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# SUPPLY CHAIN MANAGEMENT POLICY

Incorporating  
Preferential Procurement & Supply Chain Management (SCM) for  
Infrastructure Procurement & Delivery Management

**1 JULY 2023**

**MP313**



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

The Council of the Steve Tshwete Local Municipality (STLM) 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 the municipality:

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## 1. TERMS, DEFINITIONS & ABBREVIATIONS

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

“*abuse*” in terms of the municipality’s supply chain management system means conduct by an official or person that is tantamount to fraud, corruption, favouritism, unfair, irregular and unlawful practices, misrepresentation on information submitted for the purposes of procuring a contract with the municipality, misrepresentation regarding the contractor’s expertise and capacity to perform in terms of a contract procured via the supply chain management system, breach of a contract procured via the supply chain management system, failure to comply with the supply chain management system, and any other conduct referred to under the heading of “*combatting abuse of the supply chain management policy*”.

“*adjudication points*” means the points for price and points for Specific Goals referred to in the Preferential Procurement Regulations, 2022 and the preferential procurement section of this policy, also referred to as “*evaluation points*”.

“*accounting officer*” means a person appointed by the municipality in terms of sections 60, 82 and 93 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) and in terms of section 93J of the Municipal Systems Act, 2000 (Act No. 32 of 2000), and who is the head of administration and also the municipal manager of the municipality.

“*affected person*” means a person whose rights may be materially and or adversely affected if the accounting officer takes any of the steps contemplated in this policy in order to combat abuse of the supply chain management system.

“*alternative bid*” means a bid which is submitted which materially or substantially deviates from the specification and/or bid conditions.

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

“*asset*” means a tangible or intangible resource capable of ownership.

“*bid*” means a written offer in a prescribed or stipulated form in response to an invitation by the municipality for the provision of goods, services or construction works through price quotations, advertised competitive bidding processes or proposals, or any other proposition for business with the municipality whether solicited or not.

“*bidder*” means any person submitting a bid.

“*close family member*” means:

- (a) spouse or partner;
- (b) parent; or
- (c) children

“*closing date*” means the day specified in the bid documents and/or advertisement of the receipt of bids.

“*competent person*” means a person with the relevant experience, training, capability and qualifications for a specific assignment or work to be executed.

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

“*competitive bidding process*” means a competitive bidding process referred to in sub-regulation 12(1)(d) of the supply chain management regulations (published under GN868 in Government Gazette 27636 30 May 2005).

“*closing time*” means the time of day specified in the bid documents for the receipt of bids.

“*Competitions Act*” means the Competitions Act, 1998, (Act No. 89 of 1998, and any regulations pertaining thereto.

“*consortium*” means an association of persons, formalized by agreement between such persons, formed for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

“*consultant*” means a person or entity providing services requiring knowledge-based expertise and includes professional service providers.

“*contract*” means the agreement which is concluded when the municipality accepts, in writing, a bid.

“*contractor*” means any person or entity whose bid has been accepted by the municipality.

“*co-operative*” means a co-operative registered in terms of section 7 of the Co-operatives Act, 2005 (Act No. 14 of 2005).

“*day*” means calendar days unless the context indicates otherwise.

“*delegated authority*” means any person or committee delegated with authority by the municipality in terms of the provisions of the MFMA.

“*designated group*” means black designated groups, black people, women, people with disabilities or small enterprises as defined in section 1 of the National Small Enterprises Act, 1996 (Act No. 102 of 1996).

“*director*” in terms of this policy means a director of a company as defined in the Companies Act, 1973 and 2008 (Act No. 61 of 1973 and Act No. 71 of 2008), a member of a close corporation as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984), a trustee of a trust or a person holding an equivalent position in a firm.

“*disposal*” in relation to a capital asset, includes –

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

“*disposal management system*” means the system contemplated in regulation 40 of the municipal supply chain management regulations, published by General Notice No. 868 of 2005.

“*emergency*” means an unforeseeable and sudden event with harmful or potentially harmful consequences for the municipality which requires urgent action to address.

“*evaluation points*” means the points for price and points for specific goals referred to in the Preferential Procurement Regulations, 2022 and the preferential procurement section of this policy.

“*exempted micro enterprise (EME)*” means an exempted micro enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, 2003, (Act No. 53 of 2003).

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

“*financial year*” means a twelve-month (12) period ending 30 June of every year.

“*formal written price quotation*” means written quotations for procurements of a transaction.

“*framework agreement*” means a term contract “*as and when*” contracts.



*“instruction”* based on a formal written order of a signed contract for the supply of goods and services or works which are of an ad-hoc and repetitive nature when the terms and conditions are approved for use over a predetermined period of time not exceeding three financial years, without any quantum of work or expenditure guarantee utilizing the contract.

*“fronting”* means, where preference points are obtained on a fraudulent basis.

*“functionality”* means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents. This is determined by the measurement according to predetermined norms, as set out in the bid documents, of the totality of features and characteristics of the goods or services that bears on the ability thereof to satisfy the stated or implied needs.

*“General Conditions of Contract (GCC)”* terms of the National Treasury means the General Conditions of Contract.

*“General Conditions of Contract (GCC)”* for construction works in terms of South African Institute of Civil Engineering (SAICE) means engineering and construction, including any level of design responsibility.

*“green procurement”* is defined as taking into account environmental criteria for goods and services to be purchased in order to ensure that the related environmental impact is minimized.

*“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 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.

*“infrastructure”* means:

- a) immovable assets which are required, constructed or which result from construction operations; or
- b) movable assets which cannot function independently from purpose-built immovable assets.

*“infrastructure procurement”* means the procurement of goods or services including any combination thereof associated with the acquisition, refurbishment, rehabilitation, alteration, maintenance, operations or disposal of infrastructure.

*“joint venture or consortium”* means an association of persons, formalized by agreement between such persons, formed for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

*“local”* in terms of this policy means services or goods produced within a 100 km radius from Steve Tshwete Local Municipality (STLM).

*“long term contract”* means a contract with a duration period exceeding one (1) year.

*“list of accredited prospective providers”* means the list of accredited prospective providers which a municipality or municipal entity must keep.

*“municipal council (council)”* means the council referred to in section 18 of the Local Government Municipal Structures Act No. 117 of 1998.

*“municipal entity”* means an entity as defined in the Municipal Systems Act, 2000 (Act No. 32 of 2000).

*“National Treasury”* has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 18 of 1999).

*“organ of state”* is defined in section 239 of the Constitution of South Africa as:

- (a) any department of state or administration in the national, provincial or local sphere of government; or
- (b) any other functionary or institution -
  - (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or
  - (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer.

*“other applicable legislation”* means other legislation applicable to municipal supply chain management, including:

- (a) PPPFA (Preferential Procurement Policy Framework Act, 2000, Act No. 5 of 2000);
- (b) B-BBEE Act (Broad-Based Black Economic Empowerment Act, 2003, Act No. 53 of 2003);
- (c) CIDB Act (Construction Industry Development Board Act, 2000, Act No. 38 of 2000);
- (d) MFMA (Local Government Municipal Finance Act, 2003, Act No. 56 of 2003);
- (e) MSA (Local Government Municipal Systems Act, 2000, Act No. 32 of 2000);
- (f) LGMSA (Local Government Municipal Structures Act, 1998, Act No. 117 of 1998);
- (g) PCCA Act (Prevention and Combating of Corrupt Activities Act, 2004, Act No. 12 of 2004);
- (h) PPPR (Preferential Procurement Policy Regulations, 2017);

- (j) CA (Competitions Act, 1998, Act No. 89 of 1998);
- (j) MATR (Municipal Asset Transfer Regulations published in Government Gazette 31346 of 22 August 2008); and/or
- (k) PAJA (Promotion of Administrative Justice Act, 2000, Act No. 3 of 2000).

“*participation goal*” is the value of the participation of specific targeted labour and/or enterprises that a contractor must achieve in the performance of a contract, expressed as a percentage of the bid sum less provisional sums and contingencies including all taxes.

“*principle shareholder*” means a person possessing such an interest or number of shares in an organization that he can influence decisions taken.

“*person*” includes a natural or legal entity.

“*people with disabilities*” has the meaning assigned to it in section 1 of the Employment equity Act, 1998 (Act No. 55 of 1998).

“*preferred bidder*” means a bidder with whom negotiations may be entered into to conclude the final terms of a contract.

“*qualifying small enterprise (QSE)*” means a qualifying small enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).

“*quality*” also referred to as “*functionality*”.

“*reckoning of number of days*” means 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 of every such Sunday and public holiday.

“*the regulation(s)*” means the supply chain management regulations (published under GN868 in Government Gazette 27636 30 May 2005).

“*responsible person*” means a director or manager who is responsible for the procurement of goods and services in his/her department.

“*Rand value*” means the total estimated value of a contract in Rand, calculated at the time of bid invitation.

“*Republic*” means the Republic of South Africa.

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

“*rural area*” means a sparsely populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area or an area including a large settlement which depends on migratory labour and remittances and government social grants for survival, and may have a traditional land tenure system.

“SARS” means the South African Revenue Services.

“*single provider*” means sole provider – one and only (alone of its kind) supplier (Oxford dictionary). If such goods or services are produced or available from a single provider only. There is no competition and only one (1) provider exists in SA (for example, sole distribution rights).

“*stakeholder*” means any person with a vested interest in a particular organization.

“*strip and quote*” means when the repairs and maintenance on our machines, vehicles are done by one (1) supplier and/or strip/quote, for example, a municipal vehicle enters the workshop that needs repairs, however to do the repairs, the vehicle has to be sent to a supplier that determines what repairs should be done.

“*sub-contract*” means to employ a firm or person outside of one’s company to do (work) as part of a larger project or carry out work for a company as part of a larger project.

“*sub-contractor*” means an individual (person) or business firm contracting to perform part or all of another’s contract.

“*supplier/vendor*” are generic terms which may include suppliers of goods and services, contractors and/or consultants.

“*supply chain management (SCM) regulations*” means the municipal supply chain management regulations (published under GN868 in Government Gazette 27636 30 May 2005).

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

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

“*tender/tenderer*” means “*bid/bidder*”.

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

“*this policy*” means this supply chain management policy.

“*township*” means an urban living area that at any time from the late 19th century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994.

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

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

“*Treasury*” has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 18 of 1999).

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

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

“*unsolicited bid*” means an offer submitted by any person at its own initiative without having been invited by the municipality to do so.

“*validity period*” means the period for which a bid is to remain valid and binding on stipulated in the relevant tender document.

“*written quotations*” means quotations referred in sub-regulation 12(1)(b) of the supply chain management regulations (published under GN868 in Government Gazette 27636 30 May 2005).

“*youth*” has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).

*Note 1: Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include females and words importing persons shall include companies, close corporations, joint ventures and firms, unless the context clearly indicates otherwise.*

*Note 2: Unless otherwise indicated, all amounts/limits stated in this document shall be deemed to be inclusive of all applicable taxes.*

## **CHAPTER 1 ESTABLISHMENT & IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY**

### **2. SUPPLY CHAIN MANAGEMENT POLICY**

#### **2.1 Introduction**

2.1.1 This policy is established in terms of supply chain management sub-regulation 2(1), 3(1)(b) of chapter 1 and 9 of chapter 2 (published under GN868 in Government Gazette 27636 30 May 2005); and

2.1.2 Section 111 of the MFMA (the Local Government Municipal Finance Act, 2003 (Act No.56 of 2003) requires each municipality and municipal entity to adopt and implement a supply chain management policy, which gives effect to the requirements of the Act.

2.1.3 The PPPFA (Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000), requires an organ of state to determine its preferential procurement policy and to implement it within the framework prescribed. This requirement is given effect to in the preferential procurement section of this policy; and

2.1.4 In addition, establish a supply chain management system for infrastructure procurement and delivery management in terms of Circular 77 (in terms of SCM sub-regulation 3(2)(a) & (c)) and in terms of section 238 of the Constitution of the Republic of South Africa, 1996.

2.1.5 The accounting officer of Steve Tshwete Local Municipality (hereafter referred to as STLM) applies this supply chain management policy in terms of section 62(1)(f)(iv) of the Act take all reasonable steps to insure that STLM has and implements this supply chain management policy as set out in supply chain management regulation 2.

#### **2.2 Normative references**

##### **2.2.1 Acts of Parliament:**

- (a) The following referenced Acts of Parliament are indispensable for the application of this policy:
  - (i) Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) (B-BBEE Act);
  - (ii) Constitution of the Republic of South Africa, 1996
  - (iii) Competitions Act, 1998 (Act No. 89 of 1998) (CA);

- (iv) Construction Industry Development Board Act, 2000 (Act No. 38 of 2000) (CIDB Act);
- (v) Local Government Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA);
- (vi) Local Government Municipal Structures Act, 1998 (Act No. 117 of 1998) (LGMSA);
- (vii) Local Government Municipal Systems Act, 2000 (Act No. 32 of 2000) (MSA);
- (viii) National Archives and Records Services of South Africa Act, 1996 (Act No. 43 of 1996);
- (ix) Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000); (PPPFA);
- (x) Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) (PCCA Act);
- (xi) Promotion of Administrative Justice Act, 2000, (Act No. 3 of 2000) (PAJA).

## 2.3 Desired outcomes

2.3.1 The desired outcome of this policy is to provide a mechanism to ensure sound, sustainable and accountable supply chain management within the Steve Tshwete Local Municipality (STLM), whilst promoting black economic empowerment, which includes general principles for achieving the following socio-economic objectives:

- (a) to stimulate and promote local economic development in a targeted and focused manner;
- (b) to promote resource efficiency and reduce the negative environmental impact of daily operations of the municipality;
- (c) to facilitate creation of employment and business opportunities for the people of STLM
- (d) to promote the competitiveness of local businesses;
- (e) to increase the small business sector access, in general, to procurement business opportunities created by council;
- (f) to support green procurement initiatives as far as is reasonably possible;
- (g) to support local contractor development; and
- (h) to encourage the culture of value for money.

## 2.4 Compliance with ethical standards

2.4.1 In terms of clause 47 of this policy in order to create an environment where business can be conducted with integrity and in a fair and reasonable manner, this policy will strive to ensure that the accounting officer and all representatives of STLM involved in supply chain management activities shall act with integrity and in accordance with the highest ethical standards.

2.4.2 All supply chain management representatives shall adhere to the code of conduct of municipal staff contained in schedule 2 of the Municipal Systems Act, and this policy's Code of Ethical Standards.

## 3. REGULATORY CONTEXT & THE PRINCIPLES OF THIS POLICY

3.1 The principles of this policy are that it:

- (a) gives effect to:
  - (i) section 217 of the Constitution of the Republic of South Africa by implementing a system that is fair, equitable, transparent, competitive and cost effective; and
  - (ii) part 1 of chapter 11 and other applicable provisions of the Act;
- (b) complies with all applicable provisions of the MFMA including the municipal supply chain management regulations (published under GN868 in Government Gazette 27636 30 May 2005) and to comply with any National Treasury circulars/guidelines specifically adopted by council, in terms of the MFMA;
- (c) ensures consistency with all other applicable legislation and any Regulations pertaining thereto, including:
  - (i) compliance with:
    - (1) the regulatory framework prescribed in chapter 2 of the regulations; and
    - (2) any minimum norms and standards that may be prescribed in terms of section 168 of the Act.
  - (ii) consistency with other applicable legislation identified in sub-clause 2.2 of this policy and any regulations pertaining thereto, including:
    - (1) the Municipal Asset Transfer Regulations published in Government Gazette 31346 of 22 August 2008 (MATR);



- (2) the Preferential Procurement Policy Regulations, 2022 (PPR2022); and
- (3) the Municipal Supply Chain Management Regulations (published under GN868 in Government Gazette 27636 30 May 2005);
- (iii) in terms of SCM regulation sub-regulation 2(1), does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
- (iv) being consistent with national economic policy concerning the promotion of investments and doing business with the public sector.

#### 4. APPLICATION OF POLICY

4.1 The municipality may not, in terms of section 110 of the Act, act otherwise than in accordance with this policy when:

- (a) procuring goods or services including infrastructure professional services and works and professional service providers/consultant in respect of goods and services;
- (b) disposing of goods no longer needed;
- (c) selecting contractors to provide assistance in the provision of municipal services otherwise than in circumstances where chapter 8 of the Municipal Systems Act applies;
- (d) in the case of a municipality, selecting external mechanisms referred to in section 80 (1)(b) of the Municipal Systems Act, 2000 (Act No. 32 of 2000) for the provision of municipal services in circumstances contemplated in section 83 of that act; or
- (e) procuring goods and services under a current contract secured by another organ of state, provided that the relevant supplier has agreed to such procurement.

4.2 Unless specifically stated otherwise, this policy does not apply if the municipality contracts with another organ of state for:

- (a) the provision of goods or services to the municipality;
- (b) the provision of a municipal service, or assistance in the provision of a municipal service; or
- (c) any other contractual agreements between organs of state for whatever reasons.

- 4.3 A report shall be submitted to the appropriate delegated authority seeking authority to contract with another organ of state.
- 4.4 Sub-clause 3.1 and 4.1 of this policy do not apply in the circumstances described in section 110(2) of the Act except where specifically provided otherwise in this policy.
- 4.5 The policy provides, in terms of chapter 2 of the SCM regulations, sub-regulation 9(b), for the following supply chain management systems:
- (a) demand management system;
  - (b) acquisition management system;
  - (c) logistics management system;
  - (d) disposal management system;
  - (e) risk management system; and
  - (f) performance management system.
- 4.5.1 These systems must be adhered to in all supply chain management activities undertaken by the municipality.

**5. ADOPTION & AMENDMENT OF THE SUPPLY CHAIN MANAGEMENT POLICY**

- 5.1 In terms of supply chain management regulation 3, this policy is effective from the date on which it is adopted by council. Should any legislation be enacted or be amended that conflicts with any part of this policy, such legislation will take precedence and will be implemented by the municipality without amending this policy. Such amendment of the policy as may be required would be done as expeditiously as possible.
- 5.2 The accounting officer must:
- (a) at least annually review the implementation of this policy; and
  - (b) when the accounting officer considers it necessary, submit proposals for the amendment of this policy to the council for approval.
- 5.3 If the accounting officer submits a draft policy to the council that differs from the supply chain management policy, the accounting officer must ensure that such draft policy complies with the regulations. The accounting officer must report any deviation from the supply chain management policy to the National Treasury and the relevant Provincial Treasury.

