be in accordance with any Treasury guidelines on supply chain management training. Funding and resources would be made available to ensure that all officials involved in the supply chain management meets the competency levels referred to in section 119 of the Municipal Finance Management Act, Act No 56 of 2003.

CHAPTER 2

SUPPLY CHAIN MANAGEMENT SYSTEM

[9] Format of supply chain management system

This Policy provides systems for –

- [a] demand management;
- [b] acquisition management;
- [c] logistics management;
- [d] disposal management;
- [e] risk management; and
- [f] performance management.

Part 1: Demand management

[10] System of demand management

- [1] The accounting officer must establish and implement an appropriate demand management system in order to ensure that resources required by the municipality support its operational commitments and its strategic goals outlined in the Integrated Development Plan.
- [a] The objective of a demand management plan is to assist the municipality with the planning for the procurement of goods, service or infrastructure projects in a pro-active manner and to move away from merely reacting to purchasing requests.
 - [b] Accounting officers of municipalities must develop a procurement plan containing all planned procurement for the financial year, in respect of the procurement of goods, services and infrastructure projects which exceed R200 000 (all applicable taxes included) per case as described in the Supply Chain Management: Guide for Accounting Officers. This procurement plan must be approved by the accounting officer or his or her delegate.
 - [c] All user departments are required to submit their procurement plans to the Head Supply Chain Management in the municipality or municipal entity to improve planning and management of resources.
 - [d] All relevant information should preferably be furnished in the format contained in the Procurement Plan Template enclosed as Annexure B of MFMA Circular 62.
 - [e] Municipalities/municipal entities may customize and utilize the template with minimum changes necessary to address the municipality's/municipal entity's specific issues. The template should however cover the minimum information reflected in Annexure B to this Circular.

(Guidelines on how to establish a system of demand management -> MFMA Circular 62)

- [2] The demand management system must –
- [a] include timely planning and management processes to ensure that all goods and services required by the municipality are quantified, budgeted for and timely and effectively delivered at the right locations and at the critical delivery dates, and are of the appropriate quality and quantity at a fair cost;
 - [b] take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature;
 - [c] provide for the compilation of the required specifications to ensure that its needs are met.
 - [d] to undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.

- [3] The accounting officer must, prior to issuing an invitation to bid-
 - [a] properly plan for, and, as far as possible, accurately estimate the costs for the provision of goods, services and/or works for which an invitation to bid is to be issued;
 - [b] determine the appropriate preference point system to be utilized in the evaluation and adjudication of bids to be received in response to the contemplated invitation to bid; and
 - [c] determine whether the goods, services and/or works for which an invitation to bid is to be issued has been designated for local production and content in terms of section 9 of the Preferential Procurement Regulations and paragraph 29(5) of this policy.

- [4] The following key elements of the demand management process will be undertaken by the Bid Specification Committee:
 - [a] Supply chain management integration in the strategic planning process;
 - [b] understanding the future needs – research and needs analysis to be conducted;
 - [c] identifying critical delivery dates;
 - [d] the frequency of need;
 - [e] linking the requirement to the budget;
 - [f] undertaking an expenditure analysis based on past expenditure;
 - [g] compiling of specifications;
 - [h] undertaking a commodity analysis – checking for alternatives;
 - [i] undertaking a market / industry analysis; and
 - [j] providing regular feedback to and from the role players.

- [5] The accounting officer must indicate in an invitation to submit a bid and in the applicable bid specification or terms of reference-
 - [a] that such bid will be evaluated on functionality and, in such event, the following shall be clearly stated:
 - [i] the evaluation criteria for measuring functionality which criteria must be objective;
 - [ii] the weight of each criterion which should not be generic but be determined separately for each bid on a case by case basis;
 - [iii] the applicable values that will be utilized when scoring each criterion which values must be objective;
 - [iv] the minimum qualifying score for functionality in order to enable the bid concerned to be further evaluated in terms of this policy provided that the aforesaid qualifying score:
 - [aa] should not be generic but be determined separately for each bid on a case by case basis; and
 - [bb] should not be prescribed so low that it may jeopardize the quality of the service or works required nor be so high that it may be restrictive to the extent that it jeopardizes the fairness of the supply chain management system;
 - [b] the fact that no bid will be regarded as an acceptable bid if the bidder or the goods, services and/or works to be procured, as the case may be, fails to achieve the minimum qualifying score for functionality as indicated in the invitation to bid and the relevant bid specification or terms of reference; and
 - [c] that bids that have achieved the minimum qualification score for functionality will be evaluated further in terms of the preference point systems.

[6] The Demand Management System procedures are as follow:

| VALUE | PROCEDURES |
|--------------------|---|
| R 0 – R 2 000 | <ul style="list-style-type: none"> ➤ Budget & Treasury Office (BTO) would on request provide each Head of department with an official requisition book. ➤ Only the Head of department or delegated Manager is allowed to issue a requisition. ➤ The BTO should be informed in writing if the issuing of requisitions has been delegated. ➤ Delegations for the issuing of requisitions are limited to R 2 000. ➤ Requisition forms should be completed in full – name and details of provider, quantity, particulars of goods or services needed and amount including VAT. ➤ The Head of department should ensure that the correct expenditure vote and line item numbers are used. ➤ The Head of department should ensure that funding for the goods or services requested is available. ➤ Unless approved by the CFO, requisitions would only be processed between 08h00 – 10h00 and 15h30 – 16h30 every week day. ➤ The CSD registration number must be written on the requisition. (In) ➤ Requisitions should be signed by Managers or Directors as per the delegation framework. |
| R 2 001 – R 30 000 | <ul style="list-style-type: none"> ➤ Budget & Treasury Office (BTO) would on request provide each Head of department with an official requisition book. ➤ Only the Head of department or delegated Manager is allowed to issue a requisition. ➤ The BTO should be informed in writing if the issuing of requisitions have been delegated ➤ Delegations for the issuing of requisitions are limited to R 10000 ➤ Requisition forms should be completed in full – name and details of provider, quantity, particulars of goods or services needed and amount including VAT. ➤ The Head of department should ensure that the correct expenditure vote and line item number is used. ➤ The Head of department should ensure that funding for the goods or services requested is available. ➤ Unless approved by the CFO, requisitions would only be processed between 08h00 – 10h00 and 15h30 – 16h30 every week day. ➤ The CSD registration number must be written on the requisition. (In) ➤ Requisitions should be signed by Managers or the Director as per the delegation framework. ➤ Three written quotations should accompany the requisition. ➤ The Request for written or verbal quotation forms available from the BTO should used. |

| | |
|--------------------------|--|
| R 30 001 – R 200 000 | Approval to be given by only CFO and Municipal Manager |
| R 200 000 – R 10 million | Competitive Bidding Process |
| R 10 million + | Competitive Bidding Process |

- [7] Any system designed in terms of this paragraph shall take cognizance of the provisions of this policy.

Part 2: Acquisition management

[11] Systems of acquisition management

- [1] The accounting officer must implement the system of acquisition management set out in this Part in order to ensure –
- [a] that goods and services are procured by the municipality in accordance with authorised processes only;
 - [b] that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
 - [c] that the threshold values for the different procurement processes are complied with;
 - [d] that bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
 - [e] that any Treasury guidelines on acquisition management are properly taken into account.
- [2] When procuring goods or services contemplated in section 110 (2) of the Act, the accounting officer must make public the fact that such goods or services are procured otherwise than through the municipality's supply chain management system, including –
- [a] the kind of goods or services; and
 - [b] the name of the supplier.
- [3] Any bid condition that will exclude certain categories of potential bidders from bidding for contracts is unconstitutional and the municipality shall refrain from such practices. The municipality will however implement the Preferential Procurement Regulation of 2017, which are on paragraph 29(21) of this policy.
- [4] Where the recommended bidder is not tax compliant, the bidder should be notified of their non-compliant status and the bidder must be requested to submit to the municipality or municipal entity, within 7 working days, written proof from SARS of their tax compliance status or proof from SARS that they have made an arrangement to meet their outstanding tax obligations. The proof of tax compliance status submitted by the bidder to the municipality or municipal entity must be verified via the CSD or e-Filing. The accounting officer should reject a bid submitted by the bidder if such a bidder fails to provide proof of tax compliance status within the timeframe stated above.

[12] Range of procurement processes

| STRUCTURE OF APPROVAL | | |
|---|---|---|
| GOODS/SERVICE VALUE | MINIMUM PROCUREMENT METHOD | APPROVAL AUTHORITY |
| R 0 – R 2 000 (Vat Inc.) | Petty Cash: One written Quote | Head of Department or Appropriately Delegated Manager in writing and CFO or Appropriately Delegated official in writing |
| R 2 001 – R 30 000 (Vat Inc.) | Three written Quotations | Head of Department or Appropriately Delegated Manager in writing and CFO or Appropriately Delegated official in writing. |
| Up to R30 000. (Vat Inc) | Three written Quotations | Head of Department or Appropriately Delegated Manager in writing and CFO or Appropriately Delegated official in writing. All quotations above R15 000.00, the Municipality must verify the Supplier's registration with SARS if the Supplier is registered and a valid tax clearance certificate should be submitted. |
| R 30 001 – R 200 000 (Vat Inc.) | 7 days bulletin notice Advertisement via Website PPPFA requirements | Accounting Officer and Chief Financial Officer |
| R 200 000 to Bellow R 10 million (Vat Inc.) | 14 Days Advertisement Competitive Bidding Process | Bid Adjudication Committee |
| R 50 million + | 30 Days Advertisement Competitive Bidding Process | Accounting Officer |

- [1] Goods and services may only be procured by way of –
- [a] petty cash purchases, up to transaction value of R 2 000 (VAT included);
 - [b] written quotations for procurements of a transaction value over R 2 000 up to R 30 000 (VAT included);
 - [c] formal written price quotations for procurements of a transaction value over R 30 000 up to R 200 000 (VAT included); and
 - [d] a competitive bidding process for –
 - [i] procurements above a transaction value of R 200 000 (VAT included); and
 - [ii] the procurement of long term contracts.
- [2] The accounting officer may, in writing -
- [a] lower, but not increase, the different threshold values specified in subparagraph [1]; or
 - [b] direct that –
 - [i] written or verbal quotations be obtained for any specific procurement of a transaction value lower than R 2 000;
 - (ii) All quotations above R15 000.00, the Municipality must verify the Supplier's registration with SARS if the Supplier is registered and a valid tax clearance certificate should be submitted.

- [iii] formal written price quotations be obtained for any specific procurement of a transaction value lower than R 30 000; or
 - [iv] a competitive bidding process be followed for any specific procurement of a transaction value lower than R 200 000.
- [3] Goods or services may not deliberately be split into parts or items of 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.
- [4] Verification by the Chief Financial Officer prior to advertisement of bids above R10 million - the following information must be submitted by the senior manager responsible for the Vote to the CFO **prior** to the public advertisement of any bids in excess of R10 million (all applicable taxes included):
 - [a] Proof that budgetary provision exists for procurement of the goods, services and/or infrastructure projects;
 - [b] Any ancillary budgetary implications related to the bid, for example, if the project is for the acquisition of a municipal asset, does budgetary provision exist for the operation of the asset, maintenance costs relating to the asset, administration costs and rehabilitation/renewal costs;
 - [c] Any multi-year budgetary implications, for example, if a project will take more than one financial year, the estimated expenditure per financial year.
 - [d] Goods, services and/or infrastructure projects above the value of R10 million (all applicable taxes included) may only be advertised after the CFO has verified in writing that budgetary provision exists for the commencement of the particular project.
 - [e] Requirements may not be deliberately split into parts or items of lesser value merely to avoid the information being submitted.
- [5] Verification from the Chief Financial Officer prior to the award of contracts above the value of R10 million -
 - [a] Contracts above the value of R10 million (all applicable taxes included) may only be awarded to the preferred bidder after the Chief Financial Officer has verified in writing that budgetary provision exists for the acquisition of the goods, infrastructure projects and/or services and that it is consistent with the Integrated Development Plan.
- [6] Confirmation of bidding process for bids in excess of R10 million (all applicable taxes included):
 - [a] Internal audit units must compile risk-based audit plans, review internal control measures, and ensure that supply chain management, including the requirements of this Circular, is sufficiently and adequately covered in the annual coverage plan, within 2 weeks after submission of the tender documents.
 - [b] Internal auditors must be alert to fraud risks and design audit procedures and indicators that would reasonably assist in preventing and detecting potential or actual fraud and corruption.
 - [c] During competitive bidding and adjudication processes or before the award of a contract, the accounting officer may, at his or her discretion, specifically request the internal audit function to carry out audit procedures and provide an opinion on compliance of the bidding process with the Municipal Supply Chain Management Regulations.
 - [d] Where bids involve internal audit service, the audit of the bidding process may be outsourced to an independent external service provider or internal audit function of another organ of state, subject to the oversight of the audit committee
 - [e] The accounting officer may, at his or her discretion, decide to have a specific contract audited by external service providers prior to the award of the contract.

[13] General preconditions for consideration of written quotations or bids

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

- [a] has furnished that provider's –
 - [i] full name;
 - [ii] identification number or company or other registration number; and
 - [iii] Where the recommended Supplier is not tax compliant, the Supplier should be notified of their non-compliant status and the Supplier must be requested to submit to the municipality or municipal entity, within 7 working days, written proof from SARS of their tax compliance status or proof from SARS that they have made an arrangement to meet their outstanding tax obligations. The proof of tax compliance status submitted by the bidder to the municipality or municipal entity must be verified via the CSD or e-Filing.

The accounting officer should reject a bid submitted by the bidder if such a bidder fails to provide proof of tax compliance status within the timeframe stated above.

- [b] has authorised the municipality to obtain a tax clearance from the South African Revenue Services that the provider's tax matters are in order;
- [c] has, where applicable, provided the municipality with a clearance certificate from the Construction Industry Development Board to the effect that he/she holds a valid registration certificate issued by the Board;
- [d] has provided the municipality with a "Certificate of Independent Bid Determination" on Form MBD 9 or a similar form;
- [e] has provided a certificate / letter issued by the municipality or any other municipality to which he may be indebted to the effect that he and, in the event of the bidder being a company, also any of its directors, is not indebted to the municipality or to any other municipality or municipal entity for rates, taxes and/or municipal service charges which are in arrear for a period of more than three months and that no dispute exists between such bidder and municipality or municipal entity concerned in respect of any such arrear amounts;
- [f] has submitted an affidavit certifying -
 - [i] that he is not in the service of the state or has been in the service of the state in the previous twelve months;
 - [ii] that, in the event of the bidder not being a natural person, none of its directors, managers, principal shareholders or stakeholders are in the service of the state nor have they been in the service of the state in the previous twelve months;
 - [iii] that neither his spouse, child or parent nor a director, manager, shareholder or stakeholder referred to in subparagraph [ii] is in the service of the state or has been in the service of the state in the previous twelve months;
 - [iv] that he is not an advisor or consultant contracted by the municipality to advise it on the procurement under consideration;
- [g] In addition to the above, accounting officers of municipalities and municipal entities must ensure that:
 - [i] the names of the preferred bidders and their directors / trustees / shareholders are not listed on the Register for Tender Defaulters and the Database of Restricted Suppliers. These databases are now available on the National Treasury website; and
 - [ii] a process is conducted to determine whether the preferred bidders have the capability and ability to execute the contract.
 - iii) The Municipality will not give a security session to any tender awarded to a winning bidder.

[14] Lists of accredited prospective providers

- [1] The accounting officer must –
- [a] keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements through written or verbal quotations and formal written price quotations; and
 - [b] at least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
 - [c] specify the listing criteria for accredited prospective providers; and
 - [d] disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.
- [2] The list or database must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.
- [3] The list must be compiled per commodity and per type of service.

[15] Petty cash purchases

The conditions for the procurement of goods by means of petty cash purchases are as follows –

- [a] each manager must provide to the chief financial officer, in writing the name / s of the senior official / s reporting to him / her, whom he / she has delegated the authority of petty cash purchases;
- [b] the number of petty cash purchases or not limited but should meet the requirements of this Policy. The purchases should not exceed the amount budgeted for that quarter in council's approved cash flow budget;
- [c] the types of petty cash purchases or not limited but should meet the requirements of this Policy. The accounting officer and / or chief financial officer however reserves the right to request written, verbal or formal written quotations when considered necessary;
- [d] petty cash purchases can only be made by official municipal orders which would be issued by the budget and treasury department upon receipt of an official requisition signed by the manager or his / her delegates. Council would not accept any responsibility for purchases made without an official order and all providers of goods and services would be informed as such;

[16] Written or verbal quotations

The conditions for the procurement of goods or services through written or verbal quotation are as follow:

- [a] quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the municipality, provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria set out in this Policy. The budget and treasury department must immediately add such provider to the municipality's list of prospective providers;

- [b] to the extent feasible, providers must be requested to submit such quotations in writing. If not possible the manager responsible must in writing list the details of all providers who were unable to submit written quotations;
- [d] if it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the accounting officer or another official designated by the accounting officer;
- [d] the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices; and
- [e] if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.

[17] Formal written price quotations

- [1] The conditions for the procurement of goods or services through written price quotations, are as follows:
 - [a] quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the municipality;
 - [b] quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria set out in this Policy. The budget and treasury department must immediately add such provider to the municipality's list of prospective providers;
 - [c] if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer, and
 - [d] the accounting officer must keep record of the names of the potential providers and their written quotations.
- [2] A designated official referred to in subparagraph (1)(c) must within three days of the end of each month report to the chief financial officer on any approvals given during that month by that official in terms of that subparagraph.

[18] Procedures for procuring goods or services through written or verbal quotations and formal written price quotations. – 7 day notice

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

- [a] when using the list of accredited prospective providers the accounting officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;
- [b] all requirements in excess of R 30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements be advertised for at least seven days on the website and an official notice board of the municipality;
- [c] offers received must be evaluated on a comparative basis taking into account unconditional discounts;
- [d] the accounting officer or chief financial officer must on a quarterly basis be notified in writing of all written or verbal quotations and formal written price quotations accepted by an official acting in terms of a sub-delegation for all bids above R30 000.00 to R200 000.00.
- [e] offers below R 30 000 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;

- [f] acceptable offers, which are subject to the preference points system (PPPFA and associated regulations), must be awarded to the bidder who scored the highest points;
- [g] Offers above R30 000 (all applicable taxes included) must be awarded based on the applicable provisions of the Preferential Procurement Regulations;
- [h] Prior to the award of a contract with a price in excess of R30 000, the designated official must verify the status of recommended bidders (including their directors(s), owners(s) or trustee(s) by checking the Data Base of Restricted Suppliers maintained by National Treasury in order to ensure that no recommended bidder or any of its directors/owners/trustees are listed as companies or persons prohibited from doing business with the public sector;
- [i] A call for quotations in terms of the preceding paragraphs must be in writing and contain a specification for the goods and/or services to be procured and if applicable, details of the preference points system to be used in adjudicating quotations;
- [j] The procurement contract must be awarded to the bidder who scored the highest points in accordance with the stipulated preference points system

[19] Competitive bidding process

- [1] Goods or services above a transaction value of R 200 000 (VAT included) and long term contracts may only be procured through a competitive bidding process, subject to paragraph 11 (3) of this Policy.
- [2] No requirement for goods or services above an estimated transaction value of R 200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.
- [3] The accounting officer may split unduly large quantities of work into smaller contracts (units) to promote manageability and provide opportunities for emerging entrepreneurs. This procedure may only be followed when technically, logistically and financially feasible.
- [4] It is recognized that, in exceptional cases, an accounting officer of a municipality or municipal entity may deem it necessary to expand or vary orders against the original contract. The expansion or variation of orders against the original contract has, however, led to wide scale abuse of the current SCM system.
- [5] In order to mitigate such practices, accounting officers of municipalities and municipal entities are advised that, from the date of this Circular, contracts may be expanded or varied by not more than 20% for construction related goods, services and/or infrastructure projects and 15% for all other goods and/or services of the original value of the contract. Municipal Councils and Board of Directors of municipal entities are required to amend their supply chain management policies accordingly. Furthermore, anything beyond the abovementioned thresholds must be reported to council or the board of directors.
- [6] Any expansion or variation in excess of these thresholds must be dealt with in terms of the provisions of section 116(3) of the MFMA which will be regarded as an amendment to the contract.
- [7] The contents of the above paragraph are not applicable to transversal term contracts, facilitated by the relevant treasuries on behalf of municipalities and municipal entities and, specific term contracts. The latter refers to orders placed as and when commodities are required and at the time of awarding contracts, the required quantities were unknown.

[20] Process for competitive bidding

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

- [a] Compilation of bidding documentation as detailed in paragraph 21;
- [b] Public invitation of bids as detailed in paragraph 22;
- [c] Site meetings or briefing sessions as detailed in paragraph 22;
- [d] Handling of bids submitted in response to public invitation as detailed in paragraph 23;
- [e] Evaluation of bids as detailed in paragraph 28;
- [f] Award of contracts as detailed in paragraph 29;
- [g] Administration of contracts:
 - [i] After approval of a bid, the accounting officer and the bidder must enter into a written agreement.
- [h] Proper record keeping:
 - [i] Original / legal copies of written contracts agreements should be kept in a secure place for reference purposes.
- [i] Accounting officers must ensure that all written contracts or service level agreements that are entered into by their respective institutions are legally sound. This measure is aimed at avoiding potential litigation and minimizing possible fraud and corruption
- [j] Such contracts or agreements must be actively managed in order to ensure that both parties (the municipality or municipal entity and the contractors) meet their respective obligations.
- [k] Accounting officers of municipalities and municipal entities are prohibited from deliberately placing orders for goods, services and/or infrastructure projects from suppliers, receiving such goods, services and/or infrastructure projects and arranging with suppliers for such goods, services and/or infrastructure projects to be invoiced and paid for in another financial year.
- [l] The prohibition above does not apply to multi-year contracts and projects adopted over multi-years in terms of MFMA sections 19 and 33.