- 5.4 When amending this supply chain management policy, the need for uniformity in terms of the supply chain management regulation, sub-regulation 3(3), in supply chain practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.
- 5.5 The accounting officer of the municipality must in terms of section 62(1)(f)(iv) of the Act, take all reasonable steps to ensure that the municipality has and implements this policy.

## 6. DELEGATION OF SUPPLY CHAIN MANAGEMENT POWERS & DUTIES

- 6.1 The council is hereby required in terms of supply chain management sub-regulation 4(1) to delegate such additional powers and duties to the accounting officer so as to enable the accounting officer to:
- (a) discharge the supply chain management responsibilities conferred on accounting officer in terms of:
    - (i) chapter 8 or 10 of the Act; and
    - (ii) the supply chain management policy;
  - (b) maximize administrative and operational efficiency in the implementation of the supply chain management policy;
  - (c) enforce reasonable cost-effective measures for the prevention of fraud, corruption, favoritism and unfair and irregular practices in the implementation of the supply chain management policy; and
  - (d) comply with his or her responsibilities in terms of section 115(1)(a-b) and sub-section (2) of the Act and other applicable provisions of the Act.
- 6.2 The council or accounting officer may not delegate or sub-delegate any supply chain management powers or duties to a person who is not an official of the municipality or to a committee which is not exclusively composed of officials of the municipality.
- 6.3 In terms of MFMA section 158(e) and MFMA supply chain management regulation, sub-regulation 27(3), sub-regulation 29(2)(iii) and regulation 4, the accounting officer may appoint an external expert service provider to Act as consultant or advisor to provide verbal or written advice without any decision powers stipulated in clauses 6.2 and 6.3 of this policy.
- 6.4 The accounting officer may delegate or sub-delegate the authority to enter into negotiations in terms of clause 20 of this policy.

## 7. SUB-DELEGATIONS

- 7.1 In terms of regulation 5 of the supply chain management regulations, section 79 and/or 106 of the Act applies.
- 7.2 Sub-delegation powers and duties delegated to the accounting officer in terms of clause 6, sub-clauses 7.3, 7.4, 7.5, 7.6 and 29.1(a) of this policy including those in the supply chain management regulation, sub-regulation 4(1):
- 7.2.1 The accounting officer has the statutory power to delegate or sub-delegate to a staff member any power conferred on the accounting officer in terms of the MFMA and the supply chain management regulations relating to supply chain management.
- 7.2.2 No decision-making in terms of any supply chain management powers and duties may be delegated to an advisor or consultant who is not a municipal official.
- 7.3 In terms of section 79(3)(d) of the Act, in the case of a delegation to a member of the municipality's top management in terms of sub-section (1)(b), authorize that member to sub-delegate the delegated power or duty to an official or the holder of a specific post in that member's area of responsibility.
- 7.4 The accounting officer hereby in terms of supply chain management sub-regulation 5(2) will not sub-delegate the following:
- (a) above R10-million (VAT included) and is thus awarded by the accounting officer; or
- (b) above R2-million (VAT included), but not exceeding R10-million (VAT included), and is thus awarded by the accounting officer.
- 7.5 The accounting officer hereby in terms of supply chain management sub-regulation 5(2) may sub-delegate the following and gives power to make a final award:
- (a) above R200 000,00 (VAT included) but not exceeding R2-million (VAT included) only to –
- (i) the bid adjudication committee of which the executive director financial services is the chairperson and/or
- (ii) a delegated executive director act as chairperson of the bid adjudication committee in the absence of the executive manager financial services; or

- (b) not exceeding R200 000,00 (VAT included) only to -
    - (i) the executive director financial services;
    - (ii) a senior manager;
    - (iii) a manager directly accountable to the executive director financial services or senior manager; or
    - (iv) a bid adjudication committee; and
  - (c) Sub-delegations by the accounting officer will either or be sub-delegation to top management as set out below or alternatively as decided and agreed with accounting officer in writing:
    - (i) executive director financial services;
    - (ii) executive director community services;
    - (iii) executive director infrastructure services; or
    - (iv) executive director corporate services.
- 7.6 An official or bid adjudication committee to which the power to make final awards has been sub-delegated in accordance with sub-clauses 7.5(b) or (c) of this policy must within ten (10) working days of the end of each month submit to the official referred to in sub-clauses 7.5(b) or (c) of this policy a written report containing particulars of each final award made by such official or committee during that month, including:
- (a) the contract numbers and descriptions of goods, services or infrastructure projects;
  - (b) the amount of the award;
  - (c) the name of the person to whom the award was made; and
  - (d) the reason why the award was made to that person.
- 7.7 All written reports required in terms of this policy must be submitted to the accounting officer, and or to the executive director financial services or the executive manager/director responsible for the relevant bid and or quotation, in the case of an award by:
- (a) the executive director financial services; or
  - (b) an executive director and or director; or
  - (c) a bid adjudication committee of which the executive director financial services or a director is a member; or
  - (d) an executive director referred to in sub-clause 7.6 of this policy; or
  - (e) a bid adjudication committee of which the executive director financial services or a director is not a member.
- 7.8 Clauses 5 and 6 of this policy do not apply to procurements out of petty cash.
- 7.9 This clause may not be interpreted as permitting an official to whom the power to make final awards has been sub-delegated, to make a

final award in a competitive bidding process otherwise than through the committee system provided for in clause 21 of this policy.

- 7.10 Bids awarded must be published on council's website in terms of section 75(1)(g) of the Act and sub-regulation 23(c).
- 7.11 No supply chain management decision-making powers may be delegated to an advisor or consultant as stipulated in clause 6.2 of this policy.

## **8. OVERSIGHT ROLE OF COUNCIL**

- 8.1 Section 117 of the Act prohibits a councillor from being a member of a bid committee or any other committee evaluating or approving quotations or bids nor may the councillor attend any such meeting as an observer.
- 8.2 The executive mayor will provide general political guidance over the fiscal and financial affairs of STLM and must monitor and oversee the exercise of responsibilities assigned to the accounting officer and executive director financial services in terms of the Act.
- 8.3 The council must maintain oversight in terms of supply chain management regulation 6 over the implementation of this supply chain management policy.
- 8.4 For the purposes of such oversight the accounting officer must:
  - (a) in terms of sub-regulation 6(2) (a)(1) of the supply chain management regulation within thirty (30) days of the end of each financial year (ending June, submission before end of July), submit a report on the implementation of the supply chain management policy of the municipality and of any municipal entity under its sole or shared control, to the council of the municipality;
  - (b) whenever there are serious and material problems in the implementation of the supply chain management policy, immediately submit a report to the council.
- 8.5 The accounting officer must in terms of sub-regulation 6(3) of the supply chain management regulation, within ten (10) days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the executive mayor.
- 8.6 The reports must be made public in accordance with section 21(1)(a) of the Municipal Systems Act, 2000 (Act No. 32 of 2000).

**9. SUPPLY CHAIN MANAGEMENT UNIT**

9.1 The municipality has in terms of section 82 of the Act and regulation 7 of the supply chain management regulations, established a supply chain management unit within the finance department to assist the accounting officer to implement this policy.

9.2 The executive director financial services is administratively in charge of the supply chain management unit which operates under the direct supervision of the assistant director supply chain management, to whom this duty has been sub-delegated in terms of sub-sections (1)(b) and 79(3)(d) and section 82 of the Act.

**10. COMPETENCY AND TRAINING OF SUPPLY CHAIN MANAGEMENT OFFICIALS**

10.1 The accounting officer shall ensure in terms of section 107 of the Act and regulation 8 of the supply chain management regulations that all persons involved in the implementation of this policy meet the prescribed competency levels, and where necessary, shall provide relevant training.

10.2 The training of officials involved in implementing this policy shall be in accordance with any National Treasury circulars/guidelines on supply chain management training.

**11. COMMUNICATION WITH THE MUNICIPALITY**

11.1 All correspondence with regard to this policy shall be addressed to the accounting officer.

**12. AVAILABILITY OF SUPPLY CHAIN MANAGEMENT POLICY**

12.1 A copy of this policy and other relevant documentation is available on the municipality's website- [www.stlm.gov.za](http://www.stlm.gov.za)

**13. E-PROCUREMENT**

13.1 The implementation and use of an e-Procurement system is at the sole discretion of the accounting officer.

## **CHAPTER 2 FRAMEWORK FOR SUPPLY CHAIN MANAGEMENT**

### **14. FORMAT OF THIS SUPPLY CHAIN MANAGEMENT SYSTEM**

14.1 This supply chain management policy provides in terms of regulation 9 of the supply chain management regulations a system for:

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

### ***PART 1 DEMAND MANAGEMENT***

### **15. DEMAND MANAGEMENT**

15.1 Introduction

15.1.1 Demand management provides in terms of regulation 10 of the supply chain management regulations, for an effective system to ensure that the resources required to support the strategic and operational commitments of the municipality are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy the needs of the municipality.

15.1.2 The municipality's integrated development plan (IDP) is a comprehensive strategy document setting out how the municipality intends to tackle its primary and social developmental challenges in a financial year. It is on the basis of the IDP that the resources of the municipality will be allocated and on which the budget and vote is based.

15.1.3 In order to achieve effective demand management, the responsible executive director shall continuously ensure:

- (a) that efficient and effective supply chain management systems and practices are implemented to enable the municipality to deliver the required quantity and quality of services to the public;
- (b) the establishment of uniformity in policies, procedures, documents and contract options and the implementation of sound systems of control and accountability;
- (c) the development of a professional supply chain management system which results in continuing



improvement in affordability and value for money, based on total cost of ownership and quality of procurement as competition amongst suppliers is enhanced; and

- (d) in dealing with suppliers and potential suppliers, that the municipality responds promptly, courteously and efficiently to enquiries, suggestions and complaints.

## 15.2 Major activities

15.2.1 Demand management (see Annexure C1) is the beginning of the supply chain management process and the major activities associated with identifying demand are:

- (a) establishing requirements;
- (b) determining needs; and
- (c) deciding on appropriate procurement strategies and establish a procurement plan.

15.2.2 Demand management plan accordingly shall involve the following activities:

- (a) understanding the future needs;
- (b) identifying critical delivery dates;
- (c) identifying the frequency of the need;
- (d) linking the requirement to the budget;
- (e) conducting expenditure analyses based on past expenditure;
- (f) determining requirements (including the internal capacity to implement);
- (g) conducting commodity analyses in order to check for alternatives; and
- (h) conducting industry analyses.

## 15.3 System of demand management

### 15.3.1 Requirements

- (a) The demand management plan must be developed at the beginning of the financial year when the IDP, SDBIP and annual budget in terms of section 28 have been approved.
- (b) All user departments are required to submit their procurement plans to the assistant director SCM within ten (10) days after the approval of the annual budget.
- (c) The procurement plan must be submitted to and approved by the accounting officer or his/her delegate before the 30<sup>th</sup> of June of each year.
- (d) The procurement plan must be renewed regularly and submitted to the accounting officer or his/her delegate on a quarterly basis.
- (e) Demand management must be coordinated by SCM officials of the municipality in consultation with end-users.
- (f) The outcome of this activity should be a detailed planning document in order to ensure that the resources required to support the strategic and operational commitments are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy needs.
- (g) An effective system of demand management must include the following:
  - (i) planning for future requirements for the acquisition and disposals of all goods required to meet the strategic goals outlined in the integrated development plan must be quantified, budgeted and planned to ensure timely and effective delivery, appropriate quality at a fair cost to meet the needs of the Municipality and community.
  - (ii) Critical delivery dates that must be determined and adhered to.
  - (iii) If the requirement is of a repetitive nature and there are benefits of economies of scale a contract for a specific commodity should be arranged.
  - (iv) In order to compile the correct specifications an industry analysis/research should be undertaken to ensure future needs and technology benefits are maximized.

## **PART 2: ACQUISITION MANAGEMENT**

### **16. SYSTEM OF ACQUISITION MANAGEMENT**

#### **16.1 Introduction**

16.1.1 Through operational procedures the objectives of this acquisition management system are to ensure:

- (a) that goods and services, including construction works and consultant services are procured by the Municipality only in accordance with the authorized procedures and processes incorporated herein;
- (b) that expenditure on goods and services, is incurred in terms of an approved budget in terms of section 15 of the Act, including construction works and consultant services;
- (c) that the threshold values of the different procurement procedures are complied with; and
- (d) that bid documentation, evaluation and adjudication criteria, and general conditions of contract are in accordance with the requirements of relevant legislation including:
  - (i) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and its regulations;
  - (ii) any conditions of the MFMA and its regulations;
  - (iii) any conditions of the Standard for Infrastructure Procurement in terms of Circular 77 (see Annexure B);
  - (iv) the CIDB Act and its regulations where applicable as; and
  - (v) that procurement circulars/guidelines issued by the National Treasury and specifically adopted by council.

#### **16.2 General**

16.2.1 Application - a supply chain management policy is subject to supply chain management regulations, sub-regulation 11(2).

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

16.2.3 This supply chain management policy, except where provided otherwise in the policy, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including:

- (a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity;
- (b) electricity from Eskom or another public entity, another municipality or a municipal entity;
- (c) goods and services in respect of servicing of fleet/equipment at the dealership/manufacturer, e.g., *Toyota, Nissan, Audi, BMW, HP, Acer, et cetera*; including calibration of equipment by manufacturer; and
- (d) Goods and services procured from other state organs e.g. *Face Value Forms, Traffic Training*

16.2.4 The following information must be made public wherever goods or services contemplated in section 110(2) of the Act are procured other than through the supply chain management system:

- (a) the kind of goods or services; and
- (b) the name of the supplier.

### 16.3 Deliberate splitting of orders

16.3.1 In terms of section 173(1)(c) of the Act the provision of goods and services or works may not deliberately be split into part, or items of a lesser value, merely to avoid complying with the requirements set out in this policy.

### 16.4 Municipality's supplier database

16.4.1 The municipality's supplier database in terms of supply chain management regulations, sub-regulation 14(1)(b) is the database which lists the details of all suppliers who have registered in order to do business with the state.

16.4.2 The accounting officer shall disallow the registration of any prospective supplier on the municipality's supplier database who does not comply with the requirements of the central supplier database (CSD).

16.4.3 The accounting officer shall disallow the registration of any prospective supplier whose name appears on the National

Treasury's database of restricted suppliers and/or register for tender defaulters and who is therefore prohibited from doing business with the public sector.

- 16.4.4 Bidders who are not registered on the municipality's supplier database are not precluded from submitting bids but must however register when called upon to do so.
- 16.4.5 All persons forming part of a joint venture or consortium must comply with the requirements of clause 16.12. of this policy.
- 16.5 National Treasury's web-based central supplier database (CSD)
  - 16.5.1 In addition to the requirements of the municipality's supplier database, it is a requirement for all suppliers to be registered on the National Treasury web-based central supplier database (CSD) that can be accessed at <https://secure.csd.gov.za>.
  - 16.5.2 The CSD is the national standardized and centralized electronic supplier database administered by the National Treasury in terms of MFMA Circular 81 which provides information to an organ of state.
  - 16.5.3 Prospective suppliers shall be allowed to submit applications for registration and amendments for listing on the CSD at any time and agree to the terms and conditions of the CSD.
  - 16.5.4 Bidders who are not registered on the CSD are not precluded from submitting bids but must however register prior awarding of bid/quotation and when called upon to do so must be registered within five (5) working days otherwise the bid will be regarded as non-responsive.
  - 16.5.5 Prospective suppliers must notify the municipality immediately upon receipt of their CSD reference number (MAAA....) for this to be captured onto the municipality's supplier database.
  - 16.5.6 The overall tax compliance status of prospective suppliers is reflected by the central supplier database (CSD).
  - 16.5.7 The central database system (CSD) will automatically validate the following registration documents:
    - (a) confirmation and status of business registration documents;
    - (b) proof of bank account registration;
    - (c) tax compliance status;

- (d) employee in the services of the state;
- (e) identity documents;
- (f) tender defaulters and restrictions status; and
- (g) proof of CSD registration.

The following documents will remain the responsibility of the municipality to obtain and verify:

- (a) BBBEE status;
- (b) CIDB Grading;
- (c) municipal account status; and
- (d) *and any other accreditations as per specifications.*

## 16.6 Range of procurement processes

16.6.1 The procurement of goods and services in terms of supply chain management regulation 12 including infrastructure works and supplies through this policy is provided by way of:

- (a) petty cash purchases, up to a transaction value of R2 000,00 (VAT included) subject to the provisions of the petty cash policy (attached as Annexure E);
- (b) three (3) written price quotations for procurements of a transaction value over R2 000,00 up to R30 000,00 (VAT included);
- (c) formal written price quotations for procurements of a transaction value over R30 000,00 up to R200 000,00 (VAT included); and
- (d) a competitive bidding process for:
  - (i) procurements above a transaction value of R200 000,00 (VAT included); and
  - (ii) the procurement of long term contracts.

16.6.2 The accounting officer may, in writing:

- (a) lower, but not increase, the different threshold values specified in sub-clause 16.7.1 of this policy; or direct that:

- (i) written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000,00;
- (ii) formal written price quotations be obtained for any specific procurement of a transaction value lower than R30 000,00; or
- (iii) a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000,00.

16.6.3 Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the policy. When determining transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.

16.7 Panels, electronic database, framework agreements, term contracts and as and when contracts (this aligns and will support the measures to promote local suppliers and SMMEs and must be read together with clause 43 of this policy).

16.7.1 The panel system

- (a) is intended to become closed to new applicants for a period of up to three (3) years and longer without a formal contract; and
- (b) applicants are admitted to panels based on criteria other than qualifications, experience, capability to deliver the required services, facilities and resources;

16.7.2 Framework agreement, term contract, and “as and when contract”

- (a) The municipality may make use of framework agreements, term contract and “as and when” contracts if such contract was obtained through a competitive bidding process and a formal award was made, supported by a formal signed contract and in strict accordance with the provisions set out below:
  - (i) inviting tender offers to enter into a suitable contract for the required work, using stringent eligibility and evaluation criteria to ensure that contracts are entered into with only those service providers who have the capability and capacity to provide the required goods, services or works; and

- (ii) entering into a limited number of contracts based on the projected demand and geographic location for such goods, services or works.
  - (iii) the term of a framework agreement, term contract, and “*as and when*” contract shall not exceed a three (3) year term unless the prescripts of section 33 has been followed.
- (b) Framework agreement, term contract, and “*as and when*” contract that are entered into shall not:
  - (i) commit the municipality to any quantum of work beyond the first order or bind the municipality as an employer to make use of such agreements to meet its needs.
- (c) The municipality may approach the market for goods or services, or a combination thereof, whenever it considers that better value in terms of time, cost and the quality which may be obtained.
- (d) Orders
  - (i) shall cover only goods or services, or any combination thereof, falling within the scope of work associated with the agreement which may not be amended for the duration of the contract;
  - (ii) may not be issued after the expiry of the term of the agreement; and
- (e) may be completed even if the completion of the order is after the expiry of the term.
- (f) The issuing of orders with a number of framework contracts, term contract, and “*as and when*” contract contractors covering the same scope of work may be made with and without requiring competition amongst contractors. Where competition is required amongst contractors, it shall be conducted in a non-discriminatory manner such that competition is not distorted.
- (g) Competition amongst framework contractors, term contract, and “*as and when*” contract for orders shall take place where:
- (h) there is no justifiable reason for issuing an order to a particular contractor, such as:



- (1) the contractor provided the most economical transaction when the financial parameters included in the contract are applied, and has the capacity to deliver;
- (2) the required goods, services or works cannot technically or economically be separated from another contract or order previously performed by a specific contractor;
- (3) the service or works being instructed are largely identical to work previously executed by that contractor;
- (4) the value of the order is less than the threshold for the quotation procedure;
- (5) the schedule for delivery necessitates that each of the contractors be issued with orders on a continuous basis; or
- (6) capacity to execute the order:
  - (i) the terms in the agreement are insufficiently precise or complete to cover the particular requirement, e.g. delivery time scales or time estimates to complete the order (productivity); or
  - (ii) a better quality of service can be obtained through a competitive process.

### 16.7.3 A rotating electronic database linked to the nominated procedure

- (a) shall be designed and implemented around the following principles:
  - (i) calls for expressions of interest for admission to the database in specified fields of services and goods are made at least once a year in suitable media and in a manner that enables a wide spectrum of qualified respondents to respond to the call;
  - (ii) only those respondents who comply with all the employer's requirements for the award of a contract and possess the capability to provide the goods or perform the service or work in a specified field of service or supply are admitted to the database;
  - (iii) all admissions to the database are listed sequentially after an initial ranking in terms of a random number generator;
  - (iv) new admissions are entered at the bottom of the database in the sequence that they are received;
  - (v) a transaction (negotiated contract or invitation to tender) is made with the highest-ranking entry that satisfies the search criteria relating to a field of service or supply; and
  - (vi) after a transaction, all those involved in the transaction, i.e. those who declined an appointment, those invited to

submit tenders and those that were awarded a contract, are moved to the bottom of the database.

## 16.8 Specialized forms of procurement

16.8.1 Acquisition of goods or services or infrastructure including construction work and consultants from other organs of state or public and municipal entities:

- (a) In the case of goods or services or infrastructure including construction works and consultants procured from another organ of state or public and municipal entity (including the Department of Water Affairs, Eskom or any other such entities), such procurement shall be made public, giving details of the nature of the goods or services to be procured and the name/s of the supplier/s.

16.8.2 Acquisition of goods and services under contracts secured by other organs of state in terms of section 239 of the Constitution of the Republic of South Africa and section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act:

- (a) The accounting officer may procure goods or services under a contract secured by another organ of state, but only if:
  - (i) the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
  - (ii) the municipality or entity has no reason to believe that such contract was not validly procured;
  - (iii) there are demonstrable discounts or benefits for the municipality or entity to do so; and
  - (iv) that other organ of state and the provider have consented to such procurement in writing by the accounting officer of that organ of state and the director of the provider.

## 16.9 Acquisition of goods necessitating special safety arrangements

16.9.1 In terms of regulation 33 of the SCM regulations, goods, other than water, which necessitate special safety arrangements (for example, flammable products, poisons), may not be acquired in excess of immediate requirements unless there is sound financial justification therefor.

- 16.9.2 Where the storage of goods, other than water in bulk is justified, the accounting officer may authorize such storage and the decision must be based on sound reason including total cost of ownership and cost advantages for the municipality.
- 16.10 Public-private partnerships (PPPs)
- 16.10.1 Part 2, section 120 of the Act applies to the procurement of public-private partnership agreements. Regulation 33 of the supply chain management regulations also applies if the agreement will have multi-year budgetary implications for the municipality within the meaning of that section.
- 16.11 List of targeted prospective suppliers / requests for interest (RFI)
- 16.11.1 In terms of Regulation 14 of the supply chain management regulations the director supply chain management may appoint a list of accredited prospective suppliers with respect to the procuring of goods, services and/or construction to be provided to the municipality.
- 16.11.2 The list of targeted prospective suppliers refers to suppliers who are targeted to do business with the municipality in respect of particular commodities, services or construction works.
- 16.11.3 The accounting officer shall ensure that a list of targeted prospective suppliers of goods and services is kept, for the procurement requirements of the municipality through written quotations and formal written price quotations (up to and including R200 000,00).
- 16.11.4 The list of targeted prospective suppliers must be compiled per commodity and per type of service. The listing criteria for targeted prospective suppliers are as set out in clause 16.5 of this policy, along with any additional criteria the municipality may stipulate from time to time as it relates to the relevant commodity or type of service.
- 16.11.5 This list must be updated at least quarterly to include any additional prospective suppliers and any new commodities or types of service. Prospective suppliers shall, however, be allowed to submit applications for listing at any time.
- 16.11.6 The provisions of clauses 16.3 to 16.4 shall also apply to suppliers listed on the list of targeted prospective suppliers.
- 16.12 General preconditions for consideration of written quotations or bids

16.12.1 A written quotation or bid in terms of regulation 16, 17, 18, 19 & 20 of the supply chain management regulations, may not be considered unless the provider who submitted the quotation or bid:

- (a) has furnished that provider's:
  - (i) full name;
  - (ii) identification number or company or other registration number; and
  - (iii) tax reference number and VAT registration number, if any; and
  - (iv) registration number on central database system.
  
- (b) has in terms of clause 16.5 of this policy, a tax status on the central supplier database that reflects compliant and/or the supplier has authorised STLM via a tax pin to confirm with the South African Revenue Services that their tax status is compliant on the time of award; and
  - (i) 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 seven (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 bidder must be verified via CSD or e-filing. Accounting officer should reject a bid/quote submitted if such bidder fails to provide proof of tax compliance status within the timeframe stated above.
  
- (c) has indicated:
  - (i) whether he or she is in the service of the state, or has been in the service of the state in the previous twelve (12) months;
  - (ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve (12) months; or
  - (iii) whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to in sub-clause 6.12.1(c)(ii) of this policy is in the service of the

- state or has been in the service of the state in the previous twelve (12) months.
- (iv) before making an award, the supply chain management unit must check on central supplier database whether the bidder or any of its directors are not listed/indicated as a person prohibited from doing business with the public sector;
  - (d) written quotations in terms of sub-regulation 13(1)(b) of the supply chain management regulations, above R2 000,00 up to R200 000,00 (VAT included) must be obtained from at least three (3) different providers listed on the National Treasury central supplier database;
  - (e) Irrespective of the procurement process, the municipality may not make an award above R15 000,00, to a person whose tax matters have not been declared by SARS to be in order.

#### 16.13 Petty cash purchases

16.13.1 In terms of regulation 15 of the supply chain management regulations the conditions for the procurement of goods by means of petty cash purchases referred to in sub-clause 16.6.1(a) of this policy, are that minor items are purchased for up to R2 000,00 (VAT included) where it is impractical, impossible or not cost-effective to follow the official procurement process. The conditions for the procurement of goods by means of petty cash are:

- (a) such payments will only be for reimbursement expenditure incurred by officials in terms of the petty cash policy as per attached annexure D;
- (b) no claims will be accepted if to be paid to a supplier directly;
- (c) proof of such expenditures must be provided with each claim;
- (d) the accountant expenditure must record these claims in a separate register and monthly be included in the report referred to in sub-clause 16.13.2 of this policy;
- (e) the executive director financial services will authorize officials from his department to keep petty cash registers and to grant refunds for cash purposes or allow cash advances;

- (f) cash advances can only be granted for out-of-pocket expenses for delegated representatives of the municipality or upon a written quotation but in all instances should a petty cash voucher be approved by the related departmental head;
- (g) officially delegated persons will agree to the deduction from his next remuneration any cash advances of which no proof of expenditure is presented on return from the attended event;
- (h) the practice of breaking up purchases in order to circumvent the formal written price quotation and written price quotation processes is not permissible;
- (i) prospective suppliers used for petty cash transactions do not need to be registered on the central supplier database; and
- (j) rotation of suppliers will not be applicable during petty cash purchases.

16.13.2 A monthly reconciliation report from holder of petty cash must be provided to the executive director financial services, including:

- (a) the total amount of petty cash purchases for that month;
- (b) receipts and appropriate documents for each purchase; and
- (c) be submitted to the executive director financial services by the tenth (10th) working day.

16.14 Formal written price quotations above R2 000,00 (VAT included) up to R30 000,00 (VAT included)

16.14.1 The conditions for the procurement of goods or services through written quotations in terms of regulation 17 of the supply chain management regulations, sub-clauses 16.11 and 16.12 of this policy, are as follows:

- (a) quotations must be obtained from at least three (3) different providers listed on the accredited prospective provider of the National Treasury central supplier database;
- (b) quotations obtained must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;

(i) See clause 16.7.3 of this policy; and

16.14.2 if it is not possible to obtain at least three (3) quotations, the reasons must be recorded and reported quarterly to the accounting officer or another official designated by the accounting officer.

16.15 Formal written price quotations above R30 000,00 up to R200 000,00 (VAT included)

16.15.1 In terms of regulation 12 of the supply chain management regulations the conditions for the procurement of goods or services through formal written price quotations, are as follows:

- (a) Quotations must be obtained in writing from at least three (3) different providers whose names appear on the list of accredited prospective providers of the National Treasury central supplier database;
- (b) If it is not possible to obtain at least three (3) quotations, the reasons must be recorded and approved by the executive director financial services or an official designated by the executive director financial services; and
- (c) The accounting officer must record the names of the potential providers and their written quotations.

16.16 Procedures for procuring goods or services through formal written price quotations

16.16.1 In terms of regulation 18 of the SCM regulations the operational procedure for the procurement of goods or services through written quotations or formal written price quotations, are as follows:

- (a) detail specifications for formal written quotations above R30 000,00 must be signed off by the relevant department head for inclusion on the official quotation document before advertisement;
- (b) all requirements in excess of R30 000,00 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of sub-clause 16.14 and clause 23 of this policy, be advertised for at least seven (7) calendar days on the website and all official notice boards of the municipality;

- (c) all quotes received above R30 000,00 (VAT included) are to be placed in the official quotation boxes as designated for each department from time to time. No late quotations will be accepted or opened after closing date and time;
- (d) all acceptable orders above R30 000,00 (VAT included) are subjected to preference points system and be awarded to the bidder of the highest points;
- (e) all acceptable orders above R30 000,00 (VAT included) must be evaluated on a competitive basis, based on compliance with specifications and conditions of contract, ability and capability to deliver the goods and services;
  - (i) See clause 16.12.1(b)(i) of this policy;
- (f) the accounting officer must take all reasonable steps to ensure that the procurement of goods and services through written quotations or formal written price quotations is not abused, including the application of sub-clause 28.12(b) and clause 38 of this policy;
- (g) the accounting officer or executive director financial services must on a monthly basis be notified in writing of all written quotations and formal written price quotations accepted by an official acting in terms of a sub-delegation;
- (h) the executive director financial services must set procedures for the procuring of goods and services through written quotations and formal written price quotations and the proper recordkeeping thereof; and
  - (1) A quotation will not be invalidated if the amount in words and the amount in figures do not correspond, in which case the amount in words shall be read out at the quotation opening and shall be deemed to be the quotation amount.
- (i) record of approved specifications, minutes of evaluation and approval memorandums and emails must be kept for audit purposes.
- (j) Late quotations:
  - (1) A quotation is late if it is not placed in the relevant quotation box by the closing time.



- (a) Quotations arriving after the specified closing time shall not be considered and where practicable and cost effective shall be returned to the bidder unopened with a letter explaining the circumstances.
  - (b) Where it is necessary to open a late quotation to obtain the name and address of the sender, each page of the document shall be stamped "*late quotation*" before the quotation is returned to the bidder.
  - (c) The envelope must be stamped and initialed in like manner and must be retained for record purposes.
- (2) Dealing with quotations if the closing date thereof has been extended:
- (a) Where the closing date of a quotation is extended, quotations already received, will be retained unopened in the quotation box and be duly considered after the expiry of the extended period, unless the bidder cancels it by submitting a letter dated before the extended closing date.
- (3) A designated official referred to in clause 16.16.1(e) of this policy, must within ten (10) working days of the end of each month report to the executive director financial services on any approvals given during that month by that official in terms of that sub-clause.

## 16.17 Competitive bids

16.17.1 In terms of regulation 19 of the supply chain management regulations goods or services above a transaction value of R200 000,00 (VAT included) and long-term contracts (contracts exceeding one (1) year) may only be procured through a competitive bidding process, subject to sub-clause 16.2.2 and clause 38 of this policy.

16.17.2 No requirement for goods or services above an estimated transaction value of R200 000,00 (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.

## 16.18 Process for competitive bidding

16.18.1. In terms of regulation 20 of the supply chain management regulations the procedures for a competitive bidding process are established in part 2 of this policy for each of the following stages:

- (a) The compilation of bidding documentation as per clause 17 of this policy;
- (b) The public invitation of bids as per clause 18 and 23 of this policy;
- (c) Site meetings or briefing sessions, if applicable;
- (d) The handling of bids submitted in response to public invitation as per clause 19 of this policy;
- (e) The evaluation of bids as per clause 28 of this policy;
- (f) The award of contracts as per clause 29 of this policy;
- (g) The administration of contracts; and
- (h) Proper record keeping.

## 17. **BID DOCUMENTATION FOR COMPETITIVE BIDS**

17.1 If the bid relates to Infrastructure irrespective of professional services or construction works, excluding purchase of material and equipment, the supply chain management policy for infrastructure procurement (Annexure B) applies that is issued interims of Circular 77 that is aligned to National Treasuries Standard for Infrastructure Procurement and Delivery Management (SIPDM). These are:

- (a) SANS 1084 parts 1-4, not including the MBD forms or the General Conditions of Contract (GCC) of National Treasury, but only those permitted in terms of the SIPDM, with minimal amendments for e.g. the CSD requirements.

17.2 In terms of regulation 21 of the supply chain management regulations the criteria to which bid documentation in terms of goods and service for consulting services, consisting of different parts or items for a competitive bidding process must comply, and must clearly –

- (a) take into account:
  - (i) the general conditions of contract (GCC) of National Treasury and for infrastructure refer to the supply chain

- management policy for Infrastructure Circular 77 (Annexure B);
  - (ii) any special conditions of contract if specified;
  - (iii) any Treasury circulars and guidelines on compilation of bid documentation;
  - (iv) the requirements of the Construction Industry Development Board (CIDB) in relation to Infrastructure as per definition in clause 1 of this policy;
  - (v) registration on National Treasury central supplier database;
  - (vi) terms and conditions of the contract, specifications, criteria for evaluation and adjudication procedures to be followed where applicable, and include where, in exceptional circumstances site inspections are compulsory;
  - (vii) an appropriate contract and/or delivery period should be specified for all contracts and orders; and
  - (viii) draft contract included.
- (b) include the preference points system to be used as contemplated in the Preferential Procurement Regulations, 2022, evaluation and adjudication criteria, including any criteria required by the applicable legislation;
  - (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
  - (d) not be aimed at hampering competition, but rather to ensure fair, equitable, transparent, competitive and cost-effective bidding, as well as the protection or advancement of persons, or categories of persons, as embodied in sub-regulation 4(1) of the Preferential Procurement Regulations, 2022;
  - (e) in terms of sub-regulation 21(d) of the supply chain management regulations, if the value of the transaction is expected to exceed R10-million (VAT included), require bidders to furnish the following documents:
    - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements:
      - (a) for the past three (3) years; or
      - (b) since their establishment if established during the past three (3) 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 thirty (30) days;

- (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five (5) 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 an imported component or 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;
- (f) in terms of sub-section 163(2)(b) of the Act and supply chain management sub-regulation 21(d)(iv) where the acquisition in question is likely to involve an imported component or be sourced from outside the Republic, which will be subject to foreign exchange rate adjustments, specify that the contractor take out a forward exchange contract in order to fix the Rand based price as soon as possible after the award.

17.2.2 The bid documentation must in terms of regulation 13, 21 and 35 -

- (a) require bidders to disclose:
  - (i) if the bidder is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
  - (ii) whether a spouse, child or parent of the bidder or of a director, manager, shareholder or stakeholder referred to in sub-clause 16.2.1(c)(iii) is in the service of the state or has been in the service of the state in the previous twelve (12) months;
- (b) require bidders to complete, sign and submit, together with their bid, a certificate of independent bid determination;
- (c) stipulate that if it is found that the certificate of independent bid determination is not true and/or complete in every respect, that the bid may be rejected/declared non-responsive;
- (d) for consultant services require bidders to furnish the municipality with particulars of all consultancy services, and any similar services (to the services being bid for) provided to an organ of state in the last five years;
- (e) for consultant services ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, item, system or process designed or devised by a

consultant in terms of an appointment by the municipality, shall vest in the municipality;

- (f) state that in terms of supply chain management sub-regulation 14(1)(b) and MFMA Circular 81, the responsibility for registration and verification on the municipality's supplier and National Treasury's central supplier databases rests solely with the bidder; and
- (g) 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; and

17.3 As part of socio-economic development, the municipality may direct that a tenderer must sub-contract a percentage of the value of the contract based on Table 1 in this policy.