[21] Bid documentation for competitive bids

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

- [a] take into account -
 - [i] the general conditions of contract and any special conditions of contract, if specified;
 - [ii] any Treasury guidelines on bid documentation; and
 - [iii] the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of building or infrastructure;
 - [iv] relevant B-BBEE verification and certification requirements;
 - [v] relevant local content or production requirements;
 - [vi] registration of the central data base
- [b] include the preference points system to be used, 80/20 or 90/10 as contemplated in the Preferential Procurement Regulations and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- [c] compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;

- [d] if the value of the transaction is expected to exceed R 10 million (VAT included), require bidders to furnish –
 - [i] if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
 - [aa] for the past three years; or
 - [bb] since their establishment if established during the past three years;
 - [ii] a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
 - [iii] particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
 - [iv] a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
- [e] stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

[22] Public invitation for competitive bids

- [1] Prior to the invitation of bids, Accounting Officers/Accounting Authorities are required to:
 - [a] Properly plan for the provision of services, works or goods in order to ensure that the resources that are required to fulfil the needs identified in the strategic plan of the institution are delivered at the correct time, price, place and that the quantity and quality will satisfy those needs.
 - [b] As far as possible, accurately estimate the costs for the provision of the required services, works or goods. This is in order to determine and stipulate the appropriate preference point system to be utilised in the evaluation and adjudication of the bids and to ensure that the prices paid for the services, works and goods are market related.
 - [c] Estimated costs can be determined by conducting an industry and commodity analysis whereby prospective suppliers may be approached to obtain indicative market related prices that may be utilised for benchmarking purposes. Based on the findings, the relevant preference point system (80/20 or 90/10) to be utilised for the evaluation of the bid must be stipulated in the bid documents; and
 - [d] Determine whether the services, works or goods for which an invitation is to be made has been designated for local production and content in terms of Regulation 9 of the Preferential Procurement Regulations. This will entail the inclusion of a specific condition in the bid documents that only locally produced services, works or goods or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered. This will subsequently have a direct impact on the evaluation of the bid.
- [2] The procedure for the invitation of competitive bids is as follows:
 - [a] Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the municipality or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and

- [b] the information contained in a public advertisement, must include –
- [i] the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R 10 million (VAT included), or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2) of this Policy;
 - [ii] a statement that bids may only be submitted on the bid documentation provided by the municipality;
 - [iii] date, time and venue of any proposed site meetings or briefing sessions;
 - [iv] a statement to the effect that a bid from a prospective bidder who did not attend a prescribed compulsory site meeting or briefing session referred to in subparagraph (iii) will not be considered.
- [3] The accounting officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.
- [4] Bids submitted must be sealed and marked in a manner stipulated in the invitation to bid.
- [5] Where bids are requested in electronic format, such bids must be supplemented by hard copies in sealed envelope which must be deposited in the “bid box” on or by the closing time for the receipt of bids on the bid closing date as stipulated in the invitation to bid.
- [6] Where the municipality invites expressions of interest or bids for construction works with a value in excess of R30 000, it must publish such invitations on the website of the CIDB.
- [7] The municipality must also comply with the applicable provisions of the Standard for Uniformity in Construction Procurement contained in Board Notice No. 86 of 2010 issued by the Construction Industry Development Board insofar as such provisions relate to the invitation of bids.
- [8] Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.
- [9] Bidding Documents
- [a] The following bidding documents, which have been amended where necessary in accordance with the prescripts of the Preferential Procurement Regulations, 2017, are attached for use: Municipal Bidding Documents (MBDs) for use by all municipalities and municipal entities to which the MFMA apply.

| MBD Description | Document Number |
|---|----------------------|
| [i] Invitation to Bid | MBD 1 |
| [ii] Application for Tax Clearance Certificate | MBD 2 |
| [iii] Pricing Schedules | MBD 3.1, 3.2 and 3.3 |
| [iv] Declaration of Interest | MBD 4 |
| [v] Declaration for Procurement above R10 000 000 | MBD 5 |
| [vi] Preference claims in terms of the Preferential Procurement Regulations, 2017 | MBD 6.1 |
| [vii] Declaration Certificate for Local Content | MBD 6.2 |
| [viii] Formal contracts | MBD 7.1, 7.2 and 7.3 |
| [ix] Declaration of Bidder's past SCM practices | MBD 8 |
| [x] Certificate of Independent Bid Determination | MBD 9 |

- [b] AOs / AAs should customize and utilize the bidding documents (MBDs) by incorporating the institutions name, logo and contact details.
- [c] Other changes to the MBDs, such as variations necessary to address specific contract and project issues, should be kept to a minimum. The standard wording for the Application for Tax Clearance Certificates (MBD 2) should not be amended.
- [d] The formal contract document (MBD 7.1 to 7.3) should not form part of the bidding documents issued to every prospective bidder but should be made applicable only to the successful bidder after adjudication and award of the bid.
- [e] The relevant SBDs or MBDs must be utilized for procurement by means of written price quotations, advertised competitive bids or proposals, applicable. MBD4 – the declaration must be part of the quotation or proposal.
- [f] Although these SBDs or MBDs have not been formally issued to Public Entities listed in Schedules 2, 3B and 3D to the PFMA, nothing prohibits these institutions from customizing and utilizing these bidding documents as well as they need.
- [g] An e-Tendering System that is an electronic tendering system that facilitates the complete tendering process from the advertising of the requirements through the placing of the contract on the National Treasury Website.

[23] Procedure for handling, opening and recording of bids

- [1] The procedures for the handling, opening and recording of bids, are as follows:
 - [a] Bids -
 - [i] must be opened only in public;
 - [ii] must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
 - [iii] received after the closing time should not be considered and returned to the bidder, unopened immediately. If the contact details of the bidder is not known it should be safeguarded unopened.
 - [b] Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding total bidding price;
 - [c] No information, except the provisions in subparagraph (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
 - [d] The designated official opening received bids must record in a register to be provided for this purposes, all bids received by the closing time or period for the submission of same and such register shall contain at least the following information in addition to such information as may be prescribed in terms of section 75 of the Act:
 - [i] the reference number of the bid concerned;
 - [ii] the description of the relevant goods, services or works project to be procured;
 - [iii] the names of all bidders;
 - [iv] the B-BBEE status level of contribution of all bidders, where applicable;
 - [v] the local content percentages of the goods offered, where applicable; and
 - [vi] where practical, the total price submitted by all bidders that submitted bids in relation to the relevant bid invitation;

- [2] Publication of names of bidders in respect of advertised competitive bids, above the threshold value of R200 000 (all applicable taxes included):
- [a] After the closure of any advertised competitive bid, municipalities and municipal entities must, further to information to be published in terms of section 75 of the MFMA, publish on their websites, the reference number of the bid, the description of the goods, services or infrastructure project, names of all bidders, the B-BBEE status level of contribution of all bidders, where applicable, the local content percentages of the goods offered and where practical, total price of the bids, by all bidders that submitted bids in relation to that particular advertisement
 - [b] Copies should be made available at municipal offices and libraries. The municipality / municipal entity should endeavour to publish the aforementioned information within ten (10) working days after closure of the bid and it must remain on the website of the municipality or municipal entity for at least thirty (30) days.
 - [c] The following information on the successful bids must be made available on the municipal or municipal entity's website:
 - [i] Contract numbers and description of goods, services or infrastructure projects;
 - [ii] Names of the successful bidder(s) and the B-BBEE level of contribution claimed
 - [iii] The contract price(s), and;
 - [d] Records of such publication must be retained for audit purposes.

[24] Negotiations with preferred bidders

- [1] The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation-
- [a] does not allow any preferred bidder a second or unfair opportunity;
 - [b] is not to the detriment of any other bidder;
 - [c] does not lead to a higher price than the bid as submitted; and
 - [d] will not be contrary to any legal requirement or amount to a prohibited practice.
- [2] Minutes of such negotiations must be kept for record purposes.

[25] Two-stage bidding process

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

[26] Committee system for competitive bids

- [1] A committee system for competitive bids is hereby established, consisting of the following committees for each procurement or cluster of procurements as the accounting officer may determine: Chairperson and Deputy Chair be elected by Committee for the Specifications and Evaluation Committee's.

[a] a bid specification committee consisting of the following members:

| | |
|---|--|
| Budget & Treasury Manager | Permanent |
| Manager in the Municipal Managers Office | Permanent |
| Manager: Project Management Unit | Permanent |
| SCM Practitioner | Permanent |
| Manager: Human Resources & Legal Services | Compulsory if procurement relates to department. |
| Manager: Administration | |
| Manager: Technical Operations | |
| Electro Technical Controller | |
| Superintendent: Roads | |
| Manager: Community Services | |
| Manager: Information Technology | |
| Chief Traffic Officer | |
| Manager: Revenue | |
| Manager: Integrated Planning | |
| Manager: Governance & Compliance | |
| Manager: Town Planning | |
| Manager: Waste Management | |
| Executive Political Affairs Co-ordinator | |

[b] a bid evaluation committee consisting of the following members:

| | |
|--|--|
| Budget & Treasury Manager | Permanent |
| Manager in the Municipal Managers Office | Permanent |
| Manager: Project Management Unit | Permanent |
| SCM Practitioner | Permanent |
| Manager: Human Resources | Compulsory if procurement relates to department. |
| Manager: Administration | |
| Manager: Technical Operations | |
| Electro Technical Controller | |
| Superintendent: Roads | |
| Manager: Community Services | |
| Manager: Information Technology | |
| Chief Traffic Officer | |
| Manager: Revenue | |
| Manager: Integrated Planning | |
| Manager: Governance & Compliance | |
| Manager: Town Planning | |
| Manager: Waste Management | |
| Executive Political Affairs Co-ordinator | |

[c] a bid adjudication committee consisting of the following members:

| | |
|--|-------------|
| Chief Financial Officer | Chairperson |
| Director: Corporate & Support Services | Permanent |
| Director: Technical & Engineering Services | Permanent |
| Director: Community & Social Services | Permanent |
| Director: DTPS | Permanent |
| Senior SCM Practitioner | Permanent |

- [2] The accounting officer appoints the members of each committee taking into account section 117 of the Act; and
- [3] A neutral or independent observer, appointed by the accounting officer, must attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.
- [4] The committee system must be consistent with –
 - [a] paragraph 27, 28 and 29 of this Policy; and
 - [b] any other applicable legislation.
- [5] The accounting officer may apply the committee system to formal written price quotations.
- [6] The Accounting Officer must also appoint an independent and impartial person not directly involved in the SCM process of the municipality or municipal entity
 - [a] To assist in the resolution of disputes between the municipality or municipal entity and other persons regarding,
 - [i] Any decision or action taken by the municipality or municipal entity in the implementation of its SCM system or
 - [ii] Any other matter arising from a contract awarded in the course of its SCM system
 - [b] To Deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.
 - [c] A parent municipality and municipal entity under its sole or shared control may for purposes of sub regulation(1) appoint the same person
 - [d] 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.
 - [e] The person appointed must
 - [i] Strive to resolve promptly all disputes, objectives, complaints or queries received; and
 - [ii] Submit monthly reports to the accounting on all disputes, objectives, complaints or queries received attended to or resolved
 - [f] A dispute, objection, compliant or query may be referred to the relevant provincial treasury if
 - [i] The Dispute, objection, compliant or query is not resolved within 60 days: or
 - [ii] No response is received from the municipality or municipal entity within 60 days
 - [g] If the provincial treasury does not or cannot resolve the matter the dispute, objection, compliant or query may be referred to the National Treasury for resolution
 - [h] This regulation must not be read as affecting a person's rights to approach a court at any time

[27] Bid specification committees

- [1] A bid specification committee must compile the specifications or, where applicable the terms of reference, service level agreement or contract for each procurement of goods or services by the municipality.
- [2] Specifications –
 - [a] must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
 - [b] must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised

- by the South African National Accreditation System with which the equipment or material or workmanship should comply;
 - [c] must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
 - [d] may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification;
 - [e] may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word “equivalent”;
 - (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in **the Preferential Procurement Policy Framework Act 2000 and its Regulations**; and
 - (g) must be approved by the Specifications Committee prior to publication of the invitation for bids.
- [3] A bid specification committee may, when appropriate, include external specialist advisors.
- [4] No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.
- [5] Where a bid specification, terms of reference, service level agreement or contract are compiled with due regard to the findings and recommendations contained in a prior, associated feasibility study, the person, advisor or corporate entity who or which prepared the said feasibility study may be prohibited from bidding for the resulting contracts in circumstances where such person, advisor or corporate entity may / or is likely to obtain an unfair advantage or where a conflict of interest may arise.
- [6] A specification, terms of reference, service level agreement or contract referred to in this paragraph must be approved by the relevant director in writing prior to publication of the invitation for bids.

[28] Bid evaluation committees

- [1] A bid evaluation committee must –
- [a] evaluate bids in accordance with –
 - [i] the specifications for a specific procurement; and
 - [ii] the points system set out in terms of paragraph 27 (2)(f).
 - [b] evaluate each bidder’s ability to execute the contract provided that, where bids are invited on the basis of functionality as a criterion;
 - [c] check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears; and
 - [d] submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
- [2] A bid evaluation committee must as far as possible be composed of –
- [a] officials from departments requiring the goods or services; and
 - [b] at least one supply chain management practitioner of the municipality.

- [3] Subject to subsection (2):
 - [a] the composition of the bid evaluation committee may change to accommodate different scenarios;
 - [b] members from the bid specification committee may also form part of the bid evaluation committee; and
 - [c] a member from the bid evaluation committee may present reports to the bid adjudication committee, but only as an advisor.

[29] Bid adjudication committees

- [1] A bid adjudication committee must –
 - [a] consider the report and recommendations of the bid evaluation committee; and
 - [b] either –
 - [i] depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or
 - [ii] make another recommendation to the accounting officer how to proceed with the relevant procurement.
- [2] A bid adjudication committee must consist of at least four senior managers of the municipality which must include -
 - [a] the chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer; and
 - [b] at least one senior supply chain management practitioner who is an official of the municipality; and
 - [c] a technical expert in the relevant field who is an official, if such an expert exists.
- [3] The accounting officer must appoint the chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.
- [4] Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee, only the Manager Demand to observe or to give clarity on issues when asked by the Chairperson.
- [5] [a] If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –
 - [i] check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and
 - [ii] notify the accounting officer.
 [b] The accounting officer may -
 - [i] after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
 - [ii] if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- [6] The accounting officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- [7] The accounting officer must comply with section 114 of the Act within 10 working days.

- [8] The accounting officer may establish a bid administration section in the Supply Chain Management Unit of the municipality to handle all the administrative tasks pertaining to the bidding process, e.g.:
- [a] the invitation for bids;
 - [b] the opening of bids on the closing date;
 - [c] the processing of the bid documents;
 - [d] consultation; and
 - [e] the submission of a recommendation by the bid evaluation committee to the bid adjudication committee.

- [9] The accounting officer may procure the services of advisors to assist in the execution of the supply chain management function. In this regard:
- [a] these services must be obtained through a competitive bidding process;
 - [b] no advisor may, participate in the final decision-making process regarding the award of bids; and
 - [c] the accounting officer may not delegate decision-making authority to an advisor.

- [10] The **90 / 10 preference point system** must be used to calculate the points for price in respect of bids / procurement with a Rand value above **R 50 000 000 (All applicable taxes included)**:

$$P_t - P_{min}$$

$$P_s = 90 \left(1 - \frac{P_t - P_{min}}{P_t - P_{min}} \right), \text{ where}$$

P_s = Points scored for price under consideration;

P_t = Rand value of offer bid consideration; and

P_{min} = Rand value of lowest acceptable bid.

- [a] Subject to sub regulation (3) of the PPPFA Regulations of 2011, points must be awarded to a tenderer for attaining the B-BBEE status level of contributor in accordance with the table below

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

- [b] A maximum of 10 Points may be allocated per the Preferential Procurement Regulations of 2011 section 5(3)
- [c] The Points scored by a tenderer in respect of B-BBEE contribution contemplated above must be added to the points scored for price as calculated in accordance with section 5, sub-regulation 1 of the PPPFA Regulations 2017
- [11] The municipality shall, in the bid documents, stipulate the preference point system which will be applied in the adjudication of bids.
- [12] A contract may on reasonable and justifiable grounds be awarded to a bid that did not score the highest number of points.

- [13] In the event that, in the application of the 80 / 20 preference point system as stipulated in the bid documents, all bids received exceed the estimated Rand value of R 50 000 000,00 the bid invitation must be cancelled. A re-invitation of bids will be published and the bid document must stipulate the preference point system to be applied.
- [14] In the event that, in the application of the 90 / 10 preference point system as stipulated in the bid documents, all bids received above R50 000 000.00, the bid invitation must be cancelled. A re-invitation of bids will be published and the bid document must stipulate the preference point system to be applied.
- [15] The municipality may, prior to the award of a bid, cancel a bid if:
- [a] An AO / AA may, prior to the award of a bid, cancel the bid if:
 - [i] Due to changed circumstances, there is no longer a need for the services, works or goods requested. [AOs / AAs must ensure that only goods, services or works that are required to fulfil the needs of the institution are procured]; or
 - [ii] Funds are no longer available to cover the total envisaged expenditure. [AOs / AAs must ensure that the budgetary provisions exist]; or.
 - [iii] No acceptable bids are received. [If all bids received are rejected, the institution must review the reasons justifying the rejection and consider making revisions to the specific conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids].
 - [b] If a bid was cancelled in terms of paragraph 29.15 or 29.16, the correct preference point system must be stipulated in the bid documents of the re-invited bid.
- [16] Only a bidder who has completed and signed the declaration part of the bid documentation may be considered for preference points and the municipality may, before a bid is adjudicated or at any time, require a bidder to substantiate claims it has made with regard to preference.
- [17] The municipality must when calculating comparative prices take into account any discounts which have been offered unconditionally and a discount which has been offered conditionally must, dispute not being take into account for evaluation purposes, be implemented when payment is affected.
- [18] In the event that different prices are tendered for different periods of a contract, the price for each period must be regarded as a firm price if it conforms to the definition of a “firm price”.
- [19] Points scored must be rounded off to the nearest 2 decimals.
- [20] [a] In the event that two or more bids have scored equal total points, the successful bid must be the one that scored the highest points for B-BBEE.
- [b] If two or more bids have equal points, including equal preference points for BBBEE, the successful bid must be the one scoring the highest score for functionality, if functionality is part of the evaluation process.
- [c] In the event that two or more bids are equal in all respects, the award must be decided by the drawing of lots.
- [21] **PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000: PREFERENTIAL PROCUREMENT REGULATIONS, 2017**

Application

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

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

- [2] An organ of state must-
- [a] determine and stipulate in the tender documents-
 - [i] the preference point system applicable to the tender as envisaged in regulation 6 or 7; or
 - [ii] if it is unclear which preference point system will be applicable, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system;
 - [b] determine whether pre-qualification criteria are applicable to the tender as envisaged in regulation 4;
 - [c] (determine whether the goods or services for which a tender is to be invited, are in a designated sector for local production and content as envisaged in regulation 8;
 - [d] determine whether compulsory subcontracting is applicable to the tender as envisaged in regulation 9; and
 - [e] determine whether objective criteria are applicable to the tender as envisaged in regulation 11.

Pre-qualification criteria for preferential procurement

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

Tenders to be evaluated on functionality

- [5] (1) An organ of state must state in the tender documents if the tender will be evaluated on functionality.
- (2) The evaluation criteria for measuring functionality must be objective.
- (3) The tender documents must specify-
- [a] the evaluation criteria for measuring functionality;

- [b] the points for each criterion and, if any, each sub-criterion; and
- [c] the minimum qualifying score for functionality.
- (4) The minimum qualifying score for functionality for a tender to be considered further-
 - [a] must be determined separately for each tender; and
 - [b] may not be so-
 - (i) low that it may jeopardise the quality of the required goods or services; or
 - (ii) high that it is unreasonably restrictive.
- (5) Points scored for functionality must be rounded off to the nearest two decimal places.
- (6) A tender that fails to obtain the minimum qualifying score for functionality as indicated in the tender documents is not an acceptable tender.
- (7) Each tender that obtained the minimum qualifying score for functionality must be evaluated further in terms of price and the preference point system and any objective criteria envisaged in regulation 11.

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

- [6] (1) The following formula must be used to calculate the points out of 80 for price in respect of a tender with a Rand value equal to or above R30 000 and up to a Rand value of R50 million, inclusive of all applicable taxes:
 - Where-
 - Ps = Points scored for price of tender under consideration;
 - Pt = Price of tender under consideration; and
 - Pmin = Price of lowest acceptable tender.
- (2) The following table must be used to calculate the score out of 20 for BBEE:

| B-BBEE Status | Level of Contributor | Number of Points |
|-----------------------------|----------------------|------------------|
| 1 | 20 | |
| 2 | 18 | |
| 3 | 14 | |
| 4 | 12 | |
| 5 | 8 | |
| 6 | 6 | |
| 7 | 4 | |
| 8 | 2 | |
| Non-compliant contributor 0 | | |
- (3) A tenderer must submit proof of its B-BBEE status level of contributor.
- (4) A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but-
 - [a] may only score points out of 80 for price; and
 - [b] scores 0 points out of 20 for B-BBEE.
- (5) A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.
- (6) The points scored by a tenderer for B-BBEE in terms of subregulation (2) must be added to the points scored for price under subregulation (1).
- (7) The points scored must be rounded off to the nearest two decimal places.
- (8) Subject to subregulation (9) and regulation 11, the contract must be awarded to the tenderer scoring the highest points.
- (9) [a] If the price offered by a tenderer scoring the highest points is not market related, the organ of state may not award the contract to that tenderer.