17.4 Table 1: Sub-contracting scale

<b>Total Rand Value</b>	<b>Contractor as a % of Total Rand Value</b>
Use total contract amount for contracts R3-million, but less than R5-million	18% of the contract rand value
R5-million, but less than R10-million	20% of the contract rand value
R10-million, but less than R15-million	22% of the contract rand value
R15-million, but less than R20-million	24% of the contract rand value
R20-million, but less than R25-million	26% of the contract rand value
R25-million, but less than R30-million	28% of the contract rand value
R30-million and above	30% of the contract rand value (if feasible)

17.5 Additional requirements for sub-contracting

- (a) In the event of the Municipality directing sub-contracting as set out in this Policy, the contractors must:
  - (i) break areas of supply for contracts down into manageable sectors (on a local basis);
  - (ii) ensure that contracts involving more than one product or service can be separately adjudicated and handled by different contractors;
  - (iii) outsource a percentage of the value of a contract based on Table 1 for delivery services in order to empower small, medium and micro enterprises;
  - (iv) break down prices into components in order to establish the costs of distribution and delivery;
  - (v) categorize products and services in terms of their complexity, in order to allow small, medium and micro enterprises to access the sub-contracts through a

- competitive procurement process by tendering for simpler contracts which involve lower risks; and
    - (vi) award contracts for quantities that can be handled by small, medium and micro enterprises whilst remaining cost effective to the State;
  - (b) sub-contractors, suppliers and service providers are required to construct, supply or provide a service in accordance with a technical specification;
  - (c) sub-contractors are required to execute their contracts in accordance with a human resource specification which defines and sets out the goals for targeted small, medium and micro enterprise participation in the performance of the contract in such a manner that it can be quantified, measured, verified and audited;
  - (d) main contractors and sub-contractors as defined in clause 1 of this policy, must set out human resource specifications how the contractor's firms will meet contract participation goals in order to comply with the requirements of the contract; and
  - (e) the main contractor has to set out the measures which the municipality as the client body (employer) has at its disposal to remedy or penalize non-compliance.
- 17.6 Contractors' participation goals must include the net value of goods, services and works for the supply of which the firm contracts to engage targeted small, medium and micro enterprises in the performance of the contract, expressed as a percentage of the tender value of the contract.
- 17.7 Contractor shall meet their participation goal obligations by:
  - (a) obtaining manufactured articles from manufacturers who are targeted small, medium and micro enterprises;
  - (b) obtaining supplies and materials from suppliers who are targeted small, medium and micro enterprises; and
  - (c) engaging professional, technical or managerial service providers who are targeted small, medium and micro enterprises.
- 17.8 Unfair conditions of sub-contracting can be readily dealt with by denying prime contractors' credits towards their participation goal obligations should they not enter into written sub-contracts which are free of unfair conditions with targeted enterprises.

- 17.9 For infrastructure related projects refer to Practice Note 7 (PN 7) of CIDB that is adopted as part of the municipality's Master SCM Policy strategic approach and as an official guidance to the municipality to support contractors' development.
- 17.10 It is the responsibility of contractors, professional service providers/consultants, vendors and suppliers to implement progressive efforts to attain compliance with this policy.
- 17.11 All service providers submitting bids or proposals to the municipality are required to certify that they comply with the requirements of this policy.
- 17.12 The municipality has adopted the scale in Table 1 for sub-contracting to local contractors that is to be used on all contracts for services required for goods and services or any combination thereof including construction works, service contracts and professional service contracts that contain a labour component.
- 17.13 The municipality must make available the list of all suppliers registered on a database approved by National Treasury to provide the required goods or services from which the tenderer must select a supplier through an auditable procurement process.
- 17.14 A fee as determined from time to time shall be raised for bid forms, plans, specifications, samples and any other bid documentation, depending on the nature, magnitude and value of technical information or samples provided by the municipality for tenders in excess of R200 000,00 (VAT included).
- 17.15 When determining transaction values, a requirement for goods and services or any combination thereof or consulting services of different parts or items including construction works must as far as possible be treated and dealt with as a single transaction.

## **18. PUBLIC INVITATION FOR COMPETITIVE BIDS**

- 18.1 In terms of sub-regulation 22(1) and 22(4) the procedure for the invitation of competitive bids, are 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, i-Tender website of CIDB or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and e-tender;
  - (b) in terms of MFMA regulation, sub-regulation 22 (4), where bids are requested in electronic format, such bids must be supplemented by sealed hard copies;

- (c) the information contained in a public advertisement and or notice, must include:
- (i) the title of the proposed contract and the bid or contract reference number;
  - (ii) a brief of intended scope of service or work or equipment required;
  - (iii) such particulars of the contract as the municipality deems fit;
  - (iv) the place where the bid documentation is available for collection and the times between which bid documentation may be collected;
  - (v) the non-refundable bid fee payable, if any;
  - (vi) the closure date for the submission of bids, which may not be less than thirty (30) calendar days in the case of transactions over R10-million (VAT included), or which are of a long-term nature, or fourteen (14) calendar days in any other case, from the date on which the advertisement is placed in a newspaper, subject to sub-clause 18.2 of this policy;
  - (vii) a statement that bids may only be submitted on the bid documentation provided by the municipality;
  - (viii) date, time and venue of any proposed site meetings if required or mandatory briefing sessions. (If bidder did not attend his bid will not be considered);
  - (ix) the required CIDB contractor category and grading designation for construction procurement see SCM policy for infrastructure Annexure B;
  - (x) a statement that bids will only be considered if it was deposited into the bid box indicated in the bid invitation if no electronic bids were invited;
  - (xi) the period for which bids are to be valid and binding must be indicated in the bid invitation;
  - (xii) the public advertisement and or notice shall state that all bids must be submitted in a sealed envelope (if required) on which it is clearly stated that such envelope contains a bid and the contract title and contract or bid reference number for which the bid is being submitted;
  - (xiii) an indication as when stipulated minimum threshold for local production and content is applicable.

18.2 The accounting officer may determine a closure date for the submission of bids which is less than the thirty (30) or fourteen (14) calendar days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.

18.3 Pre-qualifying criteria must be stipulated in the advertisement.



18.4 *Provisioning of tax compliance status pin* and duration of bid validity period must be stipulated in the advertisement.

18.5 Amendments before the closing date

18.5.1 The municipality is entitled to amend any bid condition, validity period, specification or plan, or extend the closing date of such a bid or quotation before the closing, provided that such amendments or extensions are advertised and/or that all bidders whom bid documents have been issued, are advised in writing per e-mail or by fax of such amendments or of the extension clearly reflecting the new closing date and time.

18.5.2 For this reason, officials and authorized service providers issuing bids shall keep a record of the names, addresses and contact numbers of the persons or enterprises to whom bid documents have been issued.

19. **PROCEDURES FOR ISSUING, SUBMISSION, HANDLING, OPENING & RECORDING OF BIDS**

19.1 The procedures for the issuing of bids in terms of supply chain management regulation 20 are:

- (a) On completion of the bids specification process the municipality shall publicly invite bids.
- (b) Bid invitation shall be by notice published in the media and/or, in terms of sub-regulation 22(4) any electronic platform that may be applicable or suitable.
- (c) The notice shall, as soon as possible after the publication contemplated above, be posted on official notice boards designated by the accounting officer.
- (d) The notice may require payment of a non-refundable bid fee by bidders wanting to collect bid documents. This bid fee shall be determined by the council from time to time.
- (e) Details of all prospective bidders who have been issued with bid documents must be recorded by the issuing office but shall remain confidential for the duration of the bid period.

19.2 The procedures for the submission of bids in terms of supply chain management regulation 20 are:

- (a) At the specified closing time on the closing date the applicable bids box shall be closed.
- (b) Bids must be submitted before the closing time, at the address and in accordance with the directives in the bid documents.

- (c) Details of prospective bidders must include the full name of the person, drawing documents, a contact person, a contact telephone and fax number and a postal and email address.
- (d) Each bidder must be in writing using non-erasable ink and must be submitted on the official Form of Bid/Offer issued with the bid documents.
- (e) The bid must be submitted in a separate sealed envelope with the name and address of the bidder, the bid number and title, the bid box number (where applicable), and the closing date indicated on the envelope.
- (f) The envelope may not contain documents relating to any bid other than that shown on the envelope.
- (g) Only sealed bids will be accepted.
- (i) The municipality may accept tenders where envelopes have been inadvertently marked with the name of the bidder.
- (h) The onus shall be on the bidder to place the sealed envelope in the official, marked and locked bid box provided for this purpose, at the designated venue, not later than the closing date and time specified in the bid notice.
- (i) Postal bids will not be accepted for consideration, nor shall proof of posting or proof of delivery be accepted as proof that bids were delivered if received after the closing date of bids/quotations.
- (j) No bids forwarded by telegram, facsimile or similar apparatus shall be considered unless stated otherwise in tender document as indicated in sub-clause 18.1(b) of this policy. In terms of supply chain management regulations, sub-regulation 22(4), where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.
- (k) Electronic bids will not be accepted, unless indicated as per sub-section 18.1(b) of this policy. In terms of supply chain management regulations, sub-regulation 22 (4), where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.
- (l) The bidder shall choose a *domicilium citandi et executandi* in the Republic and unless notice of the change thereof has duly been given in writing, it shall be the address stated in the bid.

- (m) No person may amend or tamper with any bids after their submission.

19.3 Bids clarification meetings / site inspections

- (a) Will commence as determined in the advertisement;
- (b) Clarification meeting/site inspections in respect of bids exceeding R200 000,00 may be compulsory;
- (c) If clarification meeting/site inspections are to be held, full details must be included in the bid notice, including whether or not the clarification meeting/site inspections site is compulsory;
- (d) Where clarification meeting/site inspections are made compulsory, the date for the site inspection/clarification meeting shall be at least seven (7) days after the bid has been advertised, or three (3) days for RFQs;
- (e) If a bidder requests any additional information or clarification of vague points given, after the clarification meeting/site inspection, such additional information will be made available to all bidders; and
- (f) Validity period (refer to clause 22).

19.4 The procedures for the handling, opening and recording of all bids in terms of supply chain management regulation 23 are as follows:

- (a) The executive director financial services or delegated person will ensure that the following procedures will be followed and recorded.
  - (i) Handling and opening of bids
    - (1) must be opened only in public;
    - (2) must be opened at the same time and as soon as possible after the period for the submission of bids has expired;
    - (3) Bids must be opened on the same date just after the closing time of bids;
    - (4) the names of the bidders who submitted, the bids must be read out with the total bidding price in words;
    - (5) Bids received in sealed envelopes in the bid box without a bid number or title on the envelope will be opened at the bid opening and the bid number and title ascertained;
    - (6) If the bid was in the correct bid box it will be read out. If the bid was found to be in the incorrect bid

box, it will be redirected, provided that the applicable bid either closed on the same day at the same time, or are still open;

- (7) No information, except the provisions in sub-clause 19.4(a)(ii) 3) of this policy, relating to the bids should be disclosed to bidders or other persons until the successful bidder is notified of the award;
- (8) If the bid closes at a later date, the bid will be placed in a sealed envelope with the bid number and title endorsed on the outside, prior to being lodged in the applicable box; and
- (9) The municipality however disclaims any responsibility for seeing that the bid is in fact lodged in the correct box, besides the conditions set out in sub-clauses 19.2(h) and 19.4(a)(i) 6) of this policy.

(ii) Recording of bids

- (1) Record all bids received in a register; and
  - (a) keep attendance register for bidders that attended the opening.
- (2) The municipality must:
  - (a) record in a register all bids received in time;
  - (b) make the register available for public inspection;
  - (c) publish the entries in the register and the bid results on the website.
- (3) 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 made available on request.
- (4) Bids found to be inadvertently placed in the incorrect bid box will be redirected provided that the applicable bid either closed on the same day at the same time or are still open (in which case the municipality disclaims any responsibility for seeing that the bid are in fact lodged in the correct bid box), besides the condition set out in sub-clauses 19.2(h) and 19.4(a)(i) 6) of this policy.

(iii) Composition of opening committee

- (1) The opening of tenders committee will consist of:

- (a) Senior official supply chain management
  - (b) Relevant responsible official from directorate
  - (c) Official of records office
  - (d) Official of legal and admin (responsible for tender documents)
  - (e) No councilor of any municipality may be present at the opening of bids.
- (iv) Stamping of bids and reading out of names
- (1) As each bid is opened the name of the bidder and the amount, if practical and applicable, shall be read out.
    - (a) Bids opened shall be checked for compliance with mandatory documents.
    - (b) An official shall date-stamp and endorse with the opening official's signature the bids and all enclosures related to prices, delivery periods and special conditions.
    - (c) Bids shall be numbered in the sequence in which they have been opened and the words "*and last*" shall be endorsed on the last bid.
    - (d) In instances where only one (1) bid has been received the words "*and only*" shall be endorsed on such bid.
    - (e) Where prices have not been inserted in all relevant spaces on the form and such items have not been deleted by bidders, such spaces shall be stamped "*no price*" by the employee who opens the bids; and
    - (f) The name of the bidder, and where possible, the bid sum shall be recorded in a bid opening record kept for that purpose.

- (v) Late bids
  - (1) A bid is late if it is not placed in the relevant bid box by the closing time.
    - (a) Bids arriving after the specified closing time shall not be considered and where practicable and cost effective shall be returned to the bidder unopened with a letter explaining the circumstances.
    - (b) Where it is necessary to open a late bid to obtain the name and address of the sender, each page of the document shall be stamped "*late bid*" before the bid is returned to the bidder.
    - (c) The envelope must be stamped and initialed in like manner and must be retained for record purposes.
- (vi) Dealing with bids if the closing date thereof has been extended:
  - (a) Where the closing date of a bid is extended, bids already received, will be retained unopened in the bid box and be duly considered after the expiry of the extended period, unless the bidder cancels it by submitting a later dated bid before the extended closing date.

20. **NEGOTIATIONS WITH PREFERRED BIDDERS & COMMUNICATIONS WITH PROSPECTIVE PROCESS & BIDDERS**

- 20.1 The accounting officer may in terms of regulation 24, subject to supply chain management regulations, sub-regulation 11(2) and clause 16.2 of this policy, negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation:
- (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/quotation as submitted; and
  - (d) Does not lead to a lower price in respect of the sale of land/goods.

- 20.2 Minutes of such negotiations must be kept for record purposes and as far as possible be made part of the final contract.
- 20.3 No unauthorized communication with bidders and perspective providers:
- (a) Where bids and/or quotations have been submitted to the municipality, a bidder may not communicate with any councilor or official on any matter regarding his/her bid, quotation or offer other than a notice of withdrawal.
  - (b) No municipal employee may communicate with a bidder or any other party who has an interest in a bid or quotation during the period between the closing date for the receipt of the bid and the date of notification to successful bidder of acceptance of his/her bid, quotation or offer except as provided for in sub-clause 20.4 of this policy. Every such case of unauthorized communication shall forthwith be reported to the supply chain management as well as the chairperson of bid adjudication committee (BAC).
  - (c) A bid or quotation in respect of which unauthorized communication has occurred may be disqualified.
- 20.4 The accounting officer may authorize an employee, in writing, to communicate with a bidder during the period mentioned in sub-clause 20.3 of this policy for the purpose of:
- (a) Obtaining an explaining and verification of declaration made in the bid/quotation response.
  - (b) Confirming technical particulars and the compliance thereof with specifications.
  - (c) Clarifying delivery times/quantities.
  - (d) Extending the validity period of a bid (clause 23.1.7 of this policy).
  - (e) Clarifying any other commercial aspect.
- 20.5 Where authority has been granted to communicate with bidders in terms of sub-clause 20.4 of this policy it should be clearly stated in the submission to the bid adjudication committee the nature of the communication as well as by whom such authority to communicate has been granted.
- 20.6 A bid will not be invalidated if the amount in words and the amount in figures do not correspond, in which case the amount in words shall be read out at the bid opening and shall be deemed to be the bid amount.

## 21. TWO-STAGE BIDDING PROCESS (PRE-QUALIFICATION)

- 21.1 A two-stage bidding process is allowed in terms of regulation 25, for:
- 21.1.1 Large complex projects;
  - 21.1.2 Projects where it may be undesirable to prepare complete detailed technical specifications; or
  - 21.1.3 Long term projects with a duration period exceeding three (3) years.
- 21.2 In a two-stage (prequalification) bidding process, bidders are first invited to *pre-qualify* in terms of predetermined criteria, without being required to submit detailed technical proposals (where applicable) or a financial offer.
- 21.3 In the second stage, all bidders that qualify in terms of the *predetermined criteria* will be shortlisted and invited to submit final technical proposals (where applicable) and/or a financial offer.
- 21.4 The notice inviting bidders to pre-qualify must comply with the provisions of public invitation for competitive bids, including compliance with clause 18 of this policy.
- 21.5 Two-envelope system:
- (a) A two-envelope system will follow the same process as normal bids in terms of supply chain management regulation 20, 21, 22 and 23 and SCM sub-regulation 27(2). However, it differs from a two-stage (prequalification) bidding process in that a technical proposal and the financial offer are submitted in separate envelopes at the same place and time. The financial offers will only be opened once the technical proposals have been evaluated in terms of supply chain management sub-regulation 27(2) and clause 27 of this policy.
  - (b) Opening of bids where a two envelope system (consisting of a technical proposal and a financial proposal) is followed:
    - (i) If a two-envelope system is followed, only the technical proposal will be opened at the bid opening.
    - (ii) The unopened envelope containing the financial proposal shall be stamped and endorsed with the opening official's signature and be retained by him/her for safekeeping.
    - (iii) When required the financial offers/bids corresponding to responsive technical proposals, shall be opened by the



- opening official in accordance with clauses 19.4 of this policy.
- (iv) All bidders who submitted responsive technical proposals must be invited to attend the opening of the financial offers/bids.
  - (v) Envelopes containing financial offers/bids corresponding to non-responsive technical proposals shall be returned unopened along with the notification of the decision of the bid adjudication committee in this regard (sub-clauses 16.5.4, 17.2.2(c) and clause 27 of this policy refers).
  - (vi) After being recorded in the bid opening record, the bids/technical proposals shall be handed over to the official responsible for the supervision of the processing thereof and that official shall acknowledge receipt thereof by signing the bid opening record.
  - (vii) Where an e-Procurement system is used, the names of the bidders that have submitted proposals shall be published on the municipality's official website as soon as practical after the closing time.
  - (viii) When the financial offers/bids are opened they shall be published on the municipality's official website as soon as practical thereafter, and all bidders shall be notified accordingly.