[b] The organs of state may-

- (i) negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
- (ii) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
- (iii) if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.

[c] If a market-related price is not agreed as envisaged in paragraph (b)(iii), the organ of state must cancel the tender.

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

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

Where

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of lowest acceptable tender.

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

B-BBEE Status Level of Contributor Number of Points

1 10

2 9

3 6

4 5

5 4

6 3

7 2

8 1

Non-compliant contributor 0

(3) A tenderer must submit proof of its B-BBEE status level of contributor.

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

[a] may only score points out of 90 for price; and

[b] scores 0 points out of 10 for B-BBEE.

(5) A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25 of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.

(6) The points scored by a tenderer for B-BBEE contribution in terms of subregulation (2) must be added to the points scored for price under subregulation (1).

(7) The points scored must be rounded off to the nearest two decimal places.

(8) Subject to subregulation (9) and regulation 11, the contract must be awarded to the tenderer scoring the highest points.

(9) [a] If the price offered by a tenderer scoring the highest points is not market related, the organ of state may not award the contract to that tenderer.

[b] The organs of state may-

- (i) negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
 - (ii) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
 - (iii) if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.
- [c] If a market-related price is not agreed as envisaged in paragraph (b)(iii), the organ of state must cancel the tender.

Local production and content

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

Subcontracting as condition of tender

- [9] (1) If feasible to subcontract for a contract above R30 million, an organ of state must apply subcontracting to advance designated groups.
- (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 51% owned by black people living in rural or underdeveloped areas or townships;
 - [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;
 - [i] more than one of the categories referred to in paragraphs (a) to (h).

- (3) The organ of state must make available the list of all suppliers registered on a database approved by the National Treasury to provide the required goods or services in respect of the applicable designated groups mentioned in subregulation (2) from which the tenderer must select a supplier.

Criteria for breaking deadlock in scoring

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

Award of contracts to tenderers not scoring highest points

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

Subcontracting after award of tender

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

Cancellation of tender

- [13] (1) An organ of state may, before the award of a tender, cancel a tender invitation if-
 - [a] due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;
 - [b] funds are no longer available to cover the total envisaged expenditure;
 - [c] no acceptable tender is received; or
 - [d] there is a material irregularity in the tender process.
- (2) The decision to cancel a tender invitation in terms of subregulation (1) must be published in the same manner in which the original tender invitation was advertised.
- (3) An organ of state may only with the prior approval of the relevant treasury cancel a tender invitation for the second time.

Remedies

- [14] (1) Upon detecting that a tenderer submitted false information regarding its BBBEE status level of contributor, local production and content, or any other matter required in terms of these Regulations which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any subcontracting arrangements, the organ of state must-
 - [a] inform the tenderer accordingly;
 - [b] give the tenderer an opportunity to make representations within 14 days as to why-

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

Circulars and guidelines

- [15] The National Treasury may issue-
 - [a] a circular to inform organs of state of any matter pertaining to these Regulations; or
 - [b] a guideline to assist organs of state with the implementation of any provision of these Regulations.

Repeal of Regulations and saving

- [16] (1) Subject to this regulation, the Preferential Procurement Regulations, 2011, published in Government Notice No R. 502 of 8 June 2011 (herein called “the 2011 Regulations), are hereby repealed with effect from the date referred to in regulation 17.
- (2) Any sector designated and minimum threshold determined for local production and content for purposes of regulation 9 of the 2011 Regulations and in force immediately before the repeal of the 2011 Regulations, are regarded as having been done under regulation 8(1) of these Regulations.
- (3) Any tender advertised before the date referred to in regulation 17 must be dealt with in terms of the 2011 Regulations.

Short title and commencement

- [17] These Regulations are called the Preferential Procurement Regulations 2017 and take effect on 1 April 2017.

Validity of B-BBEE Status Level Verification Certificates

[31] Declarations

A bidder must, in the stipulated manner, declare that –

- [1] the information provided is true and correct;
- [2] the signatory to the bid document is duly authorized; and
- [3] documentary proof regarding any bid will, when required, be submitted to the satisfaction of the municipality.
- [4] Verification of the names and identity numbers of directors / trustees / shareholders of companies, enterprises, closed corporations and trusts against the relevant municipal staff structure according to MFMA Circular No 62.
 - [a] The Municipal Bidding Document (MBD 4) “*Declaration of Interest*” attached as Annexure C in MFMA Circular no 62 requires bidders to submit the names of their directors / trustees / shareholders, their individual identity numbers, personal tax reference numbers and employee numbers of those who are in the service of the state as defined in the Municipal Supply Chain Management Regulations as part of their bid submissions.
 - [b] A shareholder is defined as a person who owns shares in the company and is actively involved in the management of the company or business, and exercises control over the company. This is applicable for all written price quotations, advertised competitive bids, limited bids, unsolicited bids and proposals
 - [c] Accounting officers of municipalities and municipal entities are required to utilize the attached revised MBD 4 form from MFMA Circular no 62 when inviting bids and to verify the identity numbers of the directors / trustees / shareholders of the preferred bidder(s) against the municipality’s or municipal entity’s staff establishment in order to determine whether or not any of the directors / trustees / shareholders are employees of the municipality or municipal entity. Furthermore, other specific information to be disclosed relating to any other official in the service of the state, as defined in the SCM regulations will also be utilized during the evaluation process.
 - [d] The review of all disclosures referred to in the previous paragraph must take place during the bid evaluation process. If a bidder / director / trustee / shareholder declares that he / she is in the employ of the state, the municipality or municipal entity must not make any award to such bidder as this is prohibited in terms of the SCM regulations
 - [e] Municipalities can rely on the content and disclosures made by bidders but should it come to light that a false declaration was made by the bidder after the municipality had awarded the bid, the contract must be immediately suspended and payments made, recovered. False declarations by bidders can be viewed as a criminal offence and charges must be laid by the municipality with the South African Police Services for further investigation. Details will be reported to Council at its next meeting and information contained in the Annual Report of the municipality.
 - [f] In the event that the Auditor-General detects irregular expenditure during the audit process as a result of possible false declarations and subsequent awards based on those declarations, the municipality or municipal entity will be informed of such irregular expenditure. The municipality or municipal entity will be required to rectify this matter by instituting the necessary remedial measures, by investigating the matter, recovering the

funds spent, instituting disciplinary proceedings against those liable for such actions and possible criminal prosecution as may be appropriate. The accounting officer must also apply the remedial measures contained under "Termination for Default" in the General Conditions of Contract. The expenditure at this stage will not be classified as irregular expenditure.

- [g] In the event that the same expenditure is detected in the following year's audit and the remedial measures referred to above were not instituted, the expenditure will then be classified as irregular expenditure.
- [5] In Addition to the above Accounting Officers must still take into account the following:
- [a] the preferred bidders' tax matters are in order;
 - [b] the municipal rates and taxes or municipal charges owed by the preferred bidder or any of its directors to the municipality or municipal entity, or to any other municipality or municipal entity, are not in arrears for more than three months;
 - [c] the names of the preferred bidders and their directors / trustees / shareholders are not listed on the Register for Tender Defaulters and the Database of Restricted Suppliers. These databases are now available on the National Treasury website; and
 - [d] a process is conducted to determine whether the preferred bidders have the capability and ability to execute the contract
 - [e] the names of the preferred bidders and their directors / trustees / shareholders are not listed on the Register for Tender Defaulters and the Database of Restricted Suppliers. These databases are now available on the National Treasury website; and
 - [f] a process is conducted to determine whether the preferred bidders have the capability and ability to execute the contract

[32] Procurement of banking services

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

[33] Procurement of IT related goods or services

- [1] The accounting officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.
- [2] Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.
- [3] The accounting officer must notify SITA together with a motivation of the IT needs if –
 - [a] the transaction value of IT related goods or services required in any financial year will exceed R 50 million (VAT included); or

- [b] the transaction value of a contract to be procured whether for one or more years exceeds R 50 million (VAT included).
- [4] If SITA comments on the submission and the municipality disagrees with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the relevant provincial treasury and the Auditor-General.
- [34] Procurement of goods and services under contracts secured by other organs of state**
 - [1] The accounting officer may procure goods or services under a contract secured by another organ of state, but only if –
 - [a] the contract has been secured by that organ of state by means of a competitive bidding process applicable to that organ of state;
 - [b] there is no reason to believe that such contract was not validly procured;
 - [c] there are demonstrable discounts or benefits to do so; and
 - [d] that other organ of state and the provider have consented to such procurement in writing.
 - [2] Subparagraphs (1)(c) and (d) do not apply if –
 - [a] a municipal entity procures goods or services through a contract secured by its parent municipality; or
 - [b] a municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.
- [35] Procurement of goods necessitating special safety arrangements**
 - [1] The acquisition and storage of goods in bulk (other than water), which necessitate special safety arrangements, including gasses and fuel, should be avoided where ever possible.
 - [2] Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership, cost advantages and environmental impact and must be approved by the accounting officer.
- [36] Proudly SA Campaign**

The municipality supports the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services from taking into account the PPPFA regulations
- [37] Appointment of consultants**
 - [1] The term consultants includes consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, other multinational organizations, investment and merchant banks, universities, research agencies, government agencies, non-governmental organizations and individuals. Accounting officer may use these organizations as consultants to help in a wide range of activities such as policy advise, accounting officer's/authority's reform management, engineering services, construction supervision, financial services, information technology services, procurement services, social and environmental studies and identification, preparation, and implementation of projects to complement accounting officers' capabilities in these area.

- [2] The accounting officer may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.
- [3] Consultancy services must be procured through competitive bids if –
 - [a] the value of the contract exceeds R 200 000 (VAT included); or
 - [b] the duration period of the contract exceeds one year.
- [4] In addition to any requirements prescribed by this Policy for competitive bids, bidders must furnish particulars of –
 - [a] all consultancy services provided to an organ of state in the last five years; and
 - [b] any similar consultancy services provided to an organ of state in the last five years.
- [5] The accounting officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the municipality.
- [6] Consultants should only be engaged when:
 - [a] the necessary skills and/or resources to perform a project/duty/study are not available; and
 - [b] the accounting officer cannot be reasonably expected either to train or to recruit people in the time available.
- [7] The work undertaken for the accounting officer by a consultant should be regulated by a contract and the accounting officer should satisfy himself / herself that:
 - [a] the procedures to be used will result in the selection of consultants who have the necessary professional qualifications and skills;
 - [b] the selected consultant will carry out the assignment in accordance with the agreed schedule; and
 - [c] the scope of the services is consistent with the needs of the project.
- [8] A list of approved service providers should be established.
 - [a] Where consultancy services are required on a recurring basis, a panel of consultants / list of approved service providers for the rendering of these services will be established. The panels / lists should be established through the competitive bidding process, usually for services that are of a routine or simple nature where the scope and content of the work to be done can be described in detail.
 - [b] The intention to establish a panel / list of approved service providers is published in the media and on the municipality's website and the closing time and date for inclusion in the panel / list of approved service providers should be indicated. For this purpose, a questionnaire should be made available and should make provision for the following:
 - [i] composition of the firm in terms of shareholding;
 - [ii] personnel complement;
 - [iii] representation of expertise in respect of the disciplines required, e.g. accounting, legal, educational, engineering, computer, etc;
 - [iv] national / international acceptability of experts in various professions;
 - [v] experience as reflected in projects already dealt with; and
 - [vi] financial position.
 Requirements for admission to the list and criteria should be linked to the numeric value in terms of which applicants will be measured, for example qualifications, experience, acceptability, facilities and resources etc. A pre-determined standard method of awarding points be followed.

- [c] The applications received should be evaluated and any rejection of applicants should be motivated and recorded.
 - [d] Once the panel / list of service providers has been approved, only the successful applicants are approached, depending on the circumstances, either by obtaining quotes on a rotation basis, or according to the bid procedure when services are required, with the exception that the requirement is not advertised again.
 - [e] The list should be updated annually.
- [9] The relationship between the accounting officer and the consultant should be one of purchaser / provider and not employer / employee. The work undertaken for the accounting officer by a consultant should be regulated by a contract. In procuring consulting services the accounting officer should satisfy himself / herself that:
- [a] the procedures to be used will result in the selection of consultants who have the necessary qualifications and / or experience;
 - [b] the selected consultant will carry out the assignment in accordance with the agreed schedule; and
 - [c] the scope of the services is consistent with the needs of the project.
- [10] The accounting officer should be responsible for preparing and implementing the project, for selecting the consultant, awarding and subsequently administering the contract, as well as for the payment of consulting services under the project. While the specific rules and procedures to be followed for employing consultants depend on the circumstances of the particular case, at least the following four major considerations should guide the accounting officer:
- [a] the need for high-quality services;
 - [b] the need for economy and efficiency;
 - [c] the need to give qualified consultants an opportunity to compete in providing the services; and
 - [d] the importance of transparency in the selection process.

[38] Selection methods for the appointment of consultants

The particular method to be followed for the selection of consultants for any given project should be selected by the accounting officer in accordance with the criteria outlined in the ***Guide for Accounting Officers / Authorities***. The method selection is determined by the scope of the assignment, the quality of service, the complexity of the assignment and whether assignments are of a standard and routine nature.

The following methods are recommended:

[1] Quality and Cost Based Selection (QCBS)

In majority of cases, the abovementioned major considerations can best be addressed through competition among firms in which the selection is based both on the quality of the services to be rendered and on the cost of the services to be provided, i.e. Quality and Cost-Based Selection (QCBS). This method is used in the event of an assignment not complex or specialized. Cost as a factor of selection should be used judiciously. The accounting officer should determine the relative weight, in line with paragraph 29 above, to be given to quality and cost and should determine each case depending on the nature of the assignment. Where QCBS is not considered as the most appropriate method for selecting consultants and other methods should be considered.

[2] Quality Based Selection (QBS)

- [a] QBS is recommended for the following types of assignments:
 - [i] Complex or highly specialized assignments for which consultants are expected to demonstrate innovation in their proposals for which it is difficult to define a term of reference;
 - [ii] Assignments that have a high downstream impact and in which the objective is to have the best experts; and
 - [iii] Assignments that can be carried out in substantially different ways, such that proposals will not be comparable.
- [b] In QBS the request for proposal may request submission of a technical proposal only **or** a technical and financial proposal at the same time but in separate envelopes (two-envelope system).
- [c] If technical proposals alone were invited, after evaluating the proposals using the QCBS methodology, the accounting officer should request the consultant with the highest technical proposal to submit a detailed financial proposal. The accounting officer and the consultant should then negotiate the financial proposal and contract.
- [d] If consultants were requested to provide financial proposals initially (two-envelope system) together with the technical proposals, safeguards should be built in to ensure that the price envelope of only the selected proposal is opened and the rest returned unopened, after negotiations are successfully concluded.

[3] Selection under a fixed budget

The method is recommended when the assignment is simple and can be precisely defined and when the budget is fixed. The request for proposal should indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes, within the budget. The terms of reference should be particularly well prepared to ensure that the budget is sufficient for the consultants to perform the expected tasks. Evaluation of all technical proposals should be carried out first as in the QCBS method where after the price envelopes should be opened in public. Proposals that exceed the indicated budget should be rejected. The consultant who has submitted the highest ranked technical proposal should be selected and invited to negotiate a contract.

[4] Least-cost selection

This method is more appropriate to selection of consultants for assignments of a standard or routine nature where well established practices and standards exist and in which the contract amount is small. Under this method a “minimum” qualifying mark for functionality is determined. Proposals to be submitted in two envelopes are invited. Potential suppliers may be obtained from the list of approved service providers. Technical envelopes are opened first and evaluated. Those securing less than the minimum mark should be rejected and the financial envelopes of the rest are opened in public. The firm with the highest points should be selected. Under this method the qualifying minimum mark should be established, keeping in view that all proposals above the minimum compete only on cost and promotion of HDI’s and RDP objectives. The minimum mark to qualify should be stated in the request for proposal.

[5] Single-source selection

- [a] This method should be used in exceptional and justifiable cases only as it may encourage unacceptable practices. It should be examined in the context of the overall interest of the client and the project.
- [b] May only be appropriated –
 - [i] for tasks that represent a natural continuation of previous work carried out;
 - [ii] where rapid selection is essential (emergencies);

- [iii] for very small assignments; or
 - (iv) when only one firm is qualified or has experience of exceptional worth.
 - [c] The reasons for selecting this method must be recorded in detail and be approved by the accounting officer.

- [6] Selection based on consultants' qualifications
 This method may only be used for very small assignments for which the need for preparing and evaluating competitive proposals is not justified. The accounting officer should prepare the terms of reference, request expressions of interest and information on the consultants' experience and competence relevant to the assignment and select the firm with the most appropriate qualifications and references. The selected firm should be requested to submit a combined technical-financial proposal and then be invited to negotiate the contract.

- [7] Selection of individual consultants
 - [a] Individual consultants may be employed on assignments for which –
 - [i] teams of personnel are not required;
 - [ii] no additional outside professional support is required; and
 - [iii] the experience and qualifications of the individual are the paramount requirement.
 - [b] Permanent staff or associates of a consulting firm may be available as individual consultants, but when coordination, administration or collective responsibility become difficult because of the number of individuals it would be advisable to employ a firm.
 - [c] Individual consultants should be selected on the basis of their qualifications and experience for the assignment. References and qualifications should be well documented and the accounting officer should be convinced that the individual is fully capable of carrying out the assignment. Capability, also well documented, is judged on the basis of academic background, experience and as appropriate knowledge of the local conditions, such as local language, culture, administrative system and local government environment.

- [8] Selection of particular types on consultants
 - [a] Nongovernmental Organisations (NGO's) – when uniquely qualified to assist in the preparation, management and implementation of projects, essentially because of their involvement and knowledge of local issues, community needs, and / or participatory approaches.
 - [b] Inspection agents – should be registered with the South African National Accreditation System (SANAS) and their services should be obtained by means of competitive bidding.
 - [c] Banks – Investment and commercial banks, financial firms, and fund managers should be selected under QCBS.
 - [d] Auditors – typically carry out auditing tasks under well-defined terms of reference and professional standards and should be selected according to QCBS.

- [9] Association between consultants
 Consultants may associate with each other to complement their respective areas of expertise. Such associations may be for the long term or for a specific assignment and may take the form of a joint venture. The accounting officer should not compel, but may encourage associations with the aim to enhance transfer of skills.

- [39] Invitation of bids / proposals using QCBS

Appointing consultants implies the procurement of services and the prescripts of the Preferential Procurement Regulations, 2011 must be adhered to. These prescripts relate to the compulsory involvement of HDI's and the promotion of RDP goals –

[1] Request for bids

Method to be followed where a clear terms of reference, including a detailed task directive has been compiled and the objectives, goals and scope of the assignment are clearly defined:

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|----|---|
| 1 | Prepare clear TOR (Terms of Reference). Scope of services described compatible with available budget. Define task directive (methodology), objectives, goals and scope of assignment. Provide background information to facilitate consultants' preparation of bids. |
| 2 | If assignment requires component for training or transfer of knowledge and skills TOR should indicate objectives, nature, scope and goals of training programme. Define details of trainers and trainees, skills to be transferred, time frames and monitoring and evaluation arrangements. TOR should list services and surveys necessary to carry out the assignment and the expected outputs. |
| 3 | Time frames linked to various tasks should be specified including the frequency of monitoring actions. Respective responsibilities of accounting officer and the consultant should be clearly defined. |
| 4 | Clearly indicate which preference point system in terms of the PPPFA and regulations will be applicable as well as the goals to be achieved and points allocated for these goals – see paragraph 28 and 29. |
| 5 | Detailed information (ratio of % between functionality and price) on evaluation process should be provided. When determining % for price the complexity of the assignment and relative importance of functionality should be taken into account. % for price should be provided by the accounting officer. |
| 6 | Evaluation criteria, their respective weights, minimum qualifying score for functionality and values that will be applied for evaluation should be clearly indicated and should at least include the following: <ul style="list-style-type: none"> • Consultant's relevant experience relevant to the assignment; • Quality of the methodology; • Qualifications of key personnel; and • Transfer of knowledge. |
| 7 | Accounting officer may divide these criteria into sub-criteria if essential i.e. under methodology might be innovation and level of detail. |
| 8 | Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are earmarked and should be based on the accounting officer's assessment of the resources needed to carry out the assignment i.e. staff time, logistical support and physical inputs. |
| 9 | Terms of reference should clearly specify the validity period. |
| 10 | In more complicated projects provision may be made for pre-bid briefing sessions as part of the evaluation process. |
| 11 | Terms of reference should form part of the bid documentation. |
| 12 | Terms of reference should be approved by the specification committee and detailed evaluation criteria |

[2] Request for proposals

Method is used where selection is based on quality of a proposal and on the cost of the service through competitive bidding, and will be applicable on more complex projects where consultants are requested and encouraged to propose their own methodology and to comment on the terms of reference. For preparation and issuance of a Request for Proposal the following should at least be included:

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|---|---|
| 1 | Letter on invitation stating the intention to enter into a contract for the provision of consulting services, the details of the client and the date, time and address for submissions of proposals. |
| 2 | Information to consultant should contain all necessary information that would assist consultants to prepare responsive proposals. Information on evaluation process by indicating evaluation criteria and factors and their respective weights and the minimum qualifying score for functionality should be provided. |
| 3 | Give clear indication of which preference points system in terms of the PPPFA and its regulations will be applicable, as well as the goals to be targeted and points allocated for each goal. |
| 4 | <p>Information to Consultants should include adequate information on following aspects of the assignment:</p> <ul style="list-style-type: none"> • Brief description of assignment; • Standards formats for technical & financial proposals; • Names & contact information of relevant officials; • Details of selection procedure: <ul style="list-style-type: none"> ➢ description of two-stage process, if appropriate; ➢ listing of technical evaluation criteria & weights of each criterion; ➢ details of financial evaluation; ➢ relative weights for quality & cost in case of QCBS; ➢ minimum pass score for quality; and ➢ details of public opening of financial proposals. • Estimate of level of key staff inputs required of consultant and indication of minimum experience, academic achievement, i.e. expected of key staff; • Information required during the negotiation of the contract; • Deadline for submission of proposal; • Method in which proposals should be submitted – technical proposal separated, two-envelop system, etc; • Request that invited firms acknowledge receipt & inform whether or not they will be submitting a proposal; • Give list of consultants invited to submit proposals and state whether or not associations between consultants are acceptable; • The period for which proposals should be held valid – not less than 60 days; • Anticipated date on which the selected consultant should be expected to commence the assignment; • Statement indicating all prices should be VAT inclusive; • Details of services, facilities, equipment and staff to be provided by the accounting officer; • Phasing of assignment, if appropriate and likelihood of follow-up assignments; • Procedure to handle clarifications about the information given in the Request for Proposal; • Conditions for subcontracting part of the assignment. |
| 5 | Any amendments to the Information to consultant should be done as an amendment and not by changing the original text. |
| 6 | Granting of substantial extension of the agreed time for the performance of the contract that might result in an increase of the original contract amount can only be approved by the accounting officer. |
| 7 | The Terms of reference should be compatible with the available budget and should define as clearly as possible the objectives, goals and scope of the assignment. |

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| 8 | Terms on reference should enable consultants to propose their own methodology and staffing and encourage the consultant to comment of the terms of reference in their own proposal. |
| 9 | If applicable it should be indicated that proposals should be submitted in two separate clearly marked envelopes – one of technical proposal & one financial proposal. |
| 10 | Where pre-qualification / short-listing is required the terms of reference should indicate the basis thereof, i.e. the number of minimum points to be scored to pre-qualify. |
| 11 | The appropriate Standard Form of Contract issued by National Treasury. Any changes necessary to address specific project issues should be introduced through attached Contract Data Sheets or through Special Conditions of Contract and not by changing the wording of the General Contract. |

[3] Establishment of a list of approved service providers

Where consultancy services are required on a recurring basis a panel of consultants from the list of accredited service providers established in terms of paragraph 14, would be established. The application form – **Professional Service Providers** – used by consultants to be registered on council's database for accredited service providers would be used to evaluate consultants and should address the following:

| Criteria | Numeric Value |
|--|---------------|
| Composition of the firm in terms of shareholding. | |
| Personnel complement – experience and qualifications. | |
| Representation of expertise i.t.o. the discipline required i.e. engineering, legal, financial. | |
| National / international acceptability of experts in profession | |
| Experience in projects already dealt with. | |
| Financial position. | |
| Facilities and resources. | |
| | |

All registered accredited service providers should be evaluated and any rejection should be motivated and recorded. Once the panel of consultants has been evaluated by the Tender Evaluation Committee and approved by the Tender Adjudication Committee only consultants listed are approached, depending on the circumstances, either by obtaining quotes on a rotation basis, or according to the bid procedure when services are required, with the exception that the requirement is not advertised again:

| | |
|----------------------|----------------------------|
| R 2 000 – R 30 000 | Quotes on Rotation Basis |
| R 30 000 – R 200 000 | Quotes through Bid Process |

The Tender Evaluation Committee should maintain records of all assignments allocated through this process – number of assignments and monetary value thereof.

[4] Receipt of proposals

Enough time – not less than four weeks or more than three months, depending on the assignment should be allowed to prepare the proposals. Should consultants request any clarification about information already provided such clarifications should be in writing and made available to all the consultants who intend to submit proposals and if necessary the accounting officer could extend the deadline for submission. Technical and financial proposals, in separate envelopes should be submitted at the same time and no amendments are allowed after submission. All technical

proposals should immediately after the closing time for submissions be opened and recorded in the Tender Register. Financial proposals should remain sealed until they are opened and recorded publicly. Late submission should be recorded as such but returned unopened.

Consultants' role:

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| If consultants find in the Request for Proposal documents – especially in the selection procedure and evaluation criteria – any ambiguity, omission or internal contradiction or any feature that is unclear or that appears discriminatory or restrictive they should in writing within the specified period seek clarification from the accounting officer. |
| If consultants feel that any of the provisions in the Request for Proposal are inconsistent with the prescripts of Municipal Supply Chain Management Regulations and / or the PPPFA and its regulations they should in writing raise the issue with the accounting officer. |
| Should ensure that they submit a fully responsive proposal including all supporting documents requested in the Request for Proposal and that information provided is accurate. Proposal should be signed. Note should be that non-compliance with important requirements will result in rejection of the proposal. |

[40] Evaluation of bids / proposals

[1] In general, not all bids should be invited on the basis of functionality as a criterion. The need to invite bids on the basis of functionality as a criterion depends on the nature of the required commodity or service taking into account quality, reliability, viability and durability of a service and the bidders technical capacity and ability to execute a contract

[a] When an institution invites a bid that will also be evaluated on the basis of functionality as a criterion, the AO/ AA must clearly specify the following aspects in the bid documents:

[i] Evaluation criteria for measuring functionality –

The evaluation criteria may include criteria such as the consultant's relevant experience for the assignment, the quality of the methodology; the qualifications of key personnel; transfer of knowledge etc

[ii] Weight of each criterion

The weight that is allocated to each criterion should not be generic but should be determined separately for each bid on a case by case basis.

[iii] Applicable value

The applicable values that will be utilised when scoring each criterion should be objective. As a guide, values ranging from 1 being poor, 2 being average, 3 being good, 4 being very good and 5 being excellent, may be utilised.

[iv] Minimum qualifying score for functionality.

The minimum qualifying score that must be obtained for functionality in order for a bid to be considered further should not be generic. It should be determined separately for each bid on a case by case basis. The minimum qualifying score must not be prescribed so low that it may jeopardise the quality of the service required nor so high that it may be restrictive to the extent that it jeopardizes the fairness of the SCM system.

[2] Calculation of percentage for price

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| Price should include all local taxes and all other reimbursable expenses. |
| Proposal with lowest price will obtain maximum percentage for price as prescribed in Request for Proposal (RFP). |
| Proposals with higher prices will proportionally obtain lower percentages according to the method as prescribed in the RFP. |
| The following formula should be used: |

$$Ps = \frac{P_{min}}{X Ap}$$

Pt

Pt

Where Ps = percentage scored for price by under consideration;

Pmin = lowest acceptable bid;

Pt = price of bid under consideration; and

Ap = percentage allocated for price

- [3] Bids invited on the basis of functionality as a criterion must be evaluated in two stages – first functionality must be assessed and then in accordance with the 80/20 or 90/10 preference point systems prescribed in Preferential Procurement Regulations 5 and 6. The evaluation must be done as follows:

[a] First stage – Evaluation of functionality

- [i] Bids must be evaluated in terms of the evaluation criteria embodied in the bid documents. The amendment of evaluation criteria, weights, applicable values and/or the minimum qualifying score for functionality after the closure of bids is not allowed as this may jeopardise the fairness of the process
- [ii] A bid will be considered further if it achieves the prescribed minimum qualifying score for functionality.
- [iii] Bids that fail to achieve the minimum qualifying score for functionality must be disqualified.
- [iv] Score sheets should be prepared by the User Department and provided to the Demand Manager to verify the evaluation.
- [v] The score sheet should contain all the criteria and the weight for each criterion as well as the values to be applied for evaluation as indicated in the bid documents.
- [vi] Score sheets should be verified by the Demand Manager and if necessary, written motivation may be requested from the User Department where vast discrepancies in the values awarded for each criterion exist.
- [vii] If the minimum qualifying score for functionality is indicated as a percentage in the bid documents, the percentage scored for functionality may be calculated as follows:
 - [aa] The value awarded for each criterion should be multiplied by the weight for the relevant criterion to obtain the score for the various criteria;
 - [bb] The scores for each criterion should be added to obtain the total score; and
 - [cc] The following formula should be used to convert the total score to percentage for functionality:

$$Ps = \frac{So}{Ms} \times 100$$

where:

Ps = percentage scored for functionality by bid under consideration

So = total score of bid under consideration

Ms = maximum possible score

[b] Second stage – Evaluation in terms of the 80/20 or 90/10 preference point Systems

- [i] Only bids that achieve the minimum qualifying score / percentage for functionality must be evaluated further in accordance with the 80/20 or 90/10 preference point systems prescribed in Preferential Procurement Regulations 5 and 6.

- [4] Negotiations and award of contract

Accounting officer may negotiate the contract only with the preferred bidder identified by means of competitive bidding process.

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| Negotiations should include discussions of the TOR, the methodology, staffing, accounting officer's inputs and special conditions of the contract, but should not substantially alter the original TOR or the terms of the contract, lest the quality of the final product, its cost and the relevance of the initial evaluation be affected. |
| Major reductions in work inputs should not be made solely to meet the budget and the final TOR and agreed methodology should be incorporated in "Description of Services" which should form part of the contract. |
| The selected bidder is not allowed to substitute key staff. If established that key staff were offered in the proposal without confirming their availability the firm may be disqualified and the process continue with the next rank firm. |
| An original tax clearance certificate or SARS Pin number should be submitted prior conclusion of the agreement. |
| Proposed unit rates for staff-months and reimbursable should not be negotiated. |
| If negotiations fail to result in an acceptable contract, the accounting officer should terminate the negotiations and inform the original preferred bidder of reasons for termination. |
| Once negotiations are commenced with the next rank firm, the accounting officer should not reopen any earlier negotiations. |
| After the negotiations are successfully completed the accounting officer should promptly notify other firms that they were unsuccessful. |

[5] Contract award

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| According to the PPPFA and its regulations a contract may only be awarded to the bidder who scored the highest number of points, unless objective criteria justify the award to another bidder, in which case the accounting officer should be able to defend the decision in any court of law. |
| The accounting officer should award the contract within the period of validity of bids to the bidder who meets the appropriate standards of capability and resources and whose bid has been determined: <ul style="list-style-type: none"> ➤ To be substantially responsive to the bidding documents; and ➤ To be the highest on points. |

[6] Rejection of all proposals and re-invitation

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| It will be justified to reject all proposals only if all proposals are non-responsive and suitable, either because they present major deficiencies in complying with the TOR or they involve costs substantially higher than the original estimate. |
| This might result in revising the RFP, scaling down the scope of services and / or increasing the budget. |

[7] Evaluation of Bids based on a stipulated minimum threshold for Local Production and Content

[a] Bids that were invited on the basis of local production and content should be evaluated by following a two-stage bidding process:

First stage – Evaluation in terms of the stipulated minimum threshold for local production and content

[b] Bids must be evaluated in terms of the evaluation criteria stipulated in the bid documents. The amendment of the stipulated minimum threshold for local production and content after the closure of bids is not allowed as this may jeopardise the fairness of the process.

[c] A bid will be disqualified if:

- [i] the bidder fails to achieve the stipulated minimum threshold for local production and content; and.
- [ii] the Declaration Certificate for Local Content (SBD / MBD 6.2) referred to in paragraphs 7.1.4 and 7.2.4 is not submitted as part of the bid documentation.

[41] Contracts

- [1] The relationship between the accounting officer and the consultant should be one of purchaser / provider and not employer / employee and should be regulated by a contract. The most common types of contracts are:

[a] Lump Sum (Firm Fixed Price) Contract

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| Assignments were the content and duration of services and required outputs are clearly defined. |
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| Payments are linked to outputs (deliverables), such as reports, drawings, bills of quantities, etc. |
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| Easy to administer as payments are due on clearly specified outputs. |
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[b] Time-Based Contract

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| Were it difficult to define the scope and length of services, either because the services related to activities by others for which the completion period may vary or because the input required to attain the objectives is difficult to assess. |
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| Payments are based on agreed hourly, daily or monthly rates for identified staff and on reimbursable items using actually expenses and / or agreed unit prices. |
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| Should include maximum amount of total payments, including a contingency allowance for unforeseen work and duration and provision for price adjustments. |
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| Needs to be closely monitored and administered to ensure that assignment is progressing satisfactorily and payments claimed by the consultants are appropriate. |
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[c] Retainer and / or Contingency (Success) Fee Contract

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| Remuneration of the consultant includes a retainer and success fee, the latter being normally expressed as a percentage of the sale price of the assets. |
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[d] Percentage Contract

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| Percentage contracts directly relate fees paid to the consultant to the estimated or actual project construction cost, or cost of the goods procured or inspected. |
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| Are negotiated on the basis of market norms for services and / or estimated staff-month costs for the services or competitive bids. |
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[e] Indefinite Delivery Contract (Price Agreement)

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| Used when need to have "on call" specialized services to provide advice on a particular activity. |
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| Unit rates to be paid for experts are agreed upon and payments are made on the basis of the time actually used. |
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[2] Important provisions

[a] Currency

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| Firms must express the price for their services in Rand only. |
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[b] Price Adjustment

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| To adjust the remuneration for inflation a price adjustment provision should be included in the contract if its duration is expected to exceed 12 months. |
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A price adjustment is also allowable when the inflation is expected to be high or unpredictable over a shorter period.

[c] Payment Provision

Payment provisions, including amounts to be paid, schedule of payments and payments procedure should be agreed upon during negotiations.

Payments may be made at regular intervals (under time-based contracts) or for agreed outputs (under lump sum contracts)

Advance payments exceeding 10% of the contract should be backed by advance payment securities.

Payments should be made promptly in accordance with the contract provisions and to that end:

- Consultants can be paid by the accounting officer;
- Only dispute amounts should be withheld, with the remainder of the invoice paid in accordance with the contract; and
- Contract should provide for payment of financing charges (specified in the contract) if payment is delayed due to the client's fault beyond the time allowed in the contract.

[d] Bid and Performance Securities

Bid and performance securities is not allowed for consultancy's services.

[e] Accounting Officer Contribution

Contract should give details governing any counterpart staff appointed by the accounting officer.

Details governing any facilities provided by the accounting officer should be included.

[f] Conflict of Interest

Consultant should not receive any remuneration not provided for in the contract.

Consultant should not engage in consulting activities that conflict with the interest of the council under the contract and should be excluded from downstream supply of goods or construction of works or purchases of any asset or provision of any other service related to the assignment other than the continuation of the "services" under the ongoing contract.

[g] Professional Liability

Consultant is expected to carry out its assignment with due diligence and in accordance with prevailing standards of the profession and the contract need not to deal with this matter.

[h] Staff Substitution

If substitution is necessary during the assignment the consultant should propose other staff of at least the same level of qualifications for approval by the accounting officer.

[i] Applicable Law and Settlement of Disputes

Contract should include provisions dealing with the applicable law and the forum for settlement of disputes. Any unsettled disputes by means of mediation may be settled in a South African Court of Law.

[3] Evaluation of the Performance of Consultants

- [a] Consultants should observe due diligence and prevailing standards in the performance of the assignment, whilst the accounting officer should evaluate the performance of

consultants appointed in a fair and confidential process. In case of repeated poor performance the firm should be notified and provided an opportunity to explain the reasons for it and remedial action proposed.

[b] Consultants are responsible for the accuracy and suitability of their work. Although the accounting officer supervise and review the consultants' work, no modifications should be made in the final documents prepared by consultants without mutual agreement. In the case of supervision of works, consultants may have more or less authority to supervise, from full responsibility as an independent engineer, to that of advisor to the client with little authority to make decisions as determined by the accounting officer and captured in the contract agreement between the accounting officer and the consultant.

[c] Any granting of a substantial extension of the stipulated time for performance of a contract, agreeing to any substantial modification of the scope of the services substituting key staff, waiving the conditions of a contract or making any changes in the contract that would in aggregate increase the original amount of the contract by more than 5 percent will be subject to the approval of the accounting officer.

[4] Disbursements

The responsibility for the implementation of the project and therefore for the payment of consulting services under the project rests solely with the accounting officer.

[5] Confidentiality

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| The proposal evaluation process is to be confidential until the contract award is notified to the successful firm. |
| If consultants wish to raise issues or questions about the selection process they should communicate directly in writing with the accounting officer. |
| Communication received from consultants after opening of the technical proposals should be handled as follows: <ul style="list-style-type: none"> ➤ In case of contracts any communication should be sent to the accounting officer for due consideration and appropriate actions; ➤ If additional information or clarification is required from the consultant the accounting officer should obtain it and comment on or incorporate it, as appropriate, in the evaluation report. |

[6] Debriefing

If after notification of award, a consultant wishes to ascertain the grounds on which its proposal was not selected, it should address its request in writing to the accounting officer. If the consultant is not satisfied with the explanation given, the consultant may refer the matter to the relevant provincial treasury, Public Protector or court of law.

[7] Conclusion

Selecting a consultant requires a logical and systematic approach to enable the appointment of the most effective and efficient consultants and is essential to be successful in a variety of objectives to be achieved by an institution. The consultants' performance has to be monitored and evaluated in an equally, logical, systematic and objective manner to ensure that the correct decision is made when the consultant is to be utilized in future. The general culture throughout the supply chain management process and specific appointment of consultants should be one of trust, honesty, professionalism and willingness to serve.

[42] Deviation from, and ratification of minor breaches of, procurement processes

[1] The accounting officer may –

- [a] dispense with the official procurement processes established by this Policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only –
 - [i] in an emergency;
 - [ii] if such goods or services are produced or available from a single provider only;
 - [iii] for the acquisition of special works of art or historical objects where specifications are difficult to compile;
 - [iv] acquisition of animals for zoos and / or nature and game reserves; or
 - [v] in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
 - [b] ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of technical nature.
- [2] The accounting officer must record the reasons for any deviations in terms of subparagraphs (1)(a) and (b) of this Policy and report them to the next meeting of the council and include as a note to the annual financial statements.
 - [3] Subparagraph (2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this Policy.

[43] Unsolicited bids

- [1] In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- [2] The accounting officer may decide in terms of section 113 (2) of the Act to consider an unsolicited bid, only if –
 - [a] the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
 - [b] the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
 - [c] the person who made the bid is the sole provider of the product or service; and
 - [d] the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
- [3] If the accounting officer decides to consider an unsolicited bid that complies with subparagraph (2) of this Policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with –
 - [a] reasons as to why the bid should not be open to other competitors;
 - [b] an explanation of the potential benefits if the unsolicited bid were accepted; and
 - [c] an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- [4] The accounting officer must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, to the National Treasury and the relevant provincial treasury for comment.
- [5] The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, depending on its delegations.
- [6] A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.

- [7] When considering the matter, the adjudication committee must take into account –
 - [a] any comments submitted by the public; and
 - [b] any written comments and recommendations of the National Treasury or the relevant provincial treasury.
- [8] If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the accounting officer must submit to the Auditor-General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.
- [9] Such submission must be made within seven days after the decision on the ward 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.

[44] Combating of abuse of supply chain management system

- [1] The accounting officer must –
 - [a] take all reasonable steps to prevent abuse of the supply chain management system;
 - [b] investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this Policy, and when justified –
 - [i] take appropriate steps against such official or other role player; or
 - [ii] report any alleged criminal conduct to the South African Police Service;
 - [c] check the National Treasury’s database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
 - [d] reject any bid from a bidder –
 - [i] if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality, or to any other municipality or municipal entity, are in arrears for more than three months; or
 - [ii] who during the last five years failed to perform satisfactorily on a previous contract with the municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
 - [e] reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
 - [f] cancel a contract awarded to a person if –
 - [i] the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
 - [ii] an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
 - [g] reject the bid of any bidder if that bidder or any of its directors -
 - [i] has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;
 - [ii] has been convicted for fraud or corruption during the past five years;
 - [iii] has wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - [iv] has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).

- [2] The accounting officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subparagraphs (1) (b)(ii), (e) or (f) of this Policy.
- [3] All bidders must complete the **MBD8** – Declaration of Bidder’s Past Supply Chain Management Practices – form as included in the Municipal Bidding Document.

Part 3: Logistics, Disposal, Risk and Performance Management

[45] Logistics management

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

- [a] the monitoring of spending patterns on types or classes of goods and services incorporating, where practical, the coding of items to ensure that each item has a unique number;
- [b] the setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;
- [c] the placing of manual or electronic orders for all acquisitions other than those from petty cash;
- [d] before payment is approved, certification by the responsible officer that the goods and services are received or rendered on time and is in accordance with the order, the general conditions of contract and specifications where applicable and that the price charged is as quoted in terms of a contract;
- [e] appropriate standards of internal control and warehouse management to ensure that goods placed in stores are secure and only used for the purpose for which they were purchased;
- [f] regular checking to ensure that all assets including official vehicles are properly managed, appropriately maintained and only used for official purposes; and
- [g] monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for particular goods or services.

[46] Disposal management

- [1] The accounting officer must establish an effective system of disposal management for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to section 14 and 90 of the Act.
- [2] Assets may be disposed of by -
 - [a] transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
 - [b] transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
 - [c] selling the asset; or
 - [d] destroying the asset.
- [3] The preference point systems prescribed in the PPPFA and the Preferential Procurement Regulations, 2017 are not applicable to the sale and letting of assets.
- [4] In instances where assets are sold or leased by means of advertised competitive bids or written price quotations or by auctions the award must be made to the highest bidder.