## 22. **VALIDITY PERIODS**

- 22.1 The period for which bids/quotations are to remain valid and binding must be indicated in the bid/quotation documents as per supply chain management regulation 22.
- 22.2 In terms of supply chain management regulation, sub-regulation 22(1)(b)
  - 22.2.1 The closure date for the submission of bids/quotations, which may not be less than thirty (30) days in the case of transactions over R10-million (VAT included), or which are of a long-term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to the supply chain management regulation (2).
- 22.3 The bid/quotation offer validity period provided for in the bid/quotation data shall generally not exceed 12 weeks (90 days).

## 23. **EXTENSION OF VALIDITY PERIODS**

- 23.1 Extensions include goods and services as well as infrastructure.
  - 23.1.1 Extensions must be done prior to the expiry date of the bid validity period.

- 23.1.2 When validity lapses the contractual obligation that the bidder accepted on signing the relevant bid documentation falls away, therefore when a bid expires there is nothing to extend.
- 23.1.3 The expired bid cannot be evaluated further, and it must be cancelled and re-advertised, when applicable.
- 23.1.4 Reasons for extensions of bid must be investigated.
- 23.1.5 Extensions must be granted based on good reasons and must be approved by the accounting officer:
  - (a) can extend the minimum bids/quotations period by at least seven (7) days, not exceeding sixty (60) calendar days.
  - (b) An extension of validity must be requested in writing from bidders at final stage of evaluation before the expiry date.
  - (c) Bidders must be notified in writing and submit their intentions to abide by the terms and conditions and participate further in the bid. Only those bidders who agree to the extension will be evaluated.
- 23.1.6 Once an extension is granted, proper planning has to be done to ensure that the process of evaluation and awarding of bids is carried out before the expiry of a bid validity period.
- 23.1.7 Should the validity period expire on a Sunday, Saturday or public holiday, the bid must remain valid and open for acceptance until the closure on the following working day.

## 24. **EXTENSION OF CONTRACTS PERIOD**

- 24.1 A contract or agreement procured through the supply chain management policy of the municipality or municipal entity may be amended in terms of the Municipal Finance Management Act, Act No. 56 of 2003, section 116(3) (a) & (b) by the parties, but only after
  - (a) the reasons for the proposed amendment have been tabled in the council of the municipality or, in the case of a municipal entity, in the council of its parent municipality; and
  - (b) the local community -
    - (i) has been given reasonable notice of the intention to amend the contract or agreement; and
    - (ii) has been invited to submit representations to the municipality or municipal entity.

- 24.2 Should a contract be extended in terms of this section, the process must be concluded before the expiry date of the contract.

25. **SAMPLES**

- 25.1 Where samples are called for in the bid documents, samples (marked with the bid and item number as well as the bidder's name and address) shall be delivered separately (from the bid) to the address mentioned in the bid documents by no later than the closing time of the bid.
- 25.2 Bids may not be included in parcels containing samples.
- 25.3 If samples are not submitted as required in the bid documents, then the bid concerned may be declared invalid.
- 25.4 Samples shall be supplied by a bidder at his/her own expense and risk. The municipality shall not be obliged to pay for such samples or compensate for the loss thereof, unless otherwise specified in the bid documents, and shall reserve the right not to return such samples and to dispose of them at its own discretion.
- 25.5 If a bid is accepted for the supply of goods according to a sample submitted by the bidder, that sample will become the contract sample. All goods/materials supplied shall comply in all respects to that contract sample.

26. **COMMITTEE SYSTEM FOR COMPETITIVE BIDS**

- 26.1 In terms of the Act section 119, the accounting officer and all other officials of the Municipality involved in the implementation of the supply chain management policy of the municipality must meet the prescribed competency levels. This includes the supply chain management policy for infrastructure procurement. The accounting officer must for the purposes of subsection (1) of the Act, provide resources or opportunities for the training of officials referred to in that subsection to meet the prescribed competency levels for all the bid committees.
- 26.2 A committee system, for competitive bids, including for infrastructure, is hereby established in terms of regulation 26, consisting of the following committees for each transaction or cluster of transactions as the accounting officer may determine:
- (a) a bid specification committee;
  - (b) a bid evaluation committee; and
  - (c) a bid adjudication committee.

- 26.3 The accounting officer will appoint the members of each committee, taking into account section 117 of the Act.
- 26.4 No councillor of any municipality may be a member of a municipal bid specification committee or any other committee evaluating or approving tenders, quotations.
- 26.5 The committee system in terms of this policy will consist of and must be consistent with:
- (a) Clauses 27, 28 and 29 of this policy; and
  - (b) Any other applicable legislation.
- 26.6 The accounting officer may apply the committee system to formal written price quotations.

## 27. **BID SPECIFICATION COMMITTEES**

27.1 The bid specification committee must compile the specifications for each procurement of goods or services, depending on the department involved in Steve Tshwete Local Municipality *and ensure that:*

- (a) the draft tender document meets the supply chain management and contract management requirements;
- (b) the functionality points meet the minimum requirements as prescribed;
- (c) the applicable pre-qualification criteria are included in the draft tender document;
- (d) correct preference point system is utilized;
- (e) the advert meets the minimum requirements;
- (f) local content, where applicable has been included in tender document as well as advert;
- (g) determine briefing meeting and closure for submission of bids.

27.2 Specifications for bidding

- (a) specifications may only be completed and advertised if sufficient budgetary provision was approved on the annual budget.
- (b) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;

- (c) must take account of any accepted standards, such as those issued by Standards South Africa, the International Standards Organization, or an authority accredited or recognized by the South African National Accreditation System with which the equipment or material or workmanship should comply;
- (d) where possible, must be described in terms of performance required rather than in terms of descriptive characteristics for design, this has to include operation and maintenance plans where applicable;
- (e) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labeling of conformity certification;
- (f) 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*”;
- (g) must be approved by the relevant senior manager prior to submission to the specification committee.
- (h) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations, 2022 and as set out in this policy:
  - (i) 80/20 preference point system for the acquisition of goods or services with Rand value *equal to or below* R50 million; and
  - (ii) 90/10 preference point system for acquisition of goods or services with Rand value above R50-million.
  - (iii) 20 and 10 specific goals points may be awarded as per below minimum as per each tender’s requirements
    - Race 30%
    - Gender 30%
    - Disability 30%
    - RDP 10%

Points shall be awarded in proportion to ownership (share)

27.3 In terms of supply chain management sub-regulation 27(3), the composition of the bid specification committee must take regard of the following:

- (a) a bid specification committee must be composed of one or more officials of the municipality, preferably the executive director responsible or delegated person for the function involved; and;
  - (i) may, when appropriate, include external specialist advisors; and
  - (ii) a quorum shall be 50% plus one members;
- (b) the appointments will be done by the accounting officer of the members, taking into account section 117, of the Act; and
  - (i) the appointed members must meet the prescribed competency levels
- (c) no councillor of any municipality may be a member of a municipal bid specification committee;
- (d) participation in the supply chain management system of persons who are not officials of the municipality or municipal entity, subject to section 117 of the Act.;
- (e) 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;
- (f) bid specification committee meetings must be conducted in accordance with the applicable rules in order regulating the conduct of meetings as determine in this policy; and
- (g) a competent person shall draft and sign the report for submission to the chair of the specification committee to be submitted for approval.

## 28. **BID EVALUATION COMMITTEES**

- 28.1 A bid evaluation committee must evaluate bids in accordance with -
- (a) the qualification criteria and specifications for a specific procurement;
  - (b) the points system as per clause 27.2(h) of this policy; and
  - (c) SCM sub-regulation 27(2)(f) and as prescribed in terms of the Preferential Procurement Policy Framework Act;
  - (d) each bidder's ability to execute the contract without jeopardizing quality
    - (i) once the tender achieves the prescribed minimum qualifying score for functionality and quality of the

- bidder's ability to execute the contract, and the stipulated minimum threshold for local production and content has been evaluated, if applicable, then it must be evaluated on:
- (1) the preference point system; and
  - (2) price;
- (ii) and if a tender fails to achieve the stipulated minimum threshold for local production and content the bid is disqualified;
- (e) in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears.
- 28.2 In the case of infrastructure projects (refer to Annexure B), a competent person shall draw up and sign a report verifying the evaluation qualification criteria and specifications including the algorithm calculations been correct, for a specific procurement and submit to the chair of the committee for approval.
- 28.3 The chair of the committee will submit the approved report to the adjudication committee for consideration and recommendation regarding the award of the bid or any other related matter. Bids will only qualify after all requirements of the bid as stated in each bid, have been met;
- (a) this is applicable for all bids and quotations submitted to Steve Tshwete Local Municipality.
- 28.4 In terms of supply chain management sub-regulation 28(2), the bid evaluation committee must as far as possible be composed of -
- (a) officials, preferably the manager responsible or the delegated person from relevant departments that must meet the prescribed competency levels, for the function involved;
  - (b) at least one supply chain management practitioner of the municipality in terms of this policy;
  - (c) external specialist advisors, when appropriate; and
  - (d) a quorum shall be 50% plus one members.
- 28.5 The appointment of the members of the bid evaluation committee will be done by the accounting officer, taking into account section 117 of the Act.
- 28.6 The appointed members of the bid evaluation committee must meet the prescribed competency levels.

- 28.7 No councillor of any municipality may be a member of a municipal bid evaluation committee.
- 28.8 Participation in the supply chain management committee system of persons who are not officials of the municipality or municipal entity, is subject to section 117 of the Act.
- 28.9 No person, advisor or corporate entity involved with the bid evaluation committee, or director of such a corporate entity, may bid for any resulting contracts.
- 28.10 Bid evaluation committee meetings must:
- (a) be conducted in accordance with the applicable rules of order regulating the conduct of meetings as required by the chair of the committee; and
  - (b) only evaluate what was asked in procurement documents in terms of clause 28.12 (a to i) of this policy.
- 28.11 Where consultants or agents were tasked with the invitation of bids the responsible consultant or agent shall carry out a preliminary evaluation of all valid bids received and shall submit a signed bid evaluation report to the bid evaluation committee for consideration and approval by the chair that can accept it or refer the report back.
- 28.12 Any evaluation of a bid shall consider the bids received and shall note for inclusion in the evaluation report, a bidder:
- (a) whose bid was endorsed as being invalid by the responsible official at the bid opening;
  - (b) whose bid does not comply with the provisions for combating abuse of this policy in terms of supply chain management regulation 38;
  - (c) whose bid does not comply with the general conditions applicable to bids and quotations of this policy;
  - (d) whose bid is not in compliance with the specification;
  - (e) whose bid is not in compliance with the terms and conditions of the bid documentation;
  - (f) whose bid does not comply with any minimum goals stipulated in terms of the preferential procurement section of this policy;
  - (g) who is not registered and verified on the municipality's supplier database.



- (i) in this regard bid documentation shall state that the responsibility for registration and verification rests solely with the bidder; and
  - (h) who, in the case of infrastructure acquisitions, does not comply with the requirements of the Construction Industry Development Board Act regarding registration of contractors as required In the supply chain management policy for infrastructure procurement and delivery management (Annexure B); or
    - (i) who fails to comply with any applicable Bargaining Council agreements.
- 28.13 The bid evaluation committee shall, having considered the responsible agent's report, submit a report, including recommendations regarding the award of the bid or any other related matter, to the bid adjudication committee for award.
- 28.14 Bids shall be evaluated according to the following as applicable as well as the items in sub-clauses 28.12(a-i) of this policy:
- (a) bid price (corrected if applicable and brought to a comparative level where necessary);
  - (b) the unit rates and prices;
  - (c) the bidder's ability to fulfil its obligations in terms of the bid documents, any qualifications to the bid;
  - (d) the bid ranking obtained in respect of preferential procurement as required by this policy;
  - (e) the financial standing of the bidder, including its ability to furnish the required institutional guarantee, where applicable;
  - (f) any other criteria specified in the bid documents; and
- 28.15 The points scored must be rounded off to the nearest two (2) decimal places.
- 28.16 If the price offered by the tenderer scoring the highest points is not market-related, the organ of state may negotiate with the recommended service provider, for a market-related price, as per paragraph 20 of this policy;
- 28.17 The municipality in terms of this policy may –
- (a) negotiate a lower market-related price with the tenderer scoring the highest points or cancel the tender;

- (b) if the tenderer does not agree to the lower market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
  - (c) 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.
- 28.18 If a market-related price is not agreed as envisaged in sub-clause 28.17(a) of this policy, the municipality must cancel the tender.
- 28.19 Criteria for breaking deadlock in scoring in terms of regulation 8 of the PPPFA Regulations, 2022:
  - (a) 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 specific goals;
  - (b) if two or more tenderers score equal points in all respects, the award must be decided by the drawing of lots.
- 28.20 The supply chain management delegated official responsible for attending of BEC meetings must verify that above SCM compliance check is per bid evaluation committee checklist.
- 28.21 No bidder may be recommended for an award unless the bidder has demonstrated that it complies with qualification criteria required to fulfill its obligations in terms of the bid and or quotation specification criteria of the applicable bid or quotation.
- 28.22 Additional information or clarification of bids may be called for if required but only in writing as per sub-clause 20.4 of this policy.
- 28.23 The municipality shall not be bound to consider alternative bids.
- 28.24 If a bidder requests in writing, after the closing of bids, that his/her bid be withdrawn, then such a request may be considered and reported in the bid evaluation report.
- 28.25 The bidder obtaining the highest number of points should be recommended for acceptance unless there are reasonable and justifiable grounds to recommend another bidder in accordance with section 2(1)(f) of the Act and in terms of regulation 8 of the PPPFA Regulations, 2022.
- 28.26 All disclosures of a conflict of interest shall be considered by the bid evaluation committee and shall be reported to the bid adjudication committee. As such, no person with conflict of interest as per sub-

clause 17.2(c) of this policy, may take part and has to excuse themselves from the committee.

28.27 Bids may only be recommended for award if it was confirmed that suffice budgetary provision exists for the acquisition of the goods, infrastructure projects and/or services.

## 29. **BID ADJUDICATION COMMITTEES**

29.1 Composition of bid adjudication committee

(a) must, in terms of SCM sub-regulation 29(2) and clauses

(b) 7.4 and 7.5 of this policy, be composed of -

(i) at least four (4) senior managers of the municipality;  
and

(ii) when appropriate, external specialist advisors see supply chain management sub-regulation 29(4).

29.2 The appointment of the members of the bid adjudication committee will be done by the accounting officer, taking into account section 117, of the Act; and

(a) appointed members must meet the prescribed competency levels.

29.3 The accounting officer must appoint the chairperson of the bid adjudication committee and; if the chairperson is absent from a meeting, the person acting as the executive director financial services has to stand in as chairperson of the meeting.

29.4 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.

29.5 Function of bid adjudication committee:

29.5.1 The bid adjudication committee in terms of SCM regulation 29 must

(a) consider the report and recommendations of the bid evaluation committee; and 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.

- 29.6 A quorum for the adjudication committee shall be 50% plus one members.
- 29.7 In the event of an equality of votes the chairperson shall have the casting vote over and above a deliberate vote.
- 29.8 The chairperson of the bid evaluation committee must be part of the bid adjudication committee as another official.
- 29.9 No tender may be awarded:
- (a) if the tenderer's tax matters have not been declared by SARS to be in order;
  - (b) to a person who is in the service of the state;
  - (c) to a person of which any director, manager, principal shareholder or stakeholder is a person in the service of state;
  - (d) to an advisor or consultant contracted with the municipality;
  - (e) if the tenderer did not furnish the municipality with his full name, identification number or company any other registration number or tax reference number and VAT registration number if any;
  - (f) to a tenderer who has failed to declare whether he/she has been in the service of the state in the previous twelve (12) months or if not a natural person, any of its directors, managers, principal, shareholders, or stakeholders has been in the service of the state or whether a spouse, child or parent of the tenderer or directors, managers, principal, shareholder, has been in the service of the state in the previous twelve (12) months;
  - (g) to a bidder who is on the National Treasury registered list for forbidden bidders;
  - (h) to a bidder whose municipal rates and taxes are in arrears for more than three (3) months;
  - (i) to a bidder or any of its directors has committed a corrupt or fraudulent act;
  - (j) to a bidder that has been convicted for fraudulent or corrupt doing the past five (5) years.
- 29.10 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.

29.11 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 section 114 of the Act and sub-regulation 29.5(b);
- (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration; and
- (iii) 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.

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

- (a) If a tender other than the one recommended in the normal course of implementing the supply chain management policy is approved, the accounting officer must, in writing, notify the Auditor-General, the relevant Provincial Treasury and the National Treasury of the reason for deviating from such recommendation.
- (b) Subsection (a) does not apply if a different tender was approved in order to rectify an irregularity.

30. **EXTENSION OR EXPANSION OF VARIATION ORDER AGAINST THE ORIGINAL CONTRACT**

30.1 It is recognized that in exceptional cases, the accounting officer may deem it necessary to expand or vary orders against the original contract.

30.2 In order to mitigate the risk to abuse the supply chain management system the following will apply:

- (a) Contracts may be expanded or varied by not more than 15% of the original contract (including all applicable taxes) in price for goods and services and 20% of the original contract (including all applicable taxes) in price and 30 % in time (see Annexure B: Supply chain management policy for infrastructure procurement), for construction related goods,

works and/or services subject to the approval of the accounting officer.

- (b) In cases where envisaged changes in the estimated value of the purchase of goods and services does not vary more than 15% of the total value of the original contract, the contractor may be instructed to deliver the goods or render the services as such.
- (c) In cases of measurable quantities, the contractor may be approached to reduce the unit price, and such offers may be accepted provided that there is no escalation in price.
- (d) Above 20% in terms of the instruction dated 31 May 2011 of the Accountant-General this applies to municipalities as well as a constitutional entity in terms of the constitution of the republic of South Africa
  - (i) in order to mitigate against such practices, accounting officers and authorities are directed that, from the date of this instruction note taking effect, contracts may be expanded or varied by not more than 20% or R20-million (including all applicable taxes) for construction related goods, works and/or services and 15% or R15-million (including all applicable taxes) for all other goods and/or services of the original value of the contract, whichever is the lower amount.
  - (ii) the relevant treasuries may, however, decrease these thresholds for institutions reporting to them. clause 3.9.4 of the instruction stated that any deviation in excess of these thresholds will only be allowed subject to the prior written approval of the relevant treasury.
  - (iii) whilst provision is made for deviations, it is imperative to note that requests for such deviations may only be submitted to the relevant treasury where good reasons exist.
  - (iv) the accounting officer may expand contracts/order or varied by not more than 15% of the original contract value, or R15-million (including all applicable taxes for all other goods and/or services whichever is the lower amount.
  - (v) The period of extension of a contract may not exceed a period of more than twelve (12) months.