- [5] The accounting officer must ensure that –
- [a] immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
 - [b] movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
 - [c] firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;
 - [d] immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;
 - [e] all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;
 - [f] where assets are traded in for other assets, the highest possible trade-in price is negotiated; and
 - [g] in the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment.
- [6] In connection with the letting of immovable property –
- [a] immovable property must be let at market related rates except when the public interest or the plight of the poor demands otherwise; and
 - [b] all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property must be annually reviewed.
- [7] Where assets are traded in for other assets, the highest possible trade-in price must be negotiated.
- [8] During the disposal management process of movable and immovable assets the following steps should be undertaken:

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| Obsolescence planning must be effected, alternatively depreciation rates per item must be calculated. |
| A database of all redundant assets must be compiled and maintained. |
| Assets identified for disposal must first be inspected for potential re-use. |
| A strategy must be determined for the disposal of assets. |
| The actual disposal of assets must be effected in compliance with this chapter. |

[47] Risk management

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

- [e] the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.
- [3] Penalties
- [a] The municipality must upon detecting that a preference in terms of the Preferential Procurement Policy Framework Act, 2000, its regulations and the Act, as defined, has been obtained on a fraudulent basis, or any specified goals are not attained in the performance of the contract, act against the person awarded the contract.
 - [b] The municipality may in addition to any other remedy it may have against the person contemplated in subsection (1) –
 - [i] recover all costs, losses and damages it has incurred or suffered as a result of that person's conduct;
 - [ii] cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - [iii] impose a financial penalty more severe than the theoretical financial preference associated with the claim which was made in the bid; and
 - [iv] restrict the contractor, its shareholders and directors from obtaining business from any organ of state for a period not exceeding 10 years.
- [4] Insurance
- [a] The accounting officer must ensure that steps taken to –
 - [i] insure the municipality against procurement related risks;
 - [ii] establish risk management programmes; and
 - [iii] make advance provision for losses associated with such risks.
 - [b] The accounting officer shall further ensure that insurance related excesses do not cause the failure of emerging small and micro enterprises.
- [5] Guarantees
- [a] The municipality must adhere to the following principles with regard to performance guarantees –
 - [i] the afore stated performance guarantees must be commensurate with the degree of contractual risk to which the municipality will be exposed;
 - [ii] in the case of large and complex contracts, performance guarantees must be requested in order to discourage the submission of irresponsible bids; and
 - [iii] the risk of failure must be distributed between the contracting parties and should be managed so that the municipality's costs resulting from any such failure are recoverable.
 - [b] With regard to contracts pertaining to engineering and construction works –
 - [i] adequate provision should be made by the municipality to ensure that funds are available to rectify defects; and
 - [ii] performance guarantees may be waived in the case of low value and low risk contracts or where a third party bears the risk of failure.
- [6] Declaration
- For purposes of establishing control measures to eliminate fraud and corruption –
- [a] a declaration schedule will form an integral part of all the Municipality's bid documents;
 - [b] bidders must be required to complete the schedule as a prerequisite to submission of any bid;
 - [c] employees of any organ of state will be required to complete the schedule as a prerequisite to the bid.

[7] Surety

[a] Sureties must be obtained in respect of construction projects, classified as follows:

| AMOUNT | | PERCENTAGE |
|-------------|---------------|------------|
| R 1 000 000 | | Nil |
| R 1 000 001 | - R 2 500 000 | 2.5% |
| R 2 500 001 | - R 5 000 000 | 5.0% |
| R 5 000 001 | - R 7 500 000 | 7.5% |
| R 7 500 001 | - above | 10.0% |

- [b] In the event that a contractor is unable to raise the required surety, the municipality may allow such surety to be deducted in full or part from monies that are to become due to the contractor, in which events this shall be effected by way of deductions from the first three payment certificates issued in favour of the contractor.
- [c] The municipality may waive the requirement for a surety on construction contracts that are estimated to be equal to or lower than one million rand.
- [d] With regard to the waiving of sureties –
- [i] this may be permitted to assist emerging and HDI entrepreneurs in the small works sector of the construction industry;
 - [ii] it may further be permitted where a surety, a performance guarantee or funds cannot be obtained with the assistance of the Eastern Cape Development Corporation (ECDC) or a similar institution, a written indication thereof to be submitted to the municipality; and
 - [iii] the municipality may bear the risks associated with such waiver in order to promote emerging and HDI entrepreneurs.
- [e] No contractor, supplier or service provider may be permitted to undertake more than two contracts simultaneously where sureties have been waived.
- [f] Sureties will be released from their obligations upon their application to the municipality and provided that the municipality is satisfied that the contract has been completed satisfactorily.

[8] Retention

- [a] A percentage of the costs in respect of construction contracts must be set aside as retention funds.
- [b] No more than 10% of the value of the construction contract must be set aside for retention purposes for the total amount that has been awarded.
- [c] With regard to the release of retention funds –
- [i] half of the retention funds shall be released upon the issue of a completion certificate; and
 - [ii] the balance of the retention funds shall be released upon completion of the defects liability period.

[9] Cessions

- [a] A cession agreement may be concluded by the municipality, a contractor, supplier or service provider and any other third party in order to assist emerging and HDI entrepreneurs.
- [b] The conclusion of a cession agreement shall be approved at the discretion of the accounting officer.

[48] Performance management

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

For purpose of internal monitoring, at least the following must be considered:

- [a] Achievement of objectives;
- [b] Compliance with norms and standards;
- [c] Saving generated;
- [d] Stores efficiency;
- [e] Cost variance per item;
- [f] Possible breaches of contract;
- [g] Cost of the procurement process itself;
- [h] Whether supply chain objectives are consistent with national government's policies;
- [i] Increasingly alignment of material construction standards with international best practice;
- [j] Observance of principles of co-operative governance; and
- [k] Reduction of regional economic disparities are promoted.

Part 4: Other matters

[49] Prohibition on awards to persons whose tax matters are not in order

- [1] No award above R 30 000 (including VAT) may be made in terms of this Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order. It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.
- [2] Before making an award to a person the accounting officer must first check with SARS whether that person's tax matters are in order.
 - [a] In order to meet this requirement bidders are required to complete in full the TCC 001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.
 - [b] SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
 - [c] The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.
 - [d] In bids where Consortia / Joint Venture / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.
 - [e] Copies of the TCC 001 "Application for a Tax Clearance Certificate" form are available from the municipality, any SARS branch office nationally or on the website www.sars.gov.za.
 - [f] Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website www.sars.gov.za.

- [3] The Tax Clearance Certificate issued by the SARS will no longer contain a signature and date stamp, but will among others, capture a unique tax clearance certificate number as well as an approval and expiry date. A tax clearance certificate is valid for a period of one year from date of approval.
- [4] In the absence of the Tax clearance certificate the tax matters maybe verified via the National Treasury website.
- [5] Prior to the award of a bid, the accounting officer should verify the tax clearance certificate submitted by a potential bidder at any SARS branch or at telephone number 0860 12 12 18. SARS will confirm such verification by electronic mail or per facsimile which should be attached to the Tax Clearance Certificate (**MBD 2**) and Application for a Tax Clearance Certificate (**TCC 001**) forms submitted.
- [6] If the municipality is already in possession of a supplier's original valid tax clearance certificate, it is not necessary to obtain a new tax clearance certificate each time a price quotation or bid is submitted from that specific supplier, should the closing date of the price quotation or bid falls within the expiry date of the tax clearance certificate.

[50] Prohibition on awards to persons in the service of the state

Irrespective of the procurement process followed, no award may be made to a person in terms of this Policy –

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

[51] Awards to close family members of persons in the service of the state

The accounting officer must ensure that the notes to the annual financial statements disclose particulars of any award of more than R 2 000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –

- [a] the name of that person;
- [b] the capacity in which that person is in the service of the state; and
- [c] the amount of the award.

[52] Ethical standards

- [1] A code of ethical standards as set out in subparagraph (2) is hereby established for officials and other role players in the supply chain management system of the municipality in order to promote –
 - [a] mutual trust and respect; and
 - [b] an environment where business can be conducted with integrity and in a fair and reasonable manner.
- [2] An official or other role player involved in the implementation of this Policy –
 - [a] must treat all providers and potential providers equitably;
 - [b] may not use his or her position for private gain or to improperly benefit another person;

- [c] may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R 350;
 - [d] notwithstanding subparagraph (2)(c), must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted or to any close family member, partner or associate of that person;
 - [e] must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by the municipality;
 - [f] must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
 - [g] must be scrupulous in his or her use of property belonging to the municipality;
 - [h] must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
 - [i] must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –
 - [aa] any alleged fraud, corruption, favouritism of unfair conduct;
 - [bb] any alleged contravention of paragraph 47 (1) of this Policy; or
 - [cc] any alleged breach of this code of ethical standards.
- [3] Declarations in terms of subparagraphs (2) (d) and (e) -
- [a] must be recorded in a register which the accounting officer must keep for this purpose;
 - [b] by the accounting officer must be made to the mayor of the municipality who must ensure that such declarations are recorded in the register.
- [4] The National Treasury's code of conduct must also be taken into account by supply chain management practitioners and other role players involved in supply chain management.
- [5] A breach of the code of ethics must be dealt with as follows –
- [a] in the case of an employee, in terms of the disciplinary procedures of the municipality envisaged in section 67 (1)(h) of the Municipal Systems Act;
 - [b] in the case a role player who is not an employee, through other appropriate means in recognition of severity of the breach;
 - [c] in all cases, financial misconduct must be dealt with in terms of Chapter 15 of the Act.
- [53] Inducements, rewards, gifts and favours to municipalities, officials and other role players.**
- [1] No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
- [a] any inducement or reward to the municipality for or in connection with the award of a contract; or
 - [b] any reward, gift, favour or hospitality to –
 - [i] any official; or
 - [ii] any other role player involved in the implementation of this Policy.
- [2] The accounting officer must promptly report any alleged contravention of subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.

[3] Subparagraph (1) does not apply to gifts less than R 350 in value.

[54] Sponsorships

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

- [a] a provider or prospective provider of goods or services; or
- [b] a recipient or prospective recipient of goods disposed or to be disposed.

[55] Objections and complaints

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

[56] Resolution of disputes, objections, complaints and queries

- [1] The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes –
 - [a] to assist in the resolution of disputes between the municipality and other persons regarding –
 - [i] any decisions or actions taken in the implementation of the supply chain management system; or
 - [ii] any matter arising from a contract awarded in the course of the supply chain management system; or
 - [b] to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.
- [2] The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his / her functions effectively.
- [3] The person appointed must –
 - [a] strive to resolve promptly all disputes, objections, complaints or queries received; and
 - [b] submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.
- [4] A dispute, objection, complaint or query may be referred to the relevant provincial treasury if –
 - [a] the dispute, objection, complaint or query is not resolved within 60 days; or
 - [b] no response is forthcoming within 60 days.
- [5] If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.
- [6] This paragraph must not be read as affecting a person's rights to approach a court at any time.

[57] Remedies

- [1] AOs / AAs must act against the bidder or person awarded the contract upon detecting that the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the contract conditions have not been fulfilled.
- [2] The institution may, in addition to any other remedy that it may have against the bidder or person:
 - [a] Disqualify the bidder or person from the bidding process;
 - [b] Recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - [c] Cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - [d] Restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after applying the audi alter am partem (hear the other side) rule; and
 - [e] Forward the matter for criminal prosecution.
 - [f] Institution's should involve their legal services when any of the remedies are applied.
- [3] The details of any restrictions imposed on bidders, persons or contractors must be forwarded to the National Treasury for inclusion on the central Database of Restricted Suppliers.

[58] Contracts providing for compensation based on turnover

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

- [a] a cap on the compensation payable to the service provider; and
- [b] that such compensation must be performance based.

[59] Support to bidders

The municipality will provide all the necessary support within its powers to ensure that bidders, especially HDI's and / or emerging firms is provided with an opportunity to provide goods and services to the municipality where possible.

[60] Occupational Health and Safety issues

All contractors entering into contract with the municipality shall, as minimum requirement comply with the following:

- [1] Occupational Health and Safety Act No. 58 of 1993 (as amended) and applicable regulations;
- [2] Compensation for Occupational Injuries & Diseases Act No. 130 of 1993 (as amended);
- [3] Mine Health and Safety Act No. 29 of 1996.
- [4] If requested furnish the following:

- [a] An original copy of a letter of good standing from the compensation fund established in terms of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993;
- [b] A pre-bid occupational health and safety plan as contemplated in terms of the Construction Regulations, 2003.

[61] Public Private Partnerships (PPP)

The municipality may enter into a public-private partnership (PPP) agreement if:

- [1] It can demonstrate that it will provide value for money;
- [2] It can demonstrate that it is affordable;
- [3] It can demonstrate that it will transfer appropriate technical, operational and financial risk to the private party;
- [4] The PPP agreement comply with the prescribed regulatory framework for PPP's;
- [5] Where municipal services are involved complied with requirements of Chapter 8 of the Municipal Systems Act;
- [6] A feasibility study was conducted –
 - [a] explaining the strategic and operational benefits of the PPP for the municipality in terms of its objectives;
 - [b] describing in specific terms –
 - [i] the nature of the private party's role in the PPP;
 - [ii] the extent to which this role, both legally and by nature, can be performed by the private party; and
 - [iii] how the agreement will –

| |
|---|
| provide value for money to the municipality; |
| be affordable for the municipality; |
| transfer appropriate technical, operational and financial risks to the private party; and |
| impact on the municipality's revenue flows and its current and future budgets |
 - [c] taking into account all relevant information; and
 - [d] explaining the capacity of the municipality to effectively monitor, manage and enforce the agreement;
- [7] The accounting officer has at least 69 days prior to a meeting of the council at which the agreement is to be considered in accordance with section 21A of the Municipal Systems Act –
 - [a] make public particulars of the proposed PPP including the report on the feasibility study;
 - [b] invite the local community and other interested persons to submit to the municipality comments or representations in respect of the proposed PPP; and
 - [c] solicit the views and recommendations of –
 - [i] the National Treasury;
 - [ii] the national department responsible for local government;
 - [iii] if the PPP involves the provision of water, sanitation, electricity or any other service as may be prescribed, the responsible national department; and
 - [iv] any other national or provincial organ of state as may be prescribed.

[62] Expanded Public Works Programme (EPWP)

The EPWP is founded on the principle that the Implementing Agent (if the Municipality) is responsible for identifying and implementing suitable projects in accordance with the EPWP Guidelines whereby the municipality will provide guidance on the:

- [1] identification of suitable projects;
- [2] appropriate design for labour-intensive construction;
- [3] the specification of the labour-intensive works; and
- [4] the compilation of the contract documentation for labour-intensive projects.

[63] General prerequisites

All tenderers must submit the information requested below. Pro-forma data sheets can be found in the Annexures of this policy. Tenders will not be considered should the prerequisites not be met.

| | |
|----------|--|
| Annexure | Proof of company registration and / or any other form of legal standing must be submitted by all bidders and the company composition form must be completed. |
| Annexure | The Declaration of Interest form must be completed |
| Annexure | The bid document must be completed in all respects |
| Annexure | Bids must be submitted on original bid documents |
| Annexure | Bid documents must remain intact and no portion may be detached |
| Annexure | A joint venture agreement must be formalized prior to submitting a bid |

[64] Additional prerequisites for professionals

All tenderers must submit the information requested below. Pro-forma data sheets can be found in the Annexures of this policy. Tenders will not be considered should the prerequisites not be met.

| | |
|----------|---|
| Annexure | Submit proof of Professional Registration with relevant Professional Body, e.g. The Engineering Council of South Africa |
| Annexure | Submit Professional indemnity and type of cover |
| Annexure | Submit company composition on form |

[65] Additional prerequisites for contractors

All tenderers must submit the information requested below. Pro-forma data sheets can be found in the Annexures of this policy. Tenders will not be considered should the prerequisites not be met.

| | |
|----------|---|
| Annexure | Proof that all contractors and sub-contractors are registered with Construction Industry Development Board (CIDB) |
| Annexure | Details of sub-contract and sub-contractors. Sub-contractors are not allowed to sub-contract. |
| Annexure | <u>SUB-CONTRACTING</u> [1] A bidder must not be awarded the points claimed for B-BBEE status level of contribution if it is indicated in the bid documents that such a bidder intends |

| | |
|----------|---|
| | <p>subcontracting more than 25% of the contract value to any other enterprise that does not qualify for at least the same number of points that the bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.</p> <p>[2] A contractor is not allowed to sub-contract more than 25% of the contract value to another enterprise that does not have equal or higher B-BBEE status level, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.</p> <p>[3] In relation to a designated sector, a contractor must not be allowed to 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.</p> |
| Annexure | Company Composition of the subcontracting firm must be disclosed |
| Annexure | Written proof of Joint Ventures – disclosing partnerships e.g. percentages, names |
| Annexure | Joint ventures must be registered with CIDB and where relevant with National Home Builders Registration Council (NHBC) |

[66] Registration on National Treasury Supplier data base

ALL Suppliers that are registered with Senqu Municipality data base must also register with the National Treasury Central Data Base.

The Central Supplier Database (CSD) is a single database to serve as the source of all supplier information for all spheres of government. The purpose of centralizing government's supplier database is to reduce duplication of effort and cost for both supplier and government while enabling electronic procurement processes.

All prospective suppliers must register otherwise in future you will not be able to trade with any sphere of government. A supplier will not be required to submit physical tax clearance certificates or any business registration certificate to organs of state.

Suppliers are able to self-register on the CSD website www.csd.gov.za. Suppliers can capture and update their information on the CSD at any time, in preparation for the utilization of supplier data through procurement and financial systems used by all organs of state from 1 April 2016.

The standardized and electronic verification of supplier information will lead to reduced fraud with paper copies and manual processes.

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

1. General Principles
2. Conflict of Interest
3. Accountability
4. Openness
5. Confidentiality
6. Bid specification / Evaluation / Adjudication Committees
7. Combative Practices

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

[1] General Principles

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

[2] Conflict of interest

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

- [a] must treat all providers and potential providers equitably;
- [b] may not use his or her position for private gain or to improperly benefit another person;
- [c] may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R 350;
- [d] must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted or to any close family member, partner or associate of that person;
- [e] must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by the municipality;
- [f] must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
- [g] must declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest;
- [h] should not place him / herself under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties; and
- [i] should not take improper advantage of their previous office after leaving their official position.

[3] Accountability

- [1] Practitioners are accountable for their decisions and actions to the public.
- [2] Practitioners should use public property scrupulously.
- [3] Only the accounting officer or his / her delegates have the authority to commit the municipality to any transaction for the procurement of goods and / or services.

- [4] All transactions conducted by a practitioner should be recorded and accounted for in an appropriate accounting system. Practitioners should not make any false or misleading entries into such a system for any reason whatsoever.
- [5] Practitioners must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system.
- [6] Practitioners must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –
 - [i] any alleged fraud, corruption, favouritism or unfair conduct;
 - [ii] any alleged contravention of the policy on inducements, rewards, gifts and favours to the municipality, officials or other role players; and
 - [iii] any alleged breach of this code of conduct.
- [7] Any declarations made must be recorded in a register which the accounting officer must keep for this purpose. Any declarations made by the accounting officer must be made to the mayor who must ensure that such declaration is recorded in the register.

[4] Openness

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

[5] Confidentiality

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

[6] Bid Specification / Evaluation / Adjudication Committees

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

[7] Combative Practices

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

- [a] Suggestions to fictitious lower quotations;
 - [b] Reference to non-existent competition;
 - [c] Exploiting errors in price quotations / bids;
 - [d] Soliciting price quotations / bids from bidders / contractors whose names appear on the Register for Tender Defaulters.
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ANNEXURES

ANNEXURE A – CIRCULAR 77 OF NATIONAL TREASURY



October 2015

Model SCM Policy for Infrastructure Procurement and Delivery Management

for use by organs of state which are subject to the **Local Government Municipal Finance Management Act**

MFMA Circular No 77: Model SCM Policy for Infrastructure Delivery Management provides guidance to municipalities and municipal entities on the establishment of a suitable supply chain management system for infrastructure delivery which is better able to deliver value for money, while minimizing the scope for corruption. The *Model SCM Policy for Infrastructure Delivery Management* which is attached to this circular is issued in terms of Section 168 of the Municipal Finance Management Act of 2003 in support of Regulation 3(2) of the MFMA Supply Chain Management Regulations as a Treasury guideline determining a standard for municipal supply chain management policies. It is linked to the *National Treasury Standard for Infrastructure Procurement and Delivery Management* which establishes:

- a) requirements for the following matters as applied to the supply chain management system for infrastructure delivery:
- institutional arrangements;
 - demand management;
 - acquisition management;
 - contract management;
 - logistics management;
 - disposal management;
 - reporting of supply chain management information;
 - regular assessment of supply chain management performance; and
 - risk management and internal control; and

- b) a control framework for the planning, design and implementation of infrastructure projects and infrastructure procurement.

This standard for municipal supply chain management policies relating to infrastructure procurement and delivery management, or any modified version of it, when adopted will assist municipalities and municipal entities to better plan and obtain the value for money when undertaking infrastructure projects.

Supply chain management may be defined as *“the design, planning, execution, control and monitoring of supply chain activities in the delivery of goods, services or any combination thereof”*. On the other hand infrastructure is defined as *“immovable assets which are acquired, constructed or which results from construction operations or moveable assets which cannot function independently from purpose built immovable assets”* while infrastructure delivery is defined as *“the combination of all planning, technical, administrative and managerial actions associated with the construction, supply, renovation, rehabilitation, alteration, maintenance, operation or disposal of infrastructure.”* Accordingly, infrastructure delivery management is the supply chain management system for infrastructure.

This policy is aligned with the Supply Chain Management Regulations issued in terms of the Local Government: Municipal Finance Management Act of 2003.

There are unavoidably duplications in supply chain management policies for general goods and services and those for infrastructure delivery management arising from not only regulatory requirements but also an overlap in support functions such as the receipt of bids and advertising of bids. This model policy document may accordingly be issued as a stand-alone policy or as a policy which is supplementary to a municipality's or municipal entity's supply chain management system for general goods and services. Where it is issued as a supplementary policy, text should be replaced with cross references to the overarching policy.

The approach to procurement documentation is significantly different between general goods and services and infrastructure delivery. Documents for general goods and services, are based on the National Treasury General Conditions of Contract (GCC) which focuses on the rights and obligations of the parties in a generic manner and also deals with aspects of the bidding processes. This GCC requires that goods conform to the standards mentioned in the bidding documents and specifications and is used with standard bidding documents which include an invitation to bid, price schedules, local content, certificate of bid independence, declaration of bidders past SCM practices etc. Accordingly, the major variables between documents are the specifications or terms of reference and the evaluation criteria which ensures that bids are awarded on the basis of the lowest price for meeting a minimum standard. Contracts or service level agreements are frequently negotiated after the award of the bid.

In contrast, infrastructure procurement documents are based on a standard approach to the formatting and compilation of procurement documents used in conjunction with flexible standard conditions for the calling for an expression of interest and conditions of tender and a standard form of contract selected from a prescribed list. These standard forms of contract permit different allocations of risk to the parties to a contract and a wide range of pricing strategies to be pursued. This approach to procurement documentation enables procurement strategy and tactics to be exercised both in the awarding and in the performance of a contract in order to realise best value for money outcomes. Very seldom are material changes made in the draft contract which is issued to tenderers during the process of offer and acceptance as the offer is based on the selected allocation of risks and pricing strategies.

There are accordingly significant differences in the approach to bid specification and bid evaluation committees between the SCM system for general goods and services and that for infrastructure as a very different skills sets coupled with contextual knowledge is required. On the other hand, the bid adjudication committee is a governance committee which can deal with submissions emanating from both supply chains. (In any event, in most of the smaller organisations, the membership of this committee would probably not differ significantly if separate bid adjudication committees are established for the different supply chains.)

In order to distinguish between committees used in the two supply chain management systems, the terms procurement documentation, evaluation and tender committee are used in this document for the corresponding bid specification, bid evaluation and bid adjudication committees referred to in Treasury Regulations.

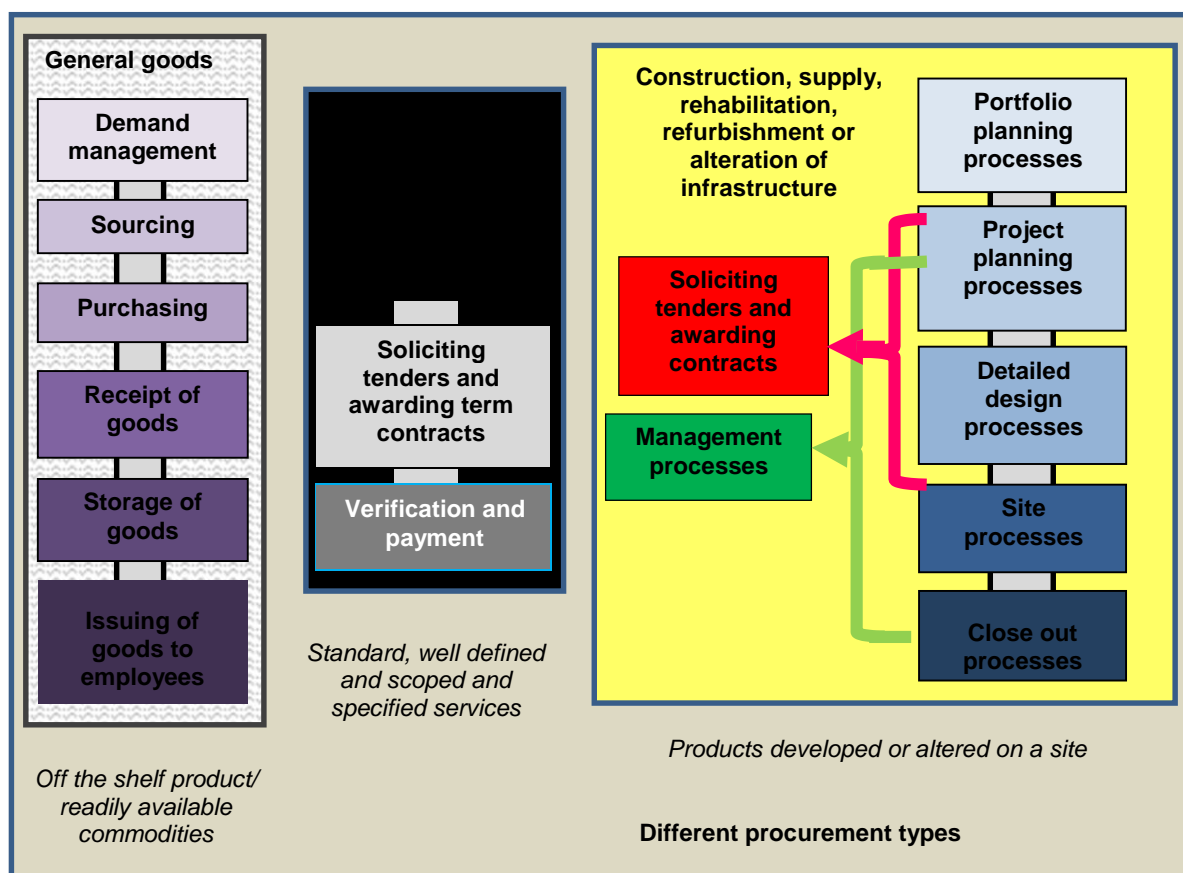
All text in square brackets needs to be populated with the correct data. All footnotes need to be deleted following the completion of the document.

Those responsible for putting in place the municipality's or municipal entity's policy need to review this model policy to ensure that it meets the needs of the municipality or municipal entity and adapt it as necessary so that the policies for both supply chain management systems are aligned.

The Supply Chain Management Regulations issued in terms of the MFMA permit the accounting officer (municipal manager or chief executive) to make use of any Treasury guidelines determining standards for municipal supply chain management policies and to submit to the council or board of directors that guideline standard, or any modified version as a draft policy (see Regulations 2 and 3). The Regulations furthermore require the municipal manager or chief executive to report any deviation from the guideline standard to the National Treasury and the relevant provincial treasury. Accordingly, all departures from this model policy and the *Standard for Infrastructure Procurement and Delivery Management* which is embedded within the policy must be reported to the relevant treasury.

Preface

Public procurement that is unrelated to infrastructure delivery typically relates to goods and services that are standard, well-defined and readily scoped and specified. Once purchased, goods invariably need to be taken into storage prior to being issued to employees. Services most often involve routine, repetitive services with well understood interim and final deliverables which do not require strategic inputs or require decisions to be made regarding the fitness for purpose of the service outputs.



In contrast, procurement relating to the provision of new infrastructure or the rehabilitation, refurbishment or alteration of existing infrastructure covers a wide and diverse range of goods and services, which are required to provide or alter the condition of immovable assets on a site. Accordingly, the procurement process for the delivery of infrastructure involves the initial and subsequent recurring updating of planning processes at a portfolio level flowing out of an assessment of public sector service delivery requirements or business needs. Thereafter it involves planning at a project level and the procurement and management of a network of suppliers, including subcontractors, to produce a product on a site. There is no need to store and issue materials or equipment unless these are issued to employees responsible for the maintenance or operation of infrastructure, or are issued free of charge to contractors for incorporation into the works.

Procurement is *the process which creates, manages and fulfils contracts*. Procurement deals with activities surrounding contracts. Such processes focus on establishing what is to be procured, developing a procurement strategy, producing procurement documentation, soliciting and evaluating tender offers, awarding of contracts and administering contracts. On the other hand, supply chain management (SCM) is *the design, planning, execution, control and monitoring of supply chain activities in the delivery of goods, services or any combination thereof*. Supply chains comprise all those public and private entities that are involved in delivering the inputs, outputs and outcomes of projects. Accordingly, supply chain management is concerned with the oversight, co-ordination and monitoring of inputs, outputs and outcomes of projects from the various entities within a supply chain.

Infrastructure is defined as “*immovable assets which are acquired, constructed or which results from construction operations or moveable assets which cannot function independently from purpose built immovable assets*” while infrastructure delivery is defined as “*the combination of all planning, technical, administrative and managerial actions associated with the construction, supply, renovation, rehabilitation, alteration, maintenance, operation or disposal of infrastructure.*” Accordingly, infrastructure delivery management contextualises the supply chain management system for infrastructure.

Understandably, there are several overlaps between the supply chain management system for general goods and services and that for infrastructure delivery management. However, the inclusion of control frameworks in the Standard for Infrastructure Procurement and Delivery Management is aimed at expenditure control and a reduction in the gap between what is planned and budget for and what is delivered to ensure that value for money is achieved.

The primary purpose of this document is to embed an infrastructure delivery management system for [Senqu Local Municipality] which is aligned with the regulatory framework for public sector procurement, supply chain management and expenditure control. It also enables the National Treasury Standard for Infrastructure Procurement and Delivery Management to be implemented.

Senqu Municipality's SCM Policy for Infrastructure procurement and delivery management

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1 Scope

This policy establishes the *[name of municipality or municipal entity]*'s policy for infrastructure procurement and delivery management in accordance with the provisions of the regulatory frameworks for procurement and supply chain management. It includes the procurement of goods and services necessary for a new facility to be occupied and used as a functional entity but excludes:

- a) the storage of goods and equipment following their delivery to *[name of municipality or municipal entity]* which are stored and issued to contractors or to employees;
- b) the disposal or letting of land;
- c) the conclusion of any form of land availability agreement;
- d) the leasing or rental of moveable assets; and
- e) public private partnerships.

2 Terms, definitions and abbreviations

2.1 Terms and definitions

For the purposes of this document, the definitions and terms given in the standard and the following apply:

agent: person or organization that is not an employee of *[name of municipality or municipal entity]* that acts on the *[name of municipality or municipal entity]*'s behalf in the application of this document

authorised person: the municipal manager or chief executive or the appropriately delegated authority to award, cancel, amend, extend or transfer a contract or order

conflict of interest: any situation in which:

- a) someone in a position of trust has competing professional or personal interests which make it difficult for him to fulfil his duties impartially,
- b) an individual or organization is in a position to exploit a professional or official capacity in some way for his personal or for corporate benefit, or
- c) incompatibility or contradictory interests exist between an employee and the organization which employs that employee

contract manager: person responsible for administering a package on behalf of the employer and performing duties relating to the overall management of such contract from the implementer's point of view

family member: a person's spouse, whether in a marriage or in a customary union according to indigenous law, domestic partner in a civil union, or child, parent, brother, sister, whether such a relationship results from birth, marriage or adoption

framework agreement: an agreement between an organ of state and one or more contractors, the purpose of which is to establish the terms governing orders to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged

gate: a control point at the end of a process where a decision is required before proceeding to the next process or activity

gateway review: an independent review of the available information at a gate upon which a decision to proceed or not to the next process is based

gratification: an inducement to perform an improper act

infrastructure delivery: the combination of all planning, technical, administrative and managerial actions associated with the construction, supply, renovation, rehabilitation, alteration, maintenance, operation or disposal of infrastructure

infrastructure procurement: the procurement of goods or services including any combination thereof associated with the acquisition, renovation, rehabilitation, alteration, maintenance, operation or disposal of infrastructure

maintenance: the combination of all technical and associated administrative actions during an item's service life to retain it in a state in which it can satisfactorily perform its required function

operation: combination of all technical, administrative and managerial actions, other than maintenance actions, that results in the item being in use

order: an instruction to provide goods, services or any combination thereof under a framework agreement

organ of state: an organ of state as defined in section 239 of the Constitution of the Republic of South Africa

procurement document: documentation used to initiate or conclude (or both) a contract or the issuing of an order

principal: a natural person who is a partner in a partnership, a sole proprietor, a director a company established in terms of the Companies Act of 2008 (Act No. 71 of 2008) or a member of a close corporation registered in terms of the Close Corporation Act, 1984, (Act No. 69 of 1984)

standard: the latest edition of the Standard for Infrastructure Procurement and Delivery Management as published by National Treasury

working day: any day of a week on which is not a Sunday, Saturday or public holiday

2.2 Abbreviations

For the purposes of this document, the following abbreviations apply

CIDB: Construction Industry Development Board

SARS: South African Revenue Services

3 General requirements¹

3.1 Delegations

3.1.1 The *Council* of Senqu Local Municipality hereby delegates all powers and duties to the *municipal manager* which are necessary to enable the *municipal manager* to:

- a) discharge the supply chain management responsibilities conferred on accounting officers in terms of Chapter 8 or 10 of the Local Government Municipal Finance Management Act of 2003 and this document;
- b) maximise administrative and operational efficiency in the implementation of this document;
- c) enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this document; and

¹ This clause is required to ensure that the standard is linked to the policy and aligned with the MFMA SCM Regulations.

- d) comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Local Government Municipal Finance Management Act of 2003 Act.

3.1.2 No departure shall be made from the provisions of this policy without the approval of the municipal manager Of Senqu Municipality.

3.1.3 The *Municipal manager* shall for oversight purposes:

- a) within 30 days of the end of each financial year, submit a report on the implementation of this the policy and the equivalent policy of any municipal entity under the sole or shared control of the *[name of municipality]*, to the council of the *[name of municipality]*³ / within 20 days of the end of each financial year, submit a report on the implementation of this policy to the board of directors, who must then submit the report to the municipal manager of *[name of parent municipality]* for submission to the council;
- b) whenever there are serious and material problems in the implementation of this policy, immediately submit a report to the *council* who must then submit the report to the municipal manager of Senqu Local Municipality for submission to the council;
- c) within 10 days of the end of each quarter, submit a report on the implementation of the policy to the *mayor* and
- d) make the reports public in accordance with section 21A of the Municipal Systems Act of 2000.

3.2 Implementation of the Standard for Infrastructure Procurement and Delivery Management

3.2.1 Infrastructure procurement and delivery management shall be undertaken in accordance with the all applicable legislation and the relevant requirements of the latest edition of the National Treasury Standard for Infrastructure Procurement and Delivery Management.⁵

3.2.2 Pre-feasibility and feasibility reports are required on⁶

3.2.3 Stage 3 to 7 are required for⁷

3.3 Supervision of the infrastructure delivery management unit⁸

The Infrastructure Delivery Management Unit shall be directly supervised by the *[chief financial officer / person delegated in terms of section 82 of the MFMA]*.

3.4 Objections and complaints⁹

² SCM Regulation 36 of the MFMA permits deviations from, and ratification of minor breaches or procurement processes.

³ Delete text after / in the case of a municipality and the text before the / in the case of a municipal entity.

⁴ Delete text after / in the case of a municipality and the text before the / in the case of a municipal entity.

⁵ Any deviation to the provisions of this standard must be reported to National Treasury and the relevant treasury.

⁶ Sub-clause 4.1.1.4 c) of the standard permits an organ of states' policy to require that pre-feasibility and feasibility reports are required, notwithstanding the test provided for in this sub-clause to determine if such reports are required. The compiler of the policy needs to delete this sub-clause if it is not required.

⁷ Sub-clause 4.1.1.1 of the standard permits stages 3 to 9 where the work does not involve the provision of new infrastructure or the rehabilitation, refurbishment, alteration of existing infrastructure. Stages 5 and 6 to be omitted where there is sufficient information to proceed to stage 7 is contained in the stage 4 deliverable. The policy may require that certain types of work (e.g. specific types of maintenance) need to pass through all the stages. If this is the case, the policy may require the application of all the stages for specific types of projects. The compiler of the policy needs to delete this sub-clause if it is not required.

⁸ SCM Regulation 7 which is issued in terms of the MFMA requires each municipality to establish a supply chain management unit to implement its supply chain management policy, which where possible, should operate under the direct supervision of the chief financial officer or an official to whom this duty has been delegated in terms of Section 82 of the MFMA. There are benefits in establishing SCM units for general goods and services and infrastructure and to delegate the supervision to a person other than the chief financial officer.

⁹ This clause aligns with SCM Regulation 49 issued in terms of the MFMA.

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

3.5 Resolution of disputes, objections, complaints and queries¹⁰

3.5.1 The *Municipal manager*, shall appoint an independent and impartial person, not directly involved in the infrastructure delivery management processes to assist in the resolution of disputes between the Senqu Local Municipality and other persons regarding:

- a) any decisions or actions taken in the implementation of the supply chain management system;
- b) any matter arising from a contract awarded within the Senqu Local Municipality infrastructure delivery management system; or
- c) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.

3.5.2 The *designated person* shall assist the person appointed in terms of 3.5.1 to perform his or her functions effectively.

3.5.3 The person appointed in terms of 3.5.1 shall:

- a) strive to resolve promptly all disputes, objections, complaints or queries received; and
- b) submit monthly reports to the *Municipal manager* on all disputes, objections, complaints or queries received, attended to or resolved.

3.5.4 A dispute, objection, complaint or query may be referred to the Provincial Treasury if:

- a) the dispute, objection, complaint or query is not resolved within 60 days; or
- b) no response is forthcoming within 60 days.

3.5.5 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.

4 Control framework for infrastructure delivery management¹¹

4.1 Assignment of responsibilities for approving or accepting end of stage deliverables¹²

The responsibilities for approving or accepting end of stage deliverables shall be as stated in Table 1.

4.2 Additional gates¹³

The following additional gates shall apply:

¹⁰ This clause aligns with SCM Regulation 50 issued in terms of the MFMA.

¹¹ This clause is required to ensure compliance with the requirements of the standard.

¹² The terms "approve" and "accept" have the meanings "officially agree to" and "receive as adequate, valid, or suitable give an affirmative answer to a proposal", respectively. Approvals will typically take place at a senior management level whilst acceptances can be made at a lower level. Approvals and acceptances can be granted by individuals or committees. Where a municipality or municipal entity implements a project on behalf of an organ of state, acceptance / approval of end of stage deliverables may have to be granted in consultation with such an organisation. Alternatively it may be assigned to a party to an agency agreement developed in accordance with the provisions of clauses 5.2 of the standard. As a result, Table 1 may have to differentiate between own infrastructure and client institution's infrastructure. It may also have to differentiate between the value and type of projects.

¹³ Clause 4.1.1.7 of the standard permits the inclusion of additional gates, if deemed necessary. This is an optional provision. The compiler of the policy should either delete this provision or describe the additional gates that are required, what their end of stage deliverable and any requirements associated with deliverables, who approves / accepts the deliverable etc..

.....

4.3 Additional requirements¹⁴

The following additional requirements apply:

.....

4.4 Gateway reviews

4.4.1 Gateway reviews for major capital projects above a threshold

4.4.1.1 *[Designated person]* shall appoint a gateway review team in accordance with the provisions of clause 4.1.13.1.2 of the standard to undertake gateway reviews for major capital projects.

4.4.1.2 The requirements for a gateway review in addition to those contained in section 4.1.13 of the standard are as follows:¹⁵

4.4.2 Elective gateway reviews¹⁶

Gateway reviews shall be undertaken

Table 1: Responsibilities for approving or accepting end of stage deliverables in the control framework for the management of infrastructure delivery

| Stage | | Person assigned the responsibility for approving or accepting end of stage deliverables |
|-------|--------------------------|---|
| No | Name | |
| 0 | Project initiation | <i>PMU Manager</i> accepts the initiation report |
| 1 | Infrastructure planning | <i>BTO Manager</i> approves the infrastructure plan |
| 2 | Strategic resourcing | <i>Specifications Committee</i> approves the delivery and / or procurement |
| 3 | Pre-feasibility | <i>PMU Manager</i> accepts the pre-feasibility report |
| | Preparation and briefing | <i>PMU Manager</i> accepts the strategic brief |
| 4 | Feasibility | <i>PMU Manager</i> accepts the feasibility report |
| | Concept and viability | <i>Specifications Committee</i> accepts the concept report |
| 5 | Design development | <i>Specifications Committee</i> accepts the design development report |
| 6 | Design documentation | 6A Production information <i>[Designated person]</i> accepts the parts of the production information which are identified when the design development report is accepted as requiring acceptance |
| | | 6B Manufacture, fabrication and construction information The contract manager accepts the manufacture, fabrication and construction information |

¹⁴ State additional requirements for any of the stages, as necessary. Sub clause 4.1.1.4 permits a municipality or municipal entity to insist that pre-feasibility and feasibility reports be provided irrespective of the test contained in the standard for determining if such reports contained in the standard suggests otherwise.

¹⁵ Delete or add in any additional requirements.

¹⁶ State optional requirements or delete clause. Gateway reviews may be undertaken by a gateway review team of the deliverables associated with any of the gates in the control framework. Such reviews should preferably take place at gates 4, 5 or 8. They can also be conducted on a random sample basis after the end of stage deliverable has been accepted. Such reviews can capture lessons learned and in so doing improve the quality of future deliverables.

| Stage | | Person assigned the responsibility for approving or accepting end of stage deliverables |
|-------|--------------------|---|
| No | Name | |
| 7 | Works | The contract manager certifies completion of the works or the delivery of goods and associated services |
| 8 | Handover | The owner or end user accepts liability for the works |
| 9 | Package completion | The contract manager or supervising agent certifies the defects certificate in accordance with the provisions of the contract The contract manager certifies final completion in accordance with the provisions of the contract <i>PMU Manager</i> accepts the close out report |

5 Control framework for infrastructure procurement¹⁷

5.1 The responsibilities for taking the key actions associated with the formation and conclusion of contracts including framework agreements above the quotation threshold shall be as stated in Table 2.