30.3 Once approved by the accounting officer to allow an expansion or variation order a report must be submitted to the bid evaluation committee to consider the following:

- (a) whether sufficient funds on the budget exist; and

(b) whether bidder complies with supply chain management requirements.

30.4 The bid evaluation committee must then make recommendations to the bid adjudication committee to approve the expansions or variation order.

30.5 The bid adjudication committee must consider the recommendations by the evaluation committee and approve the expansion or variation order in terms of the delegations framework as per clause 6 of this policy.

### **31. PROCUREMENT OF BANKING SERVICES**

31.1 In terms of supply chain management regulation 30 banking services:

- (i) must be procured through competitive bids;
- (ii) must be consistent with section 7 or 85 of the Act; and
- (iii) may not be for a period of more than five (5) years at a time.

31.2 The process for procuring a contract for banking services must commence at least nine (9) months before the end of an existing contract.

31.3 The closure date for the submission of bids may not be less than sixty (60) days from the date on which the advertisement is placed in a newspaper in terms of sub-clause 16.4.2 of this policy.

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

### **32. PROCUREMENT OF IT RELATED GOODS OR SERVICES**

32.1 The accounting officer may in terms of supply chain management regulation 31 request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.

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

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

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

- (b) The transaction value of a contract to be procured whether for one (1) or more years exceeds R50-million (VAT included).

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

**33. PROCUREMENT OF GOODS & SERVICES UNDER CONTRACTS SECURED BY OTHER ORGANS OF STATE**

33.1 The accounting officer may, subject to the provisions of National Treasury's MFMA Circular 96, procure in terms of supply chain management regulation 32 goods or services under a contract secured by another organ of state, but only if:

- (a) The contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
- (b) There is no reason to believe that such contract was not validly procured;
- (c) There are demonstrable discounts or benefits to do so; and
- (d) That other organ of state and the provider have consented to such procurement in writing.

33.2 Sub-clauses 33.1(c) and (d) of this policy 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.

33.3 The bid evaluation committee must consider the following documents of the other organ of state but not limited when the bid is evaluated:

- (a) Consent letter from organ of state;
- (b) Tender closing register;
- (c) Copy of tender documents;
- (d) Approved tender specifications;
- (e) Tender evaluation report;



- (f) Tender adjudication report; and
- (g) Appointment letter to service provider.

33.4 Municipalities may participate in a transversal term contract facilitated by National Treasury, relevant treasury. When considering participating in a transversal contract the following will apply:

- (a) Confirm the transversal contract meets the directive of supply chain management sub-regulations 32(1)(a) to (d).
- (b) Submit an application to National Treasury on the transversal term contracts participation template.
- (c) Ensure adequate budgets for the transversal term contract is available.
- (d) Ensure transversal term contract meets the technical specifications and quantities of the department.
- (e) Obtain transversal term contract from National Treasury.
- (f) Submit report to bid evaluation for recommendation to bid adjudication.
- (g) Approval by bid adjudication to utilize transversal term contract according to the supply chain delegations.

#### 34. **PROUDLY SA CAMPAIGN**

34.1 The municipality supports the Proudly SA campaign to the extent that, all things being equal, preference is given to procuring local goods and services as per supply chain management regulation 34.

#### 35. **APPOINTMENT OF CONSULTANTS**

35.1 The accounting officer may in terms of supply chain management regulation 35, and in line with section 62(1)(a),78(1)(b),95(a) and 105(1)(b) of the Act, procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.

35.2 Consultancy services must be procured through competitive bids if:

- (a) The value of the contract exceeds R200 000,00 (VAT included); or
- (b) The duration period of the contract exceeds one (1) year.

- 35.3 In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of:
- (a) All consultancy services provided to an organ of state in the last five (5) years; and
  - (b) Any similar consultancy services provided to an organ of state in the last five (5) years.
- 35.4 The accounting officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the municipality.
- 35.5 Steve Tshwete Local Municipality may only appoint consultants if an assessment of the needs and requirements confirms that the affected municipality or municipal entity does not have the requisite skills or resources in its full time employ to perform the function.
- 35.6 The accounting officer must adopt a fair and reasonable remuneration framework for consultants taking into account the rates
- (a) determined in the "*Guideline on fees for audits undertaken on behalf of the Auditor-General of South Africa*", issued by the South African Institute of Chartered Accountants;
  - (b) set out in the "*Guide on Hourly Fee Rates for Consultants*", issued by the Department of Public Service and Administration;
  - (c) as prescribed by the body regulating the profession of the *consultant*. The tender documentation for the appointment of consultants must include a clause that the remuneration rates will be subject to negotiation, not exceeding the applicable rates mentioned in sub-regulation (2).
  - (d) When negotiating cost-effective consultancy rates for international consultants, the accounting officer may take into account the relevant international and market- determined rates.
  - (e) When consultants are appointed, an accounting officer must appoint consultants on a time and cost basis with specific start and end dates; where practical, appoint consultants on an output specified basis, subject to clear specification of deliverables and associated remuneration;
    - (1) ensure that contracts with consultants include overall cost ceilings by specifying whether the contract price is inclusive or exclusive of travel and subsistence

disbursements; develop consultancy reduction plans; and undertake all engagements of consultants in accordance with the municipal supply chain management regulations and Steve Tshwete Local Municipality supply chain management policy.

- (f) All contracts consultants must include retention or penalty performance.
- (g) Steve Tshwete Local Municipality must ensure that the specifications and performance, are used as a monitoring tool for the work to be undertaken and is appropriately recorded and monitored.
- (h) The travel and subsistence costs of consultants must be in accordance with the travel policy issued by the National Department of Transport, as updated from time to time.
- (i) The contract price must specify all travel and subsistence cost and, if the travel and subsistence costs for appointed consultants are excluded from the contract price, such costs must be reimbursed in accordance the abovementioned travel policy of the National Department of Transport.

**36. DEVIATION FROM & RATIFICATION OF MINOR BREACHES OF PROCUREMENT PROCESSES**

36.1 The accounting officer may in terms of supply chain management regulation 36

- (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
- (b) Circumstances that warrant emergency dispensation includes the existence of one or more of the following but not limited to:
  - (i) The possibility of human injury or death;
  - (ii) The prevalence of human suffering or deprivation of rights;
  - (iii) The possibility of damage to property causing suffering and death of livestock and animals;
  - (iv) The interruption of essential services, including transportation and communication facilities or support services critical to the effective functioning of the municipality as a whole;

- (v) The possibility of serious damage occurring to the natural environment
  - (vi) The possibility that failure to take necessary action may result in the municipality not being able to render an essential community service; and
  - (vii) The possibility that the security of the municipality could be compromised.
- (c) The prevailing situation, or imminent danger, should be of such a scale and nature that it could not readily be alleviated by interim measures, in order to allow time for the formal procurement process. Emergency dispensation shall not be granted in respect of circumstances other than those contemplated above.
- (d) Where possible, in an emergency situation, three quotes in accordance with general acquisition management principles should be obtained and a report submitted to the city manager for approval.

However, where time is of the essence, the emergency shall be immediately addressed, and the process formalized in a report to the “*accounting officer*” as soon as possible thereafter not excluding supply chain management sub-regulation 1(a) and (b) to record and report to Council.

- (e) Ratification and any other exceptional cases where it is impractical or impossible to follow the normal official procurement processes:
- (i) if such goods or services are produced or available from a single provider only.
  - (ii) for the acquisition of special works of art or historical objects where specifications are difficult to compile.
  - (iii) acquisition of animals for zoos and/or nature and game reserves.
  - (iv) in any other exceptional case where it is impractical or impossible to follow the official procurement processes.
  - (v) ratify any minor breaches of the procurement processes by an official committee acting in terms of delegated powers or duties which are purely of a technical nature.
  - (vi) may condone any irregular expenditure incurred in contravention of, or that is not in accordance with a requirement of this policy and which is not also a contravention of the municipal supply chain management regulation, provided that such consideration and the reasons therefore be reported to at the next council meeting.
  - (vii) supply chain management sub-regulation 2 does not apply to the procurement of goods and services

contemplated in supply chain management regulation 11(2).

### 37. **UNSOLICITED BIDS**

37.1 In accordance with section 113 of the Act and supply chain management regulation 37 there is no obligation to consider unsolicited bids received outside a normal bidding process.

37.2 The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid:

(a) for the provision of goods and services, only if

- (i) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
- (ii) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
  - (1) the person who made the bid is the sole provider of the product or service; and
  - (2) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.

(b) for the disposal of immovable assets only if

- (i) the proposed development offered in terms of the bid is a demonstrably or proven unique innovative concept;
- (ii) the proposed development will be exceptionally beneficial to the council, or have exceptional local economic advantages;
- (iii) the person who made the bid is the innovative designer of the proposed development;
- (iv) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer;
- (v) only if also the selling price is not less than market related except when the plight of the poor or public interest demand otherwise;
- (vi) that the person who made the proposal will be prejudiced if a competitive bidding process is followed.

37.3 If the accounting officer decides to consider an unsolicited bid that complies with sub-clause (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, 2000 (Act No. 32 of 2000), 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 thirty (30) days of the notice.
- 37.4 All written comments received pursuant to sub-clause 37.3 of this policy, including any responses from the unsolicited bidder, must be submitted to the National Treasury and the relevant Provincial Treasury for comment.
- 37.5 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.
- 37.6 A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- 37.7 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.
- 37.8 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.
- 37.9 Such submission must be made within seven (7) days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality to the bid may be entered into or signed within thirty (30) days of the submission.

**38. COMBATING OF ABUSE OF SUPPLY CHAIN MANAGEMENT SYSTEM**

- 38.1 The following measures in terms of supply chain management regulation 38 are established to combat the abuse of the supply chain management system.
- 38.2 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 supply chain management policy, and when justified:

- (i) take appropriate steps against such official or other role player; or
  - (ii) report any alleged criminal conduct to the South African Police Service.
- (c) Check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector.
- (d) Reject any bid from a bidder
- (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality, or to any other municipality or municipal entity, are in arrears for more than three (3) months; or
  - (ii) who during the last five (5) years has failed to perform satisfactorily on a previous contract with the municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
- (e) Reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract.
- (f) Cancel a contract awarded to a person if
- (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
  - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person.
- (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 (5) years;
  - (iii) has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five (5) years; or

- (iv) has been listed in the Register for Tender Defaulters In terms section 29 of the Prevention and Combating of Corrupt Activities Act, 12 of 2004.

38.3 The accounting officer must inform the National Treasury and relevant Provincial Treasury in writing of any actions taken in terms of sub-clauses 38.2(b)(ii), 38.2(e) or 38.2(f) of this policy.

### ***PART 3: LOGISTICS, DISPOSAL, RISK & PERFORMANCE MANAGEMENT***

#### **39. LOGISTICS MANAGEMENT**

39.1 In terms of supply chain management regulation 39 STLM may not enter into any contract that will impose financial obligations beyond the three (3) years covered in the annual budget for that financial year, unless the requirements of section 33 of the Municipal Finance Management Act (MFMA) have been fully complied with, for example, the rendering of the compilation of the valuation and supplementary valuation roll services, bank services or where grant/loan funding has been secured.

39.2 An effective system of logistics management must include the following:

- (i) monitoring of spending patterns on types or classes of goods and services which should where practical incorporate the coding of items to ensure that each item has a unique number for the purposes of monitoring;
- (ii) setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;
- (iii) placing of manual or electronic orders for all acquisitions other than petty cash;
- (iv) before payment is approved, a certification from 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;
- (v) appropriate standards of internal control and warehouse management to ensure goods placed in stores are secure and only used for the purpose they were purchased;
- (vi) regular checking to ensure that all assets including official vehicles are properly managed, appropriately maintained and only used for official purposes; and
- (vii) monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for a particular good or service.

#### **40. DISPOSAL MANAGEMENT**



40.1 In terms of supply chain management regulation 40 the criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets must be done according to the municipal asset transfer regulation and the municipality's asset management policy of Steve Tshwete Local Municipality, subject to section 14 of the Act, which are as follows:

(a) Movable assets

- (i) the asset is uneconomical to repair;
- (ii) the asset is irreparable;
- (iii) the relevant department has no further use for the asset; and
- (iv) no other department requires the asset.

(b) Immovable assets

- (i) the relevant department has no further use for the asset;
- (ii) no other department requires the asset;
- (iii) a member of the public wishing to acquire the asset can utilize the asset to the advantage of the community; and
- (iv) where created specifically for sale or rental to public.

40.2 The disposal of assets must

(a) Be by one of the following methods:

- (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
- (ii) transferring the asset to another organ of state at market related value or, when appropriate for a lesser amount or free of charge;
- (iii) selling the asset; or
- (iv) destroying the asset;

provided that:

- (1) immovable assets may be sold at not less than market related prices except when the public interest or the plight of the poor demands otherwise, by means of public tenders, public auction or over the counter on a first come first serve basis;
- (2) movable assets may be sold either by way of written price quotations, public tenders, public auction whichever is the most advantageous;
- (3) in the case of the free disposal of computer equipment, the provincial department of education must first be approached to indicate within thirty

- (30) days whether any of the local schools are interested in the equipment; and
    - (4) in the case of the disposal of firearms, the National Conventional Arms Control Committee has approved any sale or donation of firearms to any person or institution within or outside the Republic.
  - (b) Furthermore, ensure that
    - (i) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise; and
    - (ii) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed.
  - (c) Ensure that where assets are traded in for other assets, the highest possible trade-in price is negotiated.
- 40.3 The alienation of immovable assets is subject to the municipal asset transfer regulation.
- 40.4 The alienation of immovable assets is subject to the following principles:
 

The payment of the purchase price and costs will be subject to:

  - (a) Cash payment of the full purchase price and estimated cost pertaining to the transaction upon signature of the deed of sale.
- 40.5 The property must be transferred to the purchasers' name within a period of hundred and eighty (180) days.
- 40.6 The standard conditions pertaining to the sale are, but not limited to:
  - (a) All costs pertaining to a transaction shall be borne by the successful bidder/purchaser example survey, engineering fees, advertisement, rezoning, et cetera. The municipality may waive the costs subject to council policy.
  - (b) The purchaser shall commence with the development of the property within thirty-six (36) months after the date of sale and shall complete the development within eighteen (18) months thereafter.
  - (c) Should the purchaser fail to commence with or complete the development as stipulated in clause 40.7(b) of this policy the purchaser may apply for extension by a maximum of a further two (2) year period.

- (d) The purchaser may only sell the property after a period of five (5) years from date of sale subject to that the rates and taxes are paid up to date.

#### 41. **RISK MANAGEMENT**

41.1 In terms of supply chain management regulation 41 the criteria for the identification, consideration and avoidance of potential risks in the supply chain management system, are as follows:

- (a) Non-compliance by the supplier to deliver within the agreed timeframes;
- (b) Supply of inferior goods or services by the supplier;
- (c) Inability of the supplier to provide goods or services as ordered;
- (d) Non-adherence to the municipality policy with regards to utilization of preferred suppliers; and
- (e) Procurement of goods or services at prices or of a quality not in the best interest of the municipality.

Risk management must include

- (1) The identification of risks on a case-by-case basis;
- (2) The allocation of risks to the party best suited to manage such risks;
- (3) Acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
- (4) The management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
- (5) The assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

#### 42. **PERFORMANCE MANAGEMENT**

42.1 In terms of supply chain management regulation 42 the accounting officer must ensure that an effective internal monitoring system is implemented in order to determine, on the basis of a retrospective analysis, whether the authorized supply chain management processes were followed and whether the measurable performance objectives linked to and approved with the budget and the service delivery and budget implementation plan, were achieved.

**PART 4: OTHER MATTERS**

43. **MEASURES TO PROMOTE LOCAL SUPPLIERS & SMME'S** (procurement strategy will be developed in consultation with the responsible division in STLM - Demand Management)

43.1 As far as possible, must quotations, with value less than R30 000,00, be awarded to local SMME's or suppliers for the following services:

- (a) catering services;
- (b) furniture and décor;
- (c) travel coordination and commuting services;
- (d) stationery stock and printing; and
- (e) advertisement, media, communications.

44. **PROHIBITION ON AWARDS TO PERSONS WHOSE TAX MATTERS ARE NOT IN ORDER**

44.1 In terms of supply chain management regulation 43 the accounting officer must ensure that, irrespective of the procurement process followed, no award above R15 000,00 is given to a person whose tax matters have not been declared by the South African Revenue Service to be in order.

44.2 Where goods and services have been delivered satisfactorily without any dispute, accounting officer should not delay processing payment of invoices due to outstanding tax matters.

44.3 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 seven (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 bidder must be verified via CSD or e-filing. Accounting officer should reject a bid/quote submitted if such bidder fails to provide proof of tax compliance status within the timeframe as stated above.

45. **PROHIBITION ON AWARDS TO PERSONS IN THE SERVICE OF THE STATE**

45.1 In terms of supply chain management regulation 44 the accounting officer must ensure that irrespective of the procurement process followed, no award may be given to a person:

- (a) Who is in the service of the state; or

- (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.

**46. AWARDS TO CLOSE FAMILY MEMBERS OF PERSONS IN THE SERVICE OF THE STATE**

46.1 In terms of supply chain management regulation 45 the notes to the annual financial statements must disclose particulars of any award of more than R2 000,00 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 (12) 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.

**47. ETHICAL STANDARDS**

47.1 A code of ethical standards is hereby established, in accordance with SCM regulation 46 and sub-clause 47.2 of this policy, for officials and other role players in the supply chain management system in order to promote:

- (a) Mutual trust and respect; and
- (b) An environment where business can be conducted with integrity and in a fair and reasonable manner.