5.2 The responsibilities for taking the key actions associated with the quotation procedure and the negotiation procedure where the value of the contract is less than the threshold set for the quotation procedure shall be as follows:¹⁸

- a) *Demand Manager* shall grant approval for the issuing of the procurement documents, based on the contents of a documentation review report developed in accordance with the provisions of the standard;
- b) the authorised person may award the contract if satisfied with the recommendations contained in the evaluation report prepared in accordance with the provisions of the standard.

5.3 The responsibilities for taking the key actions associated with the issuing of an order in terms of a framework agreement shall be as stated in Table 3.

6 Infrastructure delivery management requirements

6.1 Institutional arrangements

6.6.1 Committee system for procurement¹⁹

6.1.1.1 General

6.1.1.1.1 A committee system comprising the documentation committee, evaluation committee and tender committee shall be applied to all procurement procedures where the estimated value of the procurement exceeds the financial threshold for quotations and to the putting in place of framework agreements.

6.1.1.1.2 The evaluation committee shall, where competition for the issuing of an order amongst framework contractors takes place and the value of the order exceeds the financial threshold for quotations, evaluate the quotations received.

¹⁷ This clause is required to ensure compliance with the requirements of the standard.

¹⁸ SCM Regulation 26 of the MFMA requires that a committee system be established for procurement above the threshold for quotations. It is not, however, a requirement for such a committee to deal with quotations.

¹⁹ SCM Regulation 26 of the MFMA requires that a committee system be established for procurement above the threshold for quotations. A municipality of a municipal entity may require that the tender committee (bid adjudication committee) also deal with quotations

The principle of segregation (an internal control designed to prevent error and fraud by ensuring that at least two individuals are responsible for the separate parts of any task) is dealt with the committee system in the standard as follows:

- procurement gate 3: a technical evaluation of procurement documents and an approval of such documentation;
- procurement gate 5: a technical evaluation of submissions and an authorization to proceed with the next phase of a procurement process; and
- procurement gate 6: a tender evaluation and a recommendation to award a contract.

6.1.1.1.3 The persons appoint in writing as technical advisors and subject matter experts may attend any committee meeting.

6.1.1.1.4 No person who is a political officer bearer, a public office bearer including any councilor of a municipality, a political advisor or a person appointed in terms of section 12A of the Public Service Act of 1994 or who has a conflict of interest shall be appointed to a procurement documentation, evaluation or tender committee.

6.1.1.1.5 Committee decisions shall as far as possible be based on the consensus principle i.e. the general agreement characterised by the lack of sustained opposition to substantial issues. Committees shall record their decisions in writing. Such decisions shall be kept in a secured environment for a period of not less than five years after the completion or cancellation of the contract unless otherwise determined in terms of the National Archives and Record Services Act of 1996.

6.1.1.1.6 Committees may make decisions at meetings or, subject to the committee chairperson's approval, on the basis of responses to documents circulated to committee members provided that not less than sixty percent of the members are present or respond to the request for responses. Where the committee chairperson is absent from the meeting, the members of the committee who are present shall elect a chairperson from one of them to preside at the meeting.

6.1.1.2 Procurement documentation committee

6.1.1.2.1 The *Municipal manager* shall appoint in writing on a procurement by procurement basis:

- a) the persons to review the procurement documents and to develop a procurement documentation review report in accordance with clause 4.2.2.1 of the standard; and
- b) the members of the procurement documentation committee.

6.1.1.2.2 The procurement documentation committee shall comprise one or more persons. The chairperson shall be an employee of *[name of municipality or municipal entity]* with requisite skills. Other members shall, where relevant, include a representative of the end user or the department requiring infrastructure delivery.

6.1.1.2.3 No member of, or technical adviser or subject matter expert who participates in the work of the any of the procurement committees or a family member or associate of such a member, may tender for any work associated with the tender which is considered by these committees.

Table 2: Procurement activities and gates associated with the formation and conclusion of contracts above the quotation threshold

| Activity | | Sub-Activity (see Table 3 of the standard) | | Key action | Person assigned responsibility to perform key action |
|----------|----------------------------------|--|--|--|---|
| 1* | Establish what is to be procured | 1.3 PG1 | Obtain permission to start with the procurement process | Make a decision to proceed / not to proceed with the procurement based on the broad scope of work and the financial estimates. | <i>PMU Manager</i> |
| 2* | Decide on procurement strategy | 2.5 PG2 | Obtain approval for procurement strategies that are to be adopted including specific approvals to approach a confined market or the use of the negotiation procedure | Confirm selection of strategies so that tender offers can be solicited | <i>Demand Manager</i> |
| 3 | Solicit tender offers | 3.2 PG3 | Obtain approval for procurement documents | Grant approval for the issuing of the procurement documents | Procurement documentation committee |
| | | 3.3 PG4 | Confirm that budgets are in place | Confirm that finance is available for the procurement to take place | <i>BTO Manager</i> |
| 4 | Evaluate tender offers | 4.2 PG5 | Obtain authorisation to proceed with next phase of tender process in the qualified, proposal or competitive negotiations procedure | Review evaluation report, ratify recommendations and authorise progression to the next stage of the tender process | <i>Demand Manager</i> |
| | | 4.7 PG6 | Confirm recommendations contained in the tender evaluation report | Review recommendations of the evaluation committee and refer back to evaluation committee for reconsideration or make recommendation for award | Bid Adjudication Committee |
| 5 | Award contract | 5.3 PG7 | Award contract | Formally accept the tender offer in writing and issue the contractor with a signed copy of the contract | <i>Demand Manager</i> |
| | | 5.5 GF1 | Upload data in financial management and payment system | Verify data and upload contractor's particulars and data associated with the contract or order | <i>Demand Manager & PMU Manager if it is a MIG project.</i> |

* Applies only to goods and services not addressed in a procurement strategy developed during stage 2 (strategic resourcing) of the control framework for infrastructure delivery management

²⁰ The award of a contract can be linked to contract value. For example, high value contracts may be awarded by the municipal manager or chief executive and lower amounts by different appropriately delegated authorities.

Table 2 (concluded)

| Activity | | Sub-Activity | | Key action | Person assigned responsibility to perform key action |
|----------|---|--------------------|--|---|--|
| 6 | Administer contracts and confirm compliance with requirements | 6.4 PG8A | Obtain approval to waive penalties or low performance damages. | Approve waiver of penalties or low performance damages | <i>Director responsible</i> |
| | | 6.5 PG8B | Obtain approval to notify and refer a dispute to an adjudicator | Grant permission for the referral of a dispute to an adjudicator or for final settlement to an arbitrator or court of law | <i>Municipal Manager</i> |
| | | 6.6 PG8C | Obtain approval to increase the total of prices, excluding contingencies and price adjustment for inflation, or the time for completion at the award of a contract or the issuing of an order up to a specified percentage ²¹ | Approve amount of time and cost overruns up to the threshold | <i>Adjudication Committee</i> |
| | | 6.7 PG8D | Obtain approval to exceed the total of prices, excluding contingencies and price adjustment for inflation, or the time for completion at award of a contract or the issuing of an order by more than 20% and 30%, respectively | Approve amount of time and cost overruns above a the threshold | <i>Adjudication Committee</i> |
| | | 6.8 PG8E | Obtain approval to cancel or terminate a contract | Approve amount | <i>Director responsible</i> |
| | | 6.9 PG8F | Obtain approval to amend a contract | Approve proposed amendment to contract | <i>Director responsible</i> |

²¹ Stepped thresholds leading up to the 20% and 30% values given in PG8D may be necessary to manage cost and time overruns, respectively, the principle being that approval to exceed these percentages needs to be granted at a more senior level with each increase. For example, the increases for cost overruns could be as follows:

- ≤ 2,5 % - contract manager;
- 2,5 to 10% - project director
- > 10% - appropriately delegated authority

Table 3: Procurement activities and gates associated with the issuing of an order above the quotation threshold in terms of a framework agreement

| Activity | | Key action | Person assigned responsibility to perform key action |
|-----------------|--|--|---|
| 1 FG1 | Confirm justifiable reasons for selecting a framework contactor where there is more than one framework agreement covering the same scope of work | Confirm reasons submitted for not requiring competition amongst framework contractors or instruct that quotations be invited | <i>PMU Manager</i> |
| 3 FG2 | Obtain approval for procurement documents | Grant approval for the issuing of the procurement documents | <i>Demand Manager</i> |
| 4 FG3 | Confirm that budgets are in place | Confirm that finance is available so that the order may be issued | <i>BTO Manager</i> |
| 6 FG4 | Authorise the issuing of the order | If applicable, review evaluation report and confirm or reject recommendations. Formally accept the offer in writing and issue the contractor with a signed copy of the order | <i>Demand/Acquisition Manager</i> |

6.1.1.3 Evaluation committee

6.1.1.3.1 The *Municipal manager* shall appoint on a procurement by procurement basis in writing:

- a) the persons to prepare the evaluation and, where applicable, the quality evaluations, in accordance with clauses 4.2.3.2 and 4.2.3.4 of the standard, respectively; and
- b) the members of the evaluation committee.

6.1.1.3.2 The evaluation committee shall comprise not less than three people. The chairperson shall be an employee of *[name of municipality or municipal entity]* with requisite skills. Other members shall include a supply chain management practitioner²² and, where relevant, include an official from the department requiring infrastructure delivery.

6.1.1.3.3 The evaluation committee shall review the evaluation reports prepared in accordance with sub clause 4.2.3 of the standard and as a minimum verify the following in respect of the recommended tenderer:

- a) the capability and capacity of a tenderer to perform the contract;
- b) the tenderer's tax and municipal rates and taxes compliance status;
- c) confirm that the tenderer's municipal rates and taxes and municipal service charges are not in arrears;
- d) the Compulsory Declaration has been completed; and
- e) the tenderer is not listed in the National Treasury's Register for Tender Defaulters or the List of Restricted Suppliers.

6.1.1.3.4 No tender submitted by a member of, or technical adviser or subject matter expert who participates in the work of the procurement documentation committee or a family member or associate of such a member, may be considered by the evaluation committee.

6.1.1.3.5 The chairperson of the evaluation committee shall promptly notify the *Municipal manager* of any respondent or tenderer who is disqualified for having engaged in fraudulent or corrupt practices during the tender process.

6.1.1.4 Tender committee²³

6.1.1.4.1 The tender committee shall comprise the following persons or their mandated delegate:²⁴

- a) *[title of post]* who shall be the chairperson:
- b) *[title of post]*
- c) *[title of post]*
- d) etc..

²² A supply chain management practitioner in the context of infrastructure delivery includes a built environment professional

²³ Where no separate tender committee is established, this section should simply refer to the bid adjudication committee which is set up to deal with tenders with both the supply chain for general goods and services and for infrastructure

²⁴ The chairperson needs to be an employee of the municipality or the municipal entity with requisite skills. Other members should be employees of the municipality or the municipal entity and include at least four senior managers including the chief financial officer, a supply chain management practitioner and a technical expert in the relevant field, if such municipality or municipal entity has such an expert.

6.1.1.4.2 No member of the evaluation committee may serve on the tender committee. A member of an evaluation committee may, however, participate in the deliberations of a tender committee as a technical advisor or a subject matter expert.

6.1.1.4.3 The tender committee shall:

- a) consider the report and recommendations of the evaluation committee and:
 - 1) verify that the procurement process which was followed complies with the provisions of this document;
 - 2) confirm that the report is complete and addresses all considerations necessary to make a recommendation;
 - 3) confirm the validity and reasonableness of reasons provided for the elimination of tenderers; and
 - 4) consider commercial risks and identify any risks that have been overlooked or fall outside of the scope of the report which warrant investigation prior to taking a final decision; and
- b) refer the report back to the evaluation committee for their reconsideration or make a recommendation to the authorised person on the award of a tender, with or without conditions, together with reasons for such recommendation.

6.1.1.4.4 The tender committee shall consider proposals regarding the cancellation, amendment, extension or transfer of contracts that have been awarded and make a recommendation to the authorised person on the course of action which should be taken.

6.1.1.4.5 The tender committee shall consider the merits of an unsolicited offer and make a recommendation to the [municipal manager or chief executive].

6.1.1.4.6 The tender committee shall report to the [municipal manager or chief executive] any recommendation made to award a contract to a tenderer other than the tenderer recommended by the evaluation committee, giving reasons for making such a recommendation.

6.1.1.4.7 The tender committee shall not make a recommendation for an award of a contract or order if the recommended tenderer or framework contractor has:

- a) made a misrepresentation or submitted false documents in competing for the contract or order; or
- b) been convicted of a corrupt or fraudulent act in competing for any contract during the past five years.

6.1.1.4.8 The tender committee may on justifiable grounds and after following due process, disregard the submission of any tenderer if that tenderer or any of its directors, members or trustees or partners has abused the delivery management system or has committed fraud, corruption or any other improper conduct in relation to such system. The National Treasury and the *Eastern Cape Provincial Treasury* shall be informed where such tenderers are disregarded.

6.1.2 Actions of an authorised person relating to the award of a contract or an order

6.1.2.1 Award of a contract

6.1.2.1 The authorised person shall, if the value of the contract inclusive of VAT, is within his or her delegation, consider the report(s) and recommendations of the tender committee, or in the case of the awards for contracts below the quotation threshold, the recommendation of the [designated person], and either:

- a) award the contract after confirming that the report is complete and addresses all considerations necessary to make a recommendation and budgetary provisions are in place; or

- b) decide not to proceed or to start afresh with the process.

6.1.2.2 The authorised person shall immediately notify the *[designated person]* if a tender other than the recommended tender is awarded, save where the recommendation is changed to rectify an irregularity. Such person shall, within 10 working days, notify in writing the Auditor-General, the National Treasury and the *Eastern Cape Provincial Treasury*], and, in the case of a municipal entity, also the parent municipality, of the reasons for deviating from such recommendation.

6.1.2.3 Issuing of an order

The authorised person shall, if the value of an order issued in terms of a framework contract, is within his or her delegation, consider the recommendation of the evaluation committee or the *Demand Manager* as relevant, and either:

- a) authorise the issuing of an order in accordance with the provisions of clause 4.25 of the standard; or
- b) decide not to proceed or to start afresh with the process.

6.1.3 Conduct of those engaged in infrastructure delivery²⁵

6.1.3.1 General requirements

6.1.3.1.1 All personnel and agents of *Senqu Municipality* shall comply with the requirements of the CIDB Code of Conduct for all Parties engaged in Construction Procurement. They shall:

- a) behave equitably, honestly and transparently;
- b) discharge duties and obligations timeously and with integrity;
- c) comply with all applicable legislation and associated regulations;
- d) satisfy all relevant requirements established in procurement documents;
- e) avoid conflicts of interest; and
- f) not maliciously or recklessly injure or attempt to injure the reputation of another party.

6.1.3.1.2 All personnel and agents engaged in *[name of municipality or municipal entity]*'s infrastructure delivery management system shall:

- a) not perform any duties to unlawfully gain any form of compensation, payment or gratification from any person for themselves or a family member or an associate;
- b) perform their duties efficiently, effectively and with integrity and may not use their position for private gain or to improperly benefit another person;
- c) strive to be familiar with and abide by all statutory and other instructions applicable to their duties;
- d) furnish information in the course of their duties that is complete, true and fair and not intended to mislead;
- e) ensure that resources are administered responsibly;
- f) be fair and impartial in the performance of their functions;

²⁵ Sub clause 5.1 d) of the standard requires that the municipality's or municipal entity's policy establish ethical standards for those involved in the procurement and delivery of infrastructure. This clause is aligned with the provisions of SCM Regulation 46 (Ethical standards) issued in terms of the MFMA and National Treasury's Code of Conduct for Supply Chain Management Practitioners

- g) at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual;
- h) not abuse the power vested in them;
- i) not place themselves under any financial or other obligation to external individuals or firms that might seek to influence them in the performance of their duties;
- j) assist *Senqu Local Municipality* in combating corruption and fraud within the infrastructure procurement and delivery management system;
- k) not disclose information obtained in connection with a project except when necessary to carry out assigned duties;
- l) not make false or misleading entries in reports or accounting systems; and
- m) keep matters of a confidential nature in their possession confidential unless legislation, the performance of duty or the provision of the law require otherwise.

6.1.3.1.2 An employee or agent may not amend or tamper with any submission, tender or contract in any manner whatsoever.

6.1.3.2 Conflicts of interest

6.1.3.2.1 The employees and agents of *Senqu Local Municipality* who are connected in any way to procurement and delivery management activities which are subject to this policy, shall:

- a) disclose in writing to the employee of the *Senqu Local Municipality* to whom they report, or to the person responsible for managing their contract, if they have, or a family member or associate has, any conflicts of interest; and
- b) not participate in any activities that might lead to the disclosure of *Senqu Local Municipality* proprietary information.

6.1.3.2.2 The employees and agents of *Senqu Local Municipality* shall declare and address any perceived or known conflict of interest, indicating the nature of such conflict to whoever is responsible for overseeing the procurement process at the start of any deliberations relating to a procurement process or as soon as they become aware of such conflict, and abstain from any decisions where such conflict exists or recuse themselves from the procurement process, as appropriate.

6.1.3.2.3 Agents who prepare a part of a procurement document may in exceptional circumstances, where it is in *Senqu Local Municipality's* interest to do so, submit a tender for work associated with such documents provided that:

- a) *Senqu Local Municipality* states in the tender data that such an agent is a potential tenderer;
- b) all the information which was made available to, and the advice provided by that agent which is relevant to the tender, is equally made available to all potential tenderers upon request, if not already included in the scope of work; and
- c) the procurement documentation committee is satisfied that the procurement document is objective and unbiased having regard to the role and recommendations of that agent.

6.1.3.3 Evaluation of submissions received from respondents and tenderers

6.1.3.3.1 The confidentiality of the outcome of the processes associated with the calling for expressions of interest, quotations or tenders shall be preserved. Those engaged in the evaluation process shall:

- a) not have any conflict between their duties as an employee or an agent and their private interest;

- b) may not be influenced by a gift or consideration (including acceptance of hospitality) to show favour or disfavour to any person;
- c) deal with respondents and tenderers in an equitable and even-handed manner at all times; and
- d) not use any confidential information obtained for personal gain and may not discuss with, or disclose to outsiders, prices which have been quoted or charged to *[name of municipality or municipal entity]*.

6.1.3.3.2 The evaluation process shall be free of conflicts of interest and any perception of bias. Any connections between the employees and agents of *Senqu Local Municipality* and a tenderer or respondent shall be disclosed and recorded in the tender evaluation report.

6.1.3.3.3 *Senqu Local Municipality* personnel and their agents shall immediately withdraw from participating in any manner whatsoever in a procurement process in which they, or any close family member, partner or associate, has any private or business interest.

6.1.3.4 Non-disclosure agreements

Confidentiality agreements in the form of non-disclosure agreements shall, where appropriate, be entered into with agents and potential contractors to protect *Senqu Local Municipality's* confidential information and interests.

6.1.3.5 Gratifications, hospitality and gifts

6.1.3.5.1 The employees and agents of *Senqu Local Municipality* shall not, directly or indirectly, accept or agree or offer to accept any gratification from any other person including a commission, whether for the benefit of themselves or for the benefit of another person, as an inducement to improperly influence in any way a procurement process, procedure or decision.

6.1.3.5.2 The employees and agents of *Senqu Local Municipality* as well as their family members of associates shall not receive any of the following from any tenderer, respondent or contractor or any potential contractor:

- a) money, loans, equity, personal favours, benefits or services;
- b) overseas trips; or
- c) any gifts or hospitality irrespective of value from tenderers or respondents prior to the conclusion of the processes associated with a call for an expression of interest or a tender.

6.1.3.5.3 The employees and agents of *[name of municipality or municipal entity]* shall not purchase any items at artificially low prices from any tenderer, respondent or contractor or any potential contractor at artificially low prices which are not available to the public.

6.1.3.5.4 All employees and agents of *[name of municipality or municipal entity]* may for the purpose of fostering inter-personal business relations accept the following:

- a) meals and entertainment, but excluding the cost of transport and accommodation;
- b) promotional material of small intrinsic value such as pens, paper-knives, diaries, calendars, etc;
- c) incidental business hospitality such as business lunches or dinners, which the employee is prepared to reciprocate;
- d) complimentary tickets to sports meetings and other public events, but excluding the cost of transport and accommodation, provided that such tickets are not of a recurrent nature; and

- e) gifts in kind other than those listed in a) to d) which have an intrinsic value greater than R350 unless they have declared them to the *Municipal manager*²⁶.

6.1.3.5.5 Under no circumstances shall gifts be accepted from prospective contractors during the evaluation of calls for expressions of interest, quotations or tenders that could be perceived as undue and improper influence of such processes.

6.1.3.5.6 Employees and agents of *Senqu Local Municipality* shall without delay report to the *municipal manager or chief executive or chief financial officer or appropriately delegated authority* any incidences of a respondent, tenderer or contractor who directly or indirectly offers a gratification to them or any other person to improperly influence in any way a procurement process, procedure or decision.

6.1.3.6 Reporting of breaches

Employees and agents of *Senqu Local Municipality* shall promptly report to the *Municipal manager or chief executive or chief financial officer or appropriately delegated authority* any alleged improper conduct which they may become aware of, including any alleged fraud or corruption.

6.1.4 Measures to prevent abuse of the infrastructure delivery system²⁷

The *Municipal manager or chief executive or chief financial officer or appropriately delegated authority* shall investigate all allegations of corruption, improper conduct or failure to comply with the requirements of this policy against an employee or an agent, a contractor or other role player and, where justified:

- a) take steps against an employee or role player and inform the National Treasury and *Eastern Cape provincial treasury* of those steps;
- b) report to the South African Police Service any conduct that may constitute a criminal offence;
- c) lodge complaints with the Construction Industry Development Board or any other relevant statutory council where a breach of such council's code of conduct or rules of conduct are considered to have been breached;
- d) cancel a contract if:
 - 1) it comes to light that the contractor has made a misrepresentation, submitted falsified documents or has been convicted of a corrupt or fraudulent act in competing for a particular contract or during the execution of that contract; or
 - 2) an employee or other role player committed any corrupt or fraudulent act during the tender process or during the execution of that contract.

6.1.5 Awards to persons in the service of the state²⁸

6.1.5.1 Any submissions made by a respondent or tenderer who declares in the Compulsory Declaration that a principal is one of the following shall be rejected:

- a) a member of any municipal council, any provincial legislature, or the National Assembly or the National Council of Provinces;
- b) a member of the board of directors of any municipal entity;
- c) an official of any municipality or municipal entity;

²⁶ ~~SCM Regulation permits the receipt of gifts and hospitality provided that they are declared to the municipal manager or the chief executive~~

²⁷ The requirement to prevent abuse of the supply chain management system is aligned with the provisions of SCM Regulation 38 issued in terms of the MFMA.

²⁸ The clause aligns with SCM Regulation 44 issued in terms of the MFMA.

- d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- e) a member of the accounting authority of any national or provincial public entity; or
- f) an employee of Parliament or a provincial legislature.

6.1.5.2 The notes to the annual financial statements of the *Municipality* shall disclose particulars of an award of more than R 2000 to a person who is a family member of a person identified in 6.1.5.1 or who has been in the previous 12 months. Such notes shall include the name of the person, the capacity in which such person served and the amount of the award.

6.1.6 Collusive tendering²⁹

Any submissions made by a respondent or tenderer who fails to declare in the Compulsory Declaration that the tendering entity:

- a) is not associated, linked or involved with any other tendering entity submitting tender offers; or
- b) has not engaged in any prohibited restrictive horizontal practices including consultation, communication, agreement, or arrangement with any competing or potential tendering entity regarding prices, geographical areas in which goods and services will be rendered, approaches to determining prices or pricing parameters, intentions to submit a tender or not, the content of the submission (specification, timing, conditions of contract etc.) or intention to not win a tender shall be rejected.

6.1.7 Placing of contractors under restrictions³⁰

6.1.7.1 If any tenderer which has submitted a tender offer or a contractor which has concluded a contract has, as relevant:

- a) withdrawn such tender or quotation after the advertised closing date and time for the receipt of submissions;
- b) after having been notified of the acceptance of his tender, failed or refused to commence the contract;
- c) had their contract terminated for reasons within their control without reasonable cause;
- d) offered, promised or given a bribe in relation to the obtaining or the execution of such contract;
- e) acted in a fraudulent, collusive or anti-competitive or improper manner or in bad faith towards *Senqu Local Municipality* Or
- f) made any incorrect statement in any affidavit or declaration with regard to a preference claimed and is unable to prove to the satisfaction of *Senqu Local Municipality* that the statement was made in good faith or reasonable steps were taken to confirm the correctness of the statements,

the Demand Manager shall prepare a report on the matter and make a recommendation to the *Municipal manager* for placing the contractor or any of its principals under restrictions from doing business with the Municipality

²⁹ The standard requires the inclusion of the Compulsory Declaration in all procurement documents. This sub-clause aligns with SCM Regulation 44 issued in terms of the MFMA and SANS 10845-3 which is incorporated by reference in the standard.

³⁰ This sub-clause is aligned with the requirements of SCM Regulation 38 issued in terms of the MFMA.

6.1.7.2 The *Municipal manager* may, as appropriate, upon the receipt of a recommendation made in terms of 6.1.7.1 and after notifying the contractor of such intention in writing and giving written reasons for such action, suspend a contractor or any principal of that contractor from submitting a tender offer to *Senqu Local Municipality* for a period of time.

6.1.7.3 The *Demand Manager* shall:

- a) record the names of those placed under restrictions in an internal register which shall be accessible to employees and agents of *Senqu Local Municipality* who are engaged in procurement processes; and
- b) notify the National Treasury and *Eastern Cape provincial treasury* and , if relevant, the Construction Industry Development Board, of such decision and provide them with the details associated therewith.

6.1.8 Complaints

6.1.8.1 All complaints regarding the *Senqu Local Municipality* s infrastructure delivery management system shall be addressed to the *designation of person, office or department*. Such complaints shall be in writing.

6.1.8.2 The *Designation of person, office or department* shall investigate all complaints regarding the infrastructure procurement and delivery management system and report on actions taken to the *Designation of person, office or department* who will decide on what action to take.

6.2 Acquisition management

6.2.1 Unsolicited proposal³¹

6.2.1.1 The *Senqu Local Municipality* is not obliged to consider unsolicited offers received outside a normal procurement process but may consider such an offer only if:

- a) the goods, services or any combination thereof that is offered is a demonstrably or proven unique innovative concept;
- b) proof of ownership of design, manufacturing, intellectual property, copyright or any other proprietary right of ownership or entitlement is vested in the person who made the offer;
- c) the offer presents a value proposition which demonstrates a clear, measurable and foreseeable benefit for *Senqu Local Municipality*,
- d) the offer is in writing and clearly sets out the proposed cost;
- e) the person who made the offer is the sole provider of the goods or service; and
- f) the *Municipal manager* finds the reasons for not going through a normal tender processes to be sound.

6.2.1.2 The *Municipal manager* may only accept an unsolicited offer and enter into a contract after considering the recommendations of the tender committee if:

- a) the intention to consider an unsolicited proposal has been made known in accordance with Section 21A of the Municipal Systems Act of 2000 together with the reasons why such a proposal should not be open to other competitors, an explanation of the potential benefits for the *Senqu Local Municipality* and an invitation to the public or other potential suppliers and providers to submit their comments within 30 days after the notice;

³¹ The clause aligns with SCM Regulation 37 issued in terms of the MFMA.

- b) the *Senqu Local Municipality* has obtained comments and recommendations on the offer from the National Treasury and *Eastern Cape provincial treasury*;
- c) the tender committee meeting which makes recommendations to accept an unsolicited proposal was open to the public and took into account any public comments that were received and any comments and recommendations received from the National Treasury and *Eastern Cape provincial treasury*; and
- d) the provisions of 6.2.1.3 are complied with.

6.2.1.3 The *municipal manager* shall, within 7 working days after the decision to award the unsolicited offer is taken, submit the reasons for rejecting or not following the recommendations to the National Treasury, the *Eastern Cape provincial treasury* and Auditor General. A contract shall in such circumstances not be entered into or signed within 30 days of such submission.

6.2.2 Tax and rates compliance³²

6.2.2.1 SARS tax clearance

6.2.2.1.1 No contract may be awarded or an order issued where the value of such transaction exceeds R 15 000, unless a tenderer or contractor is in possession of an valid Tax Clearance Certificate or SARS PIN number issued by SARS provided that the tenderer is not domiciled in the Republic of South Africa and the SARS has confirmed that such a tenderer is not required to prove their tax compliance status.

6.2.2.1.2 In the case of a partnership, each partner shall comply with the requirements of 6.2.2.1.1.

6.2.2.1.3 No payment shall be made to a contractor who does not satisfy the requirements of 6.2.2.1.2. An employee of *Senqu Local Municipality* shall upon detecting that a tenderer or contractor is not tax compliant, immediately notify such person of such status.

6.2.2.1.4 Notwithstanding the requirements of 6.2.2.1.1 and 6.2.2.1.3 the following shall apply, unless a person who is not tax compliant indicates to *the Demand Manager* that it intends challenging its tax compliance status with SARS,

- a) a contract may be awarded to a non-compliant tenderer if such a tenderer is able to remedy its tax compliance status within a period not exceeding 10 working days after being duly notified of its non-compliant status;
- b) an order may be awarded to a non-compliant contractor if such a contractor is able to remedy its tax compliance status within a period not exceeding 10 working days after being duly notified of its non-compliant status;
- c) a non-compliant contractor shall be issued with a first warning that payments in future amounts due in terms of the contract may be withheld, before the authorising of any payment due to such contractor;
- d) before authorising a further payment due to a non-compliant contractor who has failed to remedy its tax compliance status after receiving a first warning, a second and final warning shall be issued to such contractor;
- e) no payments may be released for any amounts due in terms of the contract due to a non-compliant contractor if, after a period of 30 calendar days have lapsed since the second warning was issued, the non-compliant contractor has failed to remedy its tax compliance status.

6.2.2.1.5 The *Senqu Local Municipality* may cancel a contract with a non-compliant contractor if such a contractor fails to remedy its tax compliance status after a period of 30 calendar days have lapsed since the second warning was issued in terms of 6.2.2.1.4e).

³² This sub-clause aligns with the provisions of SCM Regulation 43 issued in terms of the MFMA. .

6.2.2.2 Municipal rates and taxes³³

No contract may be awarded to a tenderer who, of the principals of that tenderer, owes municipal rates and taxes or municipal service charges to any municipality or a municipal entity and are in arrears for more than 3 months.

6.2.3 Declarations of interest

Tenders and respondents making submissions in response to an invitation to submit a tender or a call for an expression of interest, respectively shall declare in the Compulsory Declaration whether or not any of the principals:

- a) are an employee of the *Senqu Local Municipality* or in the employ of the state; or
- b) have a family member or a business relation with a person who is in the employ of the state.

6.2.4 Invitations to submit expressions of interest or tender offers

6.2.4.1 All invitations to submit tenders where the estimated value of the contract exceeds R200 000 including VAT, except where a confined tender process is followed, and expressions of interest shall be advertised on the *Senqu Local Municipality's* website and on the National Treasury eTender Publication Portal.³⁴ Advertisements shall be placed by *the Demand Manager*..

6.2.4.2 Advertisements relating to construction works which are subject to the Construction Industry Development Regulations issued in terms of the Construction Industry Development Act of 2000 shall in addition to the requirements of 6.2.4.1 be advertised on the CIDB website. Advertisements shall be placed by *the PMU Manager*..

6.2.4.3 Where deemed appropriate by *the relevant Director* an invitation to tender and a call for an expression of interest shall be advertised in suitable local and national newspapers and the Government Tender Bulletin as directed by such person. Advertisements shall be placed by *the Manager: Communications*.

6.2.4.4 Such advertisements shall be advertised for a period of at least 30 days before closure, except in urgent cases when the advertisement period may be shortened as determined by the *Municipal manager*

6.2.4.5 Invitations to submit expressions of interest or tender offers shall be issued not less than 10 working days before the closing date for tenders and at least 5 working days before any compulsory clarification meeting. Procurement documents shall be made available not less than 7 days before the closing time for submissions.

6.2.5 Publication of submissions received and the award of contracts³⁵

6.2.5.1 The Demand Manager shall publish within 10 working days of the closure of any advertised call for an expression of interest or an invitation to tender where the estimated value of the contract exceeds R200 000 including VAT on the municipality's or municipal entity's website, the names of all tenderers that made submissions to that advertisement, and if practical or applicable, the total of the prices and the preferences claimed. Such information shall remain on the website for at least 30 days.

6.2.5.2 The Demand Manager shall publish within 7 working days of the award of a contract the following on the *Senqu Local Municipality's* website

- a) the contract number;

³³ This subclause aligns with the provisions of SCM Regulation 38 issued in terms of the MFMA.

³⁴ This subclause aligns with National Treasury Instruction No 1 of 2015/2016 – Advertisement of bids and the publication of awards on the eTender Publication Portal.

³⁵ This subclause aligns with National Treasury Instruction No 1 of 2015/2016 – Advertisement of bids and the publication of

- b) contract title;
- c) brief description of the goods, services or works;
- d) the total of the prices, if practical;
- e) the names of successful tenderers and their B-BBEE status level of contribution;
- f) duration of the contract; and
- g) brand names, if applicable.

6.2.5.3 The *Demand Manager* shall submit within 7 working days of the award of a contract the information required by National Treasury on the National Treasury eTender Publication Portal regarding the successful and unsuccessful tenders. Submissions shall be made by the Demand Officer

6.2.5.4 The award of contracts relating to construction works which are subject to the Construction Industry Development Regulations issued in terms of the Construction Industry Development Act of 2000 shall in addition to the requirements of 6.2.5.3 be notified on the CIDB website. The notification shall be made by placed by the PMU Manager.

6.2.6 Disposal committee

6.2.6.1 The Municipal Manager shall appoint on a disposal by disposal basis in writing the members of the disposal committee to decide on how best to undertake disposals in accordance with the provisions of clause 10 of the standard.

6.2.6.2 The disposal panel shall comprise not less than three people. The chairperson shall be an employee of Senqu Municipality.

6.2.6.3 The disposal committee shall make recommendations to *[designed person]* who shall approve the recommendations, refer the disposal strategy back to the disposal committee for their reconsideration, decide not to proceed or to start afresh with the process.

6.3 Reporting of infrastructure delivery management information

The PMU Manager shall submit any reports required in terms of the standard to the National Treasury or Eastern Cape Provincial Treasury. .

7 Infrastructure procurement

7.1 Procurement documents

7.2.1 The forms of contract that may be used are as follows:

³⁶ Delete this clause if there are no restriction. Amend if there are specific circumstance under which a procurement procedure is to be used.

| Form of contract ³⁷ | Code | Usage |
|--------------------------------|------|-------|
| | | |

7.2.2 The Senqu Municipality's preapproved templates for Part C1 (Agreements and contract data) of procurement documents shall be utilised to obviate the need for legal review prior to the awarding of a contract. All modifications to the standard templates shall be approved by the Director prior to being issued for tender purposes.

7.2.3 Disputes arising from the performance of a contract shall be finally settled in a South African court of law.³⁸

7.2.4 *The use of standard access specifications, health and safety specifications, accounting and consulting fees.*

7.2.5 The Municipal Declaration and returnable documents contained in the standard shall be included in all tenders for:

- a) consultancy services;⁴⁰ and
- b) goods and services or any combination thereof where the total of the prices is expected to exceed R10 m including VAT.⁴¹

.....

7.3 Payment of contractors⁴³

The *Senqu Municipality* shall settle all accounts within 30 days of invoice or statement as provided for in the contract.

7.4 Approval to utilise specific procurement procedures⁴⁴

7.5.1 Prior approval shall be obtained for the following procurement procedures from the following persons, unless such a procedure is already provided for in the approved procurement strategy:

- a) *The Accounting Officer* shall authorise the use of the negotiated procedure above the thresholds provided in the standard.
- b) *The Accounting Officer* shall authorise the approaching of a confined market except where a rapid response is required in the presence of, or the imminent risk of, an extreme or emergency situation arising from the conditions set out in the standard and which can be dealt with or the risks relating thereto arrested within 48 hours; and
- c) the proposal procedure using the two-envelope system, the proposal procedure using the two-stage system or the competitive negotiations procedure⁴⁵.

³⁷ Reproduce from Table 11 of the standard the forms of contract which the municipality or municipal entity wishes to make use of.

³⁸ This sub-clause aligns with SCM Regulation 21 issued in terms of the PFMA.

³⁹ Include if requirements are not included in the templates.

⁴⁰ The clause aligns with SCM Regulation 35(3) issued in terms of the MFMA.

⁴¹ The clause aligns with SCM Regulation 35(3) issued in terms of the MFMA.

⁴² State specific goals that may be promoted.

⁴³ The Section 65 of the MFMA requires municipal manager or chief executives to settle all contractual obligations and pay all money owing within 30 days of receiving the relevant statement or invoice.

⁴⁴ This clause is necessary to enable the standard to be implemented.

⁴⁵ 7.5.1 c) is an optional statement and needs to be deleted if this control is not required.

7.5.2 The person authorised to pursue a negotiated procedure in an emergency is the Municipal Manager.

7.6 Receipt and safeguarding of submissions⁴⁶

7.6.1 A dedicated and clearly marked tender box shall be made available to receive all submissions made.⁴⁷

7.6.2 The tender box shall be fitted with one lock and the keys kept separately by the Demand Manager and CFO. Two SCM personnel shall be present when the box is opened on the stipulated closing date for submissions.

7.7 Opening of submissions⁴⁸

7.7.1 Submissions shall be opened by an opening panel comprising two people nominated by the Demand Manager who have declared their interest or confirmed that they have no interest in the submissions that are to be opened.

7.7.2 The opening panel shall open the tender box at the stipulated closing time and:

- a) sort through the submissions and return those submissions to the box that are not yet due to be opened including those whose closing date has been extended;
- b) return submissions unopened and suitably annotated where:
 - 1) submissions are received late, unless otherwise permitted in terms of the submission data;
 - 2) submissions were submitted by a method other than the stated method,
 - 3) submissions were withdrawn in accordance with the procedures contained in SANS 10845-3; and.
 - 4) only one tender submission is received and it is decided not to open it and to call for fresh tender submissions;
- c) record in the register submissions that were returned unopened;
- d) open submissions if received in sealed envelopes and annotated with the required particulars and read out the name of and record in the register the name of the tenderer or respondent and, if relevant, the total of prices including VAT where this is possible;
- e) record in the register the name of any submissions that is returned with the reasons for doing so;
- f) record the names of the tenderer's representatives that attend the public opening;
- g) sign the entries into the register; and
- h) stamp each returnable document in each tender submission.

7.7.3 Each member of the opening panel shall initial the front cover of the submission and all pages that are stamped in accordance with the requirements of 7.7.3h).

7.7.4 Respondents and tenderers whose submissions are to be returned shall be afforded the opportunity to collect their submissions.

7.7.5 Submissions shall be safeguarded from the time of receipt until the conclusion of the procurement process.

⁴⁶ This section may not be necessary if the policy for general goods and services already covers these requirements.

⁴⁷ Modify as necessary. Preferably describe the location and accessibility of the box.

⁴⁸ This section may not be necessary if the policy for general goods and services already covers these requirements.

7.8 Use of another organ of state's framework agreement⁴⁹

The Senqu Municipality may make use of another organ of state's framework contract which has been put in place by means of a competitive tender process and there are demonstrable benefits for doing so. The relevant Director shall make the necessary application to that organ of state to do so. Then the evaluation will be done by the Evaluation committee, and the Adjudication committee will make the final award up to 10 million and higher than 10 million the award will be made by the Municipal Manager.

7.9 Insurances⁵⁰

7.9.1 Contractors shall be required to take out all insurances required in terms of the contract.⁵¹

7.9.2 The insurance cover in engineering and construction contracts for loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with a contract shall in general not be less than the value stated in Table 4, unless otherwise directed by Technical Director

7.9.3 Lateral earth support insurance in addition to such insurance shall be take out on a case by case basis.

Table 4: Minimum insurance cover⁵²

| Type of insurance | Value |
|---|---|
| Engineering and construction contracts - loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with a contract | Not less than R20 million |
| Professional services and service contracts - death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with a contract or damage to property | Not less than R10 million |
| Professional indemnity insurance | geotechnical, civil and structural engineering: R5,0 million electrical, mechanical and engineering: R3,0 million architectural: R5,0 million other R3,0 million |

7.9.4 The insurance cover in professional services and service contracts for damage to property or death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with a contract shall not be less than the value stated in Table 4 for any one event unless otherwise directed by *[designated person]*.

7.9.5 SASRIA Special Risk Insurance in respect of riot and associated risk of damage to the works, Plant and Materials shall be taken out on all engineering and construction works.

7.9.5 Professional service appointments shall as a general rule be subject to proof of current professional indemnity insurance being submitted by the contractor in an amount not less than the value stated in Table 4 in respect of each claim, without limit to the number of claims, unless otherwise directed by the *[designated person]* in relation to the nature of the service that they provide.

⁴⁹ This clause aligns with SCM Regulation 32 issued in terms of the MFMA and clause 7.3 of the Standard.

⁵⁰ Align with the manner in which the municipality or municipal entity wishes to manage risk.

⁵¹ Alternatively state that the insurances shall be principal or employer controlled.

⁵² Modify as necessary

7.9.6 *Senqu Municipality* shall take out professional indemnity insurance cover where it is deemed necessary to have such insurance at a level higher than the levels of insurance commonly carried by contractors.

7.9.7 Where payment is to be made in multiple currencies, either the contractor or *Senqu Municipality* should be required to take out forward cover. Alternatively, the prices for the imported content should be fixed as soon as possible after the starting date for the contract.

7.10 Written reasons for actions taken

7.10.1 Written reasons for actions taken shall be provided by the PMU Manager..

7.10.2 The written reasons for actions taken shall be as brief as possible and shall as far as is possible, and where relevant, be framed around the clauses in the:

- a) SANS 10845-3, *Construction procurement - Part 3: Standard conditions of tender*, and, giving rise to the reason why a respondent was not short listed, prequalified or admitted to a data base; or
- b) SANS 10845-4, *Construction procurement - Part 4: Standard conditions for the calling for expressions of interest*; as to why a tenderer was not considered for the award of a contract or not awarded a contract.

7.10.3 Requests for written reasons for actions taken need to be brief and to the point and may not divulge information which is not in the public interest or any information which is considered to prejudice the legitimate commercial interests of others or might prejudice fair competition between tenderers.

7.11 Request for access for information⁵³

7.11.1 Should an application be received in terms of Promotion of Access to Information Act of 2000 (Act 2 of 2000), the “requestor” should be referred to the *Senqu’s Municipality Information Manual* which establishes the procedures to be followed and the criteria that have to be met for the “requester” to request access to records in the possession or under the control of *Senqu Municipality*.

7.11.2 Access to technical and commercial information such as a comprehensive programme which links resources and prices to such programme should be refused as such information provides the order and timing of operations, provisions for time risk allowances and statements as to how the contractor plans to do the work which identifies principal equipment and other resources which he plans to use. Access to a bill of quantities and rates should be provided in terms of the Act.

⁵³ Amend as necessary