47.2 An official or other role player involved in the implementation of the supply chain management policy:

- (a) Must treat all providers and potential providers equitably;
- (b) May not use his or her position for private gain or to improperly benefit another person;
- (c) May not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350,00;
- (d) Notwithstanding sub-clause 47.2(c) of this policy, must declare to the accounting officer details of any reward, gift, favour,

hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;

- (e) Must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the municipality;
- (f) Must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
- (g) Must be scrupulous in his or her use of property belonging to the municipality;
- (h) Must assist the accounting officer in combating fraud, corruption, favoritism 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
- (j) person may become aware of, including:
  - (i) any alleged fraud, corruption, favoritism or unfair conduct;
  - (ii) any alleged contravention of sub-clause 50.1 of this policy; or
  - (iii) any alleged breach of this code of ethical standards.

47.3 Declarations in terms of sub-clause 47.2(d) and (e) of this policy:

- (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.

47.4 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.

47.5 A breach of the code of conduct adopted by the municipality must be dealt with in accordance with schedule 2 of the Local Government: Municipal Systems Act, 2000.

**48. INDUCEMENTS, REWARDS, GIFTS & FAVOURS TO MUNICIPAL OFFICIALS & OTHER ROLE PLAYERS**

48.1 In terms of supply chain management regulation 47 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 the supply chain management policy.

48.2 The accounting officer must promptly report any alleged contravention of sub-clause 48.1 of this policy 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.

48.3 Sub-clause 48.1 of this policy does not apply to gifts less than R350,00 in value.

**49. SPONSORSHIPS**

49.1 In terms of supply chain management regulation 48 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.

**50. OBJECTIONS AND COMPLAINTS**

50.1 In terms of supply chain management regulation 49 persons aggrieved by decisions or actions taken in the implementation of this supply chain management system, may lodge within fourteen (14) days of the decision or action, a written objection or complaint against the decision or action.

## 51. **RESOLUTION OF DISPUTES, OBJECTIONS, COMPLAINTS & QUERIES**

- 51.1 In terms of supply chain management regulation 50 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.
- 51.2 The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.
- 51.3 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.
- 51.4 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 sixty (60) days; or
  - (b) No response is forthcoming within sixty (60) days.
- 51.5 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.
- 51.6 This clause must not be read as affecting a person's rights to approach a court at any time.

## 52. **CONTRACTS PROVIDING FOR COMPENSATION BASED ON TURN-OVER**

- 52.1 In terms of supply chain management regulation 51 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.

## 53. CANCELLATION OF CONTRACTS

53.1 Contracts may be terminated in accordance with the termination provisions set out in the contract and in terms of PPPFA Regulation 14(1)(c)(i)(aa) and reasons contemplated in supply chain management sub-regulations 38(1)(f) & (g). Legal advice may be sought as appropriate.

## 54. CANCELLATION OF TENDERS

54.1 In terms of PPPFA Regulation 13 the municipality may accept or reject any variation, deviation, tender offer, or alternative tender offer, and may cancel the tender process and reject all tender offers at any time before the formation of a contract. The municipality shall not accept or incur any liability to a tenderer for such cancellation and rejection but will give written reasons for such action upon written request to do so.

54.2 The municipality may, prior to the award of a tender, cancel a tender if

- (a) Due to changed circumstances there is no longer a need for the services, works or goods requested;
- (b) The funds are no longer available to cover the total envisaged expenditure;
- (c) No acceptable tenders are received; or
- (d) The incorrect application of the preference point system applied.

54.3 In the event of an incorrect preference point system the following will be applied:

- (a) In the application of the 80/20 preference point system as stipulated in the tender documents, all tenders received exceed the estimated Rand value of *R50-million*, the tender invitation must be cancelled.
- (b) If one or more of the acceptable tenders received are within the prescribed threshold of *R50-million*, all tenders received must be evaluated on the 80/20 preference point system.

- (c) In the event of the application of the 90/10 preference point system as stipulated in the tender documents, all tenders received are equal to or below the estimated Rand value of R50-million, the tender invitation must be cancelled.
  - (d) If one or more of the acceptable tenders received are above the prescribed threshold of R50-million, all tenders received must be evaluated on the 90/10 preference point system.
  - (e) A cancellation of a tender invitation as contemplated in the supply chain management sub-regulation (3)(a) and (3)(c), must re-invite tenders and must, in the tender documents, stipulate the correct preference point system to be applied.
- 54.4 The decision to cancel a tender in terms of the supply chain management sub-regulation 58(2) must be published in the government tender bulletin for the media in which the original tender invitation was advertised.
- 54.5 The municipality may not, subsequent to the cancellation or abandonment of the tender process, or the rejection of all responsive tender offers, re-issue a tender covering substantially the same scope of work within a period of six (6) months unless only one tender was received, and such tender was returned unopened to the tenderer.
- 54.6 The period of six (6) months "*cooling off period*" commence from the official cancellation or abandonment date (CIDB standard condition of tender).
- 54.7 An organ of state may only with the prior approval of the relevant treasury cancel a tender invitation for the second time.

## 55. **BLACKLISTING**

- 55.1 Tenderers and service providers can be blacklisted/prohibited from doing business with the municipality based on supply chain management sub-regulations 38(1)(f) & (g) for a prescribed period due to an improper practice or non-performance as defined in the blacklisting policy.
- 55.2 A tenderer who is blacklisted or included on the National Treasury register of tender defaulters, shall not be allowed to participate in any procurement processes for work offered by the municipality during the period of disqualification. Maximum period of restriction shall be five (5) years and shall be determined on a case-by-case-basis.
- 55.3 The blacklisting of tenderers, service providers, persons and/or business will be conducted according to the procedures as stipulated in the blacklisting policy.

56. **GENERAL**

- 56.1 The municipality supports labour intensive construction and other services relating to where physical labour is required. All labour-intensive projects a minimum of 80% local labour will apply to bids.
- 56.2 All relevant EPWP documents and reports must be completed in full and be submitted as part of the bid documents and thereafter on implementation of the project.
- 56.3 All construction work contracts shall include:
- (a) operation and maintenance plans for such contracts;
  - (b) environmental impact assessments or exemption/partial exemption thereof; and
  - (c) occupational health and safety plans where applicable.

57. **BUDGETARY ITEMS**

57.1 **RETENTION**

- 57.1.1 Retention is an amount of money retained for a certain period to offset costs which may arise from the contractor's failure to comply fully with the contract.
- 57.1.2 Retention amounts are deducted from the value of the interim amounts inclusive of VAT due to contractors in construction works contracts. (Retention amounts are financial arrangements between the parties to a contract and are therefore not subject to VAT.)
- 57.1.3 Some forms of contract include the release of retention monies in interim and final payments. Others make these amounts due within a specified time after the employer's agent certifies completion or the end of the defects liability period in terms of the contract.
- 57.1.4 Release of retention monies. Retention amounts are deducted from the value of the interim amounts inclusive of VAT due to contractors in construction works contracts (retention amounts are financial arrangements between the parties to a contract and are therefore not subject to VAT) Some forms of contract include the release of retention monies in interim and final payments. Others make these amounts due within a specified time after the employer's agent certifies completion or the end of the defects liability period in terms of the contract.

- 57.1.5 Retention for procurement of goods and services (including consultancy services) will not generally be called for and does not form part of the contract but forms part of the programme for specific service or works required. It can, however, be accessed through the programme in accordance with the limits set below for goods and services:
- (a) In respect of a Rand value less than or equal to R1 000 000,00, 5% of the value of work carried out with no limit, reducing by half for the duration of the defects liability period.
  - (b) In respect of a Rand value exceeding R1 000 000,00, 10% of the value of work carried out with no limit, reducing by half for the duration of the defects liability period unless otherwise provided for in the standard conditions of contract as may be prescribed.
- 57.1.6 For construction works see clause 14.5.6 of the Standard for Infrastructure Procurement and Delivery Management (SIPDM);
- (a) Retention monies that are held shall not exceed 10% of any amount due to a contractor. The total amount of retention monies held shall not exceed 5% of the contract or package order price.
- 57.1.7 No interest shall be paid or claimed on retention monies kept by the municipality on behalf of service providers.

Table 6: Retentions in terms of construction works

<b>Form of Contract</b>	<b>Release of Retention Amounts</b>
FIDIC short contract	The first half of the retention is paid by the employer within 14 days of issuing the taking over notice. The second half of the retention is paid within 14 days after the later of the expiry of the period for notifying of defects stated in the contract data or the remedying of notified defects. The contractor is not required to issue a statement to receive these payments. The issuing of the notice and the expiry of these periods automatically trigger payment.
FIDIC “ <i>Red Book</i> ” and FIDIC “ <i>Yellow Book</i> ”	The first half of the retention money is certified for payment by the engineer when the taking-over certificate is issued. The outstanding balance of the retention is certified by the engineer promptly after the expiry of the latest of the dates for the defects notification period.
GCC 2004	The first half of the retention money becomes due when the engineer issues the certificate of completion. The outstanding balance of the retention is certified by the engineer within 14 days after the expiry of the defects liability period.
JBCC minor works	Retention is halved after the date of practical completion and becomes 0% in the final payment certificate.
JBCC principal agreement	The payment reduction is 97% of the interim payment certificate issued at practical completion, 99% of the interim payment certificate issued on the date of final completion and 100% of the value in the final payment certificate.
NEC engineering and construction short contract	The amount is halved in the first assessment made after completion and remains at this amount until the assessment day after the defects certificate is issued. No amount is retained in the assessment made after the defects certificate has been issued.
NEC engineering and construction contract	The amount is halved in the next assessment made at the completion of the whole of the works or in the assessment after the employer has taken over the whole of the works if this is before completion of the whole of the works. No amount

## Form of Contract

## Release of Retention Amounts

is retained in the assessment made after the defects certificate has been issued.

### 57.2 CONTINGENCIES

57.2.1 No provision for contingencies or price adjustment for inflation shall be made in the pricing data or included in the contract price at the time that the contract is awarded or an order is issued this budgetary item will be kept at programme level, approval will be obtain from the Municipal Manager (see Annexure B) and Standard for Infrastructure Procurement (SIPDM section 14.5.9) at programme level

### 58. NO FORMAL BID PROCESS

58.1 The following line items are not required to be procured through SCM process:

(a) The end user to complete and submit documents with the original invoice to SCM/Expenditure unit to check for compliancy:

- (i) audit fees;
- (ii) bursaries and student practical work;
- (iii) compensation for injuries and dismissals;
- (iv) congresses/professional meetings (S&T);
- (v) donations/grants by council;
- (vi) entertainment: finance – cash collection;
- (vii) telecommunications (Telkom);
- (viii) license fees;
- (ix) postage;
- (x) mayoral donations;
- (xi) membership fees;
- (xii) insurance claims;
- (xiii) ward committee allowances;
- (xiv) Eskom;
- (xv) debit orders;
- (xvi) bank charges;
- (xvii) Rand Water;
- (xviii) inter-departmental charges;
- (xix) employee/councilors related costs; and
- (xx) transactions with other organs of state

58.2 The following items are not required to be procured through the normal supply chain management process as required by any legislation:

- (a) Audit fees;
- (b) Statutory payments;

- (c) License fees;
- (d) Postage fees;
- (e) Membership fees;
- (f) Telecommunications (Telkom);
- (g) DWAF (water purchases);
- (h) Eskom (electricity purchases);
- (i) Purchases less than R2 000,00;
- (j) transactions with other organs of state; and/or
- (k) Service and repairs of vehicles and equipment at dealers/manufacturers

## 59. RECORDS TO BE KEPT

- (a) Record of verbal and written quotations and formal written quotations
- (b) Verbal and written quotations
- (c) Formal written price quotations
- (d) List of bid documents issued
- (e) Record of ad hoc bids
- (f) Record of specific term contracts
- (g) Record of deviation processes
- (h) Record of complaints received from bidders or contractors
- (i) Record of declaration of interest
- (j) Record of gifts received
- (k) Record of instances of fraud or corruption
- (l) Record of irregular, fruitless and wasteful expenditure
- (m) Record of circulars distributed within Steve Tshwete Local Municipality.

## 60. REPORTING OBLIGATIONS

- 60.1 STLM shall submit to the Council, the Mpumalanga Provincial Treasury, the National Treasury, the Department for Local Government in the Province or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as may be required.

## 60.2 AD HOC REPORTING

Table: 2

<b>REPORTING OBLIGATION</b>	<b>REPORT TO</b>
➤ If the municipal manager is unable to comply with any of the responsibilities in terms of the MFMA, he/she shall promptly report the inability, together with reasons.	<input type="checkbox"/> Council
➤ The municipal manager of Steve Tshwete Local Municipality shall report any deviations between this SCM manual and the guideline standard.	<input type="checkbox"/> Council
➤ If Steve Tshwete Local Municipality procures goods or services as contemplated in section 110(2) of the MFMA, they shall make public the fact that it procures such goods or services otherwise than through its supply chain management system, including: <ul style="list-style-type: none"> <li>▪ The kind of goods or service.</li> <li>▪ The name of the supplier.</li> </ul>	<input type="checkbox"/> Shall make public
➤ If a bid other than the one recommended in the normal course of implementing the supply chain management policy is approved, the municipal manager shall within ten (10) working days, in writing, notify the role players of the reasons for deviating from such recommendation.	<input type="checkbox"/> Auditor-General <input type="checkbox"/> Provincial Treasury <input type="checkbox"/> National Treasury
➤ If Steve Tshwete Local Municipality disagrees with comments from SITA in terms of MFMA regulation 31(4), the comments and the reasons for rejecting or not following such comments shall be submitted to the role players.	<input type="checkbox"/> Council <input type="checkbox"/> National Treasury <input type="checkbox"/> Provincial Treasury <input type="checkbox"/> Auditor-General
➤ The municipal manager shall record the reasons for any deviations from the procurement processes and report them to the next meeting of the council.	<input type="checkbox"/> Council
➤ If Steve Tshwete Local Municipality decides to consider an unsolicited bid, Steve Tshwete Local Municipality shall make its decision public and once Steve Tshwete Local Municipality has received written comments on this issue, it shall submit such comments, including any responses from the unsolicited bidder, to the role players for comment.	<input type="checkbox"/> National Treasury <input type="checkbox"/> Provincial Treasury <input type="checkbox"/> Council
➤ If any recommendation of the council, the municipal manager shall submit within seven (7) days, to the role players the reasons for rejection or not following those recommendations.	
➤ The municipal manager shall inform the role players in writing of any actions taken in terms of MFMA regulation 38(1)(b)(ii), (e) or (f) (system abuse, fraud and corruption and contract cancellation).	<input type="checkbox"/> Council <input type="checkbox"/> National Treasury <input type="checkbox"/> Provincial Treasury



### **REPORTING OBLIGATION**

- On discovery of any irregular expenditure or any fruitless and wasteful expenditure, the municipal manager shall inform the council, who shall promptly report, in writing, to the role players:

- Particulars of the expenditure.
- Any steps that have been taken:
  - ✓ To recover the expenditure.
  - ✓ To prevent a recurrence of the expenditure

- The council shall promptly report any:

- Irregular expenditure that may constitute a criminal offence.
- Other losses suffered by Steve Tshwete Local Municipality which resulted from suspected criminal conduct

### **REPORT TO**

- Council
- Mayor and Municipal Manager
- Auditor-General

- Council
- Auditor-General
- SAPS (if criminal offence)

### **60.3 MONTHLY REPORTING**

Table: 3

### **REPORTING OBLIGATION**

- He/she the municipal manager or delegate shall report monthly on the following aspects:

- Total procurement spent.
- Percentage of total spend directed towards BEE against target.
- Targeted percentage spend to be directed towards BEE.
- All declarations of interest by the MM shall be made to the Council.
- Process disputes.
- Unsolicited bids considered and accepted with consent of other role players.

- The municipal manager shall, on a monthly basis report on the management of contracts or agreements and the performance of the relevant contractors.

- An official or bid adjudication committee to which the power to make final awards has been sub-delegated shall within five (5) days of the end of each month submit a written report containing particulars of each final award made by such official or committee during that month, including:

- The amount of the award.
- The name of the person to whom the award was made.
- The reason why the award was made to that person.

- A written report referred to in MFMA regulation 5(3) shall be submitted:

### **REPORT TO**

- Council

- The official referred to in MFMA Regulation 5(4)

- MM
- CFO

**REPORTING OBLIGATION**

**REPORT TO**

- To the municipal manager, in the case of an award by:
  - ✓ The chief financial officer.
  - ✓ A senior official.
  - ✓ A bid adjudication committee of which the chief financial officer or a senior official is a member.
  - ✓ The chief financial officer or the senior official responsible for the relevant bid, in the case of an award by:
    - manager referred to in MFMA regulation 5(2)(c)(iii).
    - A bid adjudication committee of which the chief financial officer or a senior official is not a member.
- MFMA regulation 5(3) and (4) does not apply to procurement out of petty cash
- Each manager shall however forward a monthly reconciliation report on petty cash purchases detailing at least:
  - Total amount of petty cash purchases for that specific month.
  - Receipts and appropriate documents for each purchase.
  - If it is not possible to obtain at least three formal written price quotations, the reasons shall be recorded and approved by the CFO or an official designated by the CFO. The municipal manager or delegate shall record the names of the potential providers and their written quotations.
  - The official designated by the CFO shall within three (3) days of the end of each month report to the CFO on any approvals given during that month.
- The municipal manager or CFO shall 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 □ CFO
- The appointed person who deals with disputes, objections, complaints and queries shall submit a report on the status of these issues. □ MM or CFO
- The appointed person who deals with disputes, objections, complaints and queries shall submit a report on the status of these issues. □ MM

**60.4 QUARTERLY REPORTING**

Table: 4

**REPORTING OBLIGATION**

**REPORT TO**

- The municipal manager shall within ten (10) days after the end of each quarter submit implementation reports on the supply chain management policy. □ Council
- If it is not possible to obtain at least three (3) written or verbal quotations, the reasons shall be recorded and reported. □ MM or another official designated by the MM

**60.5 ANNUAL REPORTING**

60.5.1 The municipal manager shall at least annually within twenty (20) days of the end of the financial year, submit reports on the implementation of the supply chain management policy as contained in the supply chain management manual to the council within thirty (30) days of the end of the financial year.

60.5 The municipal manager of Steve Tshwete Local Municipality shall at least annually review the implementation of the supply chain management policy as contained in the supply chain management manual, inform the council of its correctness and applicability and, if necessary; submit proposals for the amendment of the manual to the council.

60.6 Disclose particulars of non-compliance with the MFMA from a supply chain management perspective.

Table 5

**REPORTING OBLIGATION**

**REPORT TO**

- The municipal manager shall at least annually within twenty (20) days of the end of the financial year, submit reports on the implementation of the supply chain management policy as contained in the supply chain management manual to the council within thirty (30) days of the end of the financial year.  Council
- The municipal manager of Steve Tshwete Local Municipality shall at least annually review the implementation of the supply chain management policy as contained in the supply chain management manual, inform the council of its correctness and applicability and, if necessary, submit proposals for the amendment of the manual.  Council
- The notes to the annual financial statements of Steve Tshwete Local Municipality shall:
  - Disclose particulars of any award of more than R2 000,00 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:
    - ✓ The name of that person.
    - ✓ The capacity in which that person is in the service of the state.
    - ✓ The amount of the award
  - Disclose the reasons for any deviations from the procurement processes.
  - Disclose particulars of any material losses and any material irregular or fruitless and wasteful expenditure that occurred during the financial year and whether these are recoverable.
  - Disclose particulars of any criminal or disciplinary steps taken as a result of such losses or such irregular or fruitless

## **REPORTING OBLIGATION**

## **REPORT TO**

and wasteful expenditures.

- Disclose particulars of non-compliance with the MFMA from a supply chain management perspective

### **60.6 REPORTING TO NATIONAL TREASURY**

#### **60.6.1 SUPPLY CHAIN MANAGEMENT IMPLEMENTATION**

- (a) Steve Tshwete Local Municipality shall continue to report to National Treasury on their progress in the implementation of supply chain management if there are any changes from year to year.

#### **60.6.2 CONTRACTS REPORTING QUESTIONNAIRE**

- (a) Steve Tshwete Local Municipality shall submit reports electronically (on the National Treasury PCI system) to National Treasury in respect of each contract above the value of R100 000,00 (all applicable taxes included) concluded during that month within fifteen (15) days of the end of each month.
- (b) Report all irregular expenditure immediately to the National Treasury.

#### **60.6.3 RESTRICTIONS IMPOSED BY STLM**

- (a) Report all restrictions imposed by Steve Tshwete Local Municipality immediately to the National Treasury.

#### **60.6.4 UNSOLICITED PROPOSALS**

- (a) Upon receipt of an unsolicited proposal, Steve Tshwete Local Municipality shall (in writing) notify the National Treasury contact person within ten (10) working days of such receipt.

#### **60.6.5 REPORT TO THE DTI**

- (a) Steve Tshwete Local Municipality shall, within five (5) working days after the award of a contract that is in excess of R10-million, submit details of such a contract to the NIPP section of the DTI.

## **61. REVIEW**

- 61.1 This policy will be reviewed annually to be in line with municipal practices, legislation and regulations.

62. **SHORT TITLE**

- 62.1 This policy shall be called the Steve Tshwete Local Municipality Master Supply Chain Management Policy.

**PART 5 ANNEXURES**

- Annexure A Code of conduct for supply chain management practitioners & other role players
- Annexure B Supply chain management policy for infrastructure procurement & delivery management
- Annexure C MFMA Circular 62 (supply chain management enhancing compliance & accountability, 20 August 2012)
- Annexure C1 Demand management
- Annexure C2 Procurement plan (under separate cover)*
- Annexure C3 MBD4 declaration updated version
- Annexure D Petty cash policy
- Annexure E Preferential Procurement Regulations, 2017

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

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

### **1. GENERAL PRINCIPLES**

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

### **2. CONFLICT OF INTEREST**

- 2.1 An official or other role player involved with supply chain management –
  - (a) must treat all providers and potential providers equitably;
  - (b) may not use his or her position for private gain or to improperly benefit another person;
  - (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
  - (d) must declare to the Accounting Officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;

- (e) must declare to the Accounting Officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process, or in any award of a contract by the municipality;
- (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
- (g) must declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest;
- (h) should not place him/herself under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties; and
- (i) should not take improper advantage of their previous office after leaving their official position.

### 3. **ACCOUNTABILITY**

- 3.1 Practitioners are accountable for their decisions and actions to the public.
- 3.2 Practitioners should use public property scrupulously.
- 3.3 Only Accounting Officers or their delegates have the authority to commit the municipality to any transaction for the procurement of goods and/or services.
- 3.4 All transactions conducted by a practitioner should be recorded and accounted for in an appropriate accounting system. Practitioners should not make any false or misleading entries into such a system for any reason whatsoever.
- 3.5 Practitioners must assist the Accounting Officer in combating fraud, corruption, favouritism and unfair and irregular practices in the Supply Chain Management System.
- 3.6 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
  - (a) any alleged fraud, corruption, favouritism or unfair conduct;

(b) any alleged contravention of the policy on inducements, rewards, gifts and favours to municipalities or municipal entities, officials or other role players; and

(c) any alleged breach of this code of conduct.

3.7 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 **executive mayor** who must ensure that such declaration is recorded in the register.

#### 4. **OPENNESS**

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

#### 5. **CONFIDENTIALITY**

5.1 Any information that is the property of the municipality or its providers should be protected at all times. No information regarding any bid/contract/bidder/contractor may be revealed if such an action will infringe on the relevant bidder's/contractors personal rights.

5.2 Matters of confidential nature in the possession of officials and other role players involved in SCM should be kept confidential unless legislation, the performance of duty or the provisions of law requires otherwise. Such restrictions also apply to officials and other role players involved in SCM after separation from service.

#### 6. **BID SPECIFICATION / EVALUATION / ADJUDICATION COMMITTEES**

6.1 Bid specification, evaluation and adjudication committees should implement supply chain management on behalf of the municipality in an honest, fair, impartial, transparent, cost-effective and account-able manner.

6.2 Bid evaluation/adjudication committees should be familiar with and adhere to the prescribed legislation, directives and procedures in respect of supply chain management in order to perform effectively and efficiently.

6.3 All members of Bid Adjudication Committees should be cleared by the Accounting Officer at the level of "**CONFIDENTIAL**" and should be required to declare their financial interest annually.



6.3 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**

7.1 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.

# INFRASTRUCTURE PROCUREMENT & DELIVERY MANAGEMENT

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3. General requirements
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7. Infrastructure procurement

## 1. **TERMS, DEFINITIONS AND ABBREVIATIONS**

### 1.1 Terms and definitions

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

*“agent”* means a person or organization that is not an employee of Steve Tshwete Local Municipality that acts on the Steve Tshwete Local Municipality’s behalf in the application of this document.

*“authorized person”* means 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”* means 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”* means a 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”* means 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”* means 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”* means a control point at the end of a process where a decision is required before proceeding to the next process or activity.

*“gateway review”* means 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”* means an inducement to perform an improper act.

*“infrastructure delivery”* means 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”* means the procurement of goods or services including any combination thereof associated with the acquisition, renovation, rehabilitation, alteration, maintenance, operation or disposal of infrastructure.

*“maintenance”* means 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”* means the combination of all technical, administrative and managerial actions, other than maintenance actions, that results in the item being in use.

*“order”* means an instruction to provide goods, services or any combination thereof under a framework agreement.

*“organ of state”* means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa.

*“procurement document”* means documentation used to initiate or conclude (or both) a contract or the issuing of an order.

*“principal”* means 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”* means 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.

## 1.2 Abbreviations

For the purposes of this document, the following abbreviations apply:

CIDB: Construction Industry Development Board  
SARS: South African Revenue Services

## 2. PURPOSE

This policy establishes the Steve Tshwete Local Municipality’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 Steve Tshwete Local Municipality 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.

## 3. GENERAL REQUIREMENTS<sup>1</sup>

### 3.1 Delegations

---

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

3.1.1 The council of Steve Tshwete 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) maximize 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
- (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 Steve Tshwete Local Municipality<sup>2</sup>.

3.1.3 The municipal manager shall for oversight purposes:

- (a) within thirty (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 Steve Tshwete Local Municipality , to the council of the Steve Tshwete Local Municipality<sup>3</sup> / within twenty (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 Steve Tshwete Local 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<sup>4</sup>, who must then submit the report to the municipal manager of Steve Tshwete Local Municipality for submission to the council;

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

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

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

- (c) within ten (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.

3.1.4 The requirements of this policy will be applicable to bids above R200 000,00.

### 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.<sup>5</sup>

3.2.2 Stages 3 to 9 may be omitted where the required work does not involve the provisions of infrastructure, or the rehabilitation, refurbishment or alteration of existing infrastructure.

3.2.3 Stages 5-6 may be omitted if sufficient information to proceed to stage 7 is contained in the stage 4 deliverable.

3.2.4 A stage shall only be complete when the deliverable has been approved or accepted by the person designated in the institutional arrangement to do so.

3.2.5 Pre-feasibility and feasibility reports are required on where the project is a major capital project which is not standardized, and the risk of failing to achieve time, cost and quality objectives is relatively high.<sup>6</sup>

### 3.3 Supervision of the infrastructure delivery management unit<sup>7</sup>

The Infrastructure Delivery Management Unit shall be directly supervised by the executive director infrastructure services.

### 3.4 Objections and complaints<sup>8</sup>

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

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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 fourteen (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 queries<sup>9</sup>

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 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 Steve Tshwete Local Municipality's 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 sixty (60) days; or
- (b) no response is forthcoming within sixty (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.

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<sup>9</sup> This clause aligns with SCM Regulation 50 issued in terms of the MFMA.

#### 4. CONTROL FRAMEWORK FOR INFRASTRUCTURE DELIVERY MANAGEMENT<sup>10</sup>

##### 4.1 Assignment of responsibilities for approving or accepting end of stage deliverables<sup>11</sup>

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

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<sup>10</sup> This clause is required to ensure compliance with the requirements of the standard.

<sup>11</sup> 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.



**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	Accounting officer accepts the initiation report	
1	Infrastructure planning	Council approves the infrastructure plan	
2	Strategic resourcing	Head of department approves the delivery and / or procurement strategy	
3	Pre-feasibility	Project manager accepts the pre-feasibility report	
	Preparation and briefing	Project manager accepts the strategic brief	
4	Feasibility	Project manager accepts the feasibility report	
	Concept and viability	Project manager accepts the concept report	
5	Design development	Project manager accepts the design development report	
6	Design documentation	6A Production information	Project manager 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
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 Project manager accepts the close out report	

The infrastructure plan (stage 1), initiation reports (stage 0), decisions made during stages 3 and 4 and work in progress in stages 5 to 9, and the procurement strategy (stage 2) shall be reviewed and updated at least once a year.

The approval of the infrastructure plan and the securing of the necessary budget shall be obtained prior to advancing to stage 3. All subsequent stages shall only be proceeded with if the necessary budget is in place.

The approvals or acceptances at each stage shall be retained for record purposes for a period of not less than five (5) years of such acceptance or approval in a secured environment.

#### 4.1.1 **Stage 0 : Project initiation**

An initiation report which outlines the high-level business case together with the estimated project cost and proposed schedule for a single project or a group of projects having a similar high-level scope.

The initiation report for a project shall as a minimum:

- (a) provide a project description and high-level scope of work;
- (b) outline key issues and solution options that were interrogated
- (c) outline options that were evaluated;
- (d) indicate the high-level business case; and
- (e) provide the estimated project cost and indicative high-level schedule.

#### 4.1.2 **Stage 1 : Infrastructure planning**

The infrastructure plan for a portfolio of projects or packages which require implementation shall cover a period of not less than five (5) years.

Such a plan shall be:

- (a) described by the high-level scope of work for each project, the proposed time schedule, the estimated total project cost and annual budget requirement, the geographical location, any known encumbrances and estimated timeframes for removing these encumbrances; and
- (b) aligned with all prescribed planning, budgeting, monitoring and reporting requirements.

The demand for infrastructure delivery shall be managed through:

- (a) the service life plans which;
  - (1) are based on:
    - an assessment of current performance against desired levels of service or functionality; and
    - a needs analysis informed by factors such as policies, norms and standards, condition assessments, functional performance, demographic trends, current and forecasted levels of optimization; and
  - (2) reflect a cost estimate for the life cycle activities comprising acquisition, operations, maintenance, refurbishment, rehabilitation or alteration as relevant, over a minimum period of five (5) years; and

- (b) infrastructure plans which, as a minimum, summarize the service life plans and provide a credible forecast of current and net demand for services or requirements for functionality over a period of not less than ten (10) years.

Consideration shall, where appropriate, be given to:

- (a) alternative service delivery methods or means of satisfying needs which do not require infrastructure to implement or reduce the demand for infrastructure; and
- (b) the disposal of infrastructure that is surplus to requirements.

Projects shall, wherever possible, be delivered in accordance with established norms and standards which are designed to yield value for money.

#### 4.1.3 **Stage 2 : Strategic resourcing**

A delivery management strategy shall be developed following the conducting of a spend, organizational and market analysis. Such a strategy shall indicate how needs are to be met for each category of spend through one or more of the following:

- (a) a public private partnership;
- (b) another organ of state on an agency basis;
- (c) another organ of state's framework agreement;
- (d) own resources; or
- (e) own procurement system.

A procurement strategy shall document the selected packaging, contracting, pricing and targeting strategy and procurement procedure for all required goods or services or any combination thereof including professional services, including the rationale for adopting a particular option.

#### 4.1.4 **Stage 3 : Preparation and briefing or pre-feasibility**

Prefeasibility and feasibility reports shall be required as end-of-stage deliverables for stages 3 and 4, respectively, where one or more of the following applies:

- (a) the major capital project is required for:
  - (1) a major public enterprise where the total project capital expenditure exceeds R1,5 billion; or

- (2) an organ of state subject to the Public Finance Management Act other than a major public enterprise where the total project capital expenditure exceeds R1,0 billion including VAT, or where the expenditure per year for a minimum of three (3) years exceeds R250-million per annum including VAT;
- (b) the project is not:
  - (1) a building project with or without related site works; or
  - (2) a process-based, somewhat repetitive or relatively standardized project where the risk of failing to achieve time, cost and quality objectives is relatively low; or
- (c) it is deemed necessary during stage 2

The strategic brief shall as necessary:

- (a) confirm the scope of the package and identify any constraints, including those relating to occupational health and safety;
- (b) establish the project criteria, including the performance and reliability requirements, design life, service life of components, function, maintenance and replacement requirements, mix of uses, scale, location, quality, value, time, safety, health, environment and sustainability;
- (c) identify procedures, organizational structure, key constraints, statutory permissions (e.g. environmental, heritage, social, planning, building control), and utility approvals, policies (e.g. environmental, developmental, social, maintenance or facilities management) and strategies to take the package forward;
- (d) identify risks that need to be mitigated;
- (e) identify interfaces between packages as necessary; and
- (f) establish the control budget for the package, ownership costs and schedule for the package or series of packages.

The prefeasibility study shall as necessary:

- (a) document the owner or user requirements specification;
- (b) shortlist the options that were considered;
- (c) provide a preliminary design for study options;

- (d) provide preliminary capital estimate and the proposed schedule; and
- (e) present the study outcomes.

#### 4.1.5 **Stage 4 : Concept and viability or feasibility**

The concept report shall as necessary:

- (a) document the initial design criteria and design options or the methods and procedures required to maintain the condition of infrastructure for the package;
- (b) establish the detailed brief, scope, scale, form and cost plan for the package;
- (c) provide an indicative schedule for documentation and construction or maintenance services associated with the package;
- (d) contain a site development plan or other suitable schematic layouts of the works;
- (e) describe the statutory permissions, funding approvals or utility approvals required to proceed with the works associated with the package;
- (f) include a baseline risk assessment for the package, and a health and safety plan which is required in terms of the requirements of the Construction Regulations issued in terms of the Occupational Health and Safety Act;
- (g) contain a risk report linked to the need for further surveys, tests, other investigations and consent and approvals, if any, during subsequent stages and identified health, safety and environmental risk;
- (h) contain an operations and maintenance support plan which establishes the organizational structure required for the operation and maintenance of the works resulting from the package or series of packages over its service life, and the office, stores, furniture, equipment, Information and Communications Technology (ICT), engineering infrastructure and staff training requirements;
- (i) confirm the financial sustainability of the project; and

- (j) establish the feasibility of satisfying the strategic brief for the package or series of packages within the control budget established during stage 3 and, if not, motivate a revised control budget.

A feasibility report shall as a minimum provide the following:

- (a) details regarding the preparatory work covering:
  - (1) a needs and demand analysis with output specifications; and
  - (2) an options analysis;
- (b) a viability evaluation covering:
  - (1) a financial analysis; and
  - (2) an economic analysis, if necessary;
- (c) a risk assessment and sensitivity analysis;
- (d) a professional analysis covering:
  - (1) a technology options assessment;
  - (2) an environmental impact assessment; and
  - (3) a regulatory due diligence; and
- (e) implementation readiness assessment covering:
  - (1) institutional capacity; and
  - (2) a procurement plan

#### 4.1.6 **Stage 5 : Design development**

The design development report shall as necessary:

- (a) develop in detail the accepted concept to finalize the design and definition criteria;
- (b) establish the detailed form, character, function and costings;
- (c) define all components in terms of overall size, typical detail, performance and outline specification;

- (d) describe how infrastructure, or elements or components thereof, are to function, how they are to be safely constructed, how they are to be maintained and how they are to be commissioned; and
- (e) confirm that the package or series of packages can be completed within the control budget or propose a revision to the control budget.

Outline specifications shall be in sufficient detail to enable a view to be taken on the operation and maintenance implications of the design and the compatibility with existing plant and equipment.

#### 4.1.7 **Stage 6 : Design documentation**

Stage 6A (production information) is complete when all the production information that is required to be accepted prior to being issued for construction, manufacturing or fabrication purposes has been accepted.

Stage 6B (manufacture, fabrication and construction information) is complete when the manufacture, fabrication and construction information is accepted as being in accordance with the production information.

#### 4.1.8 **Stage 7 : Works**

Stage 7 is complete when:

- (a) completion of the works is certified in accordance with the provisions of the contract; or
- (b) the goods and associated services are certified as being delivered in accordance with the provisions of the contract.

#### 4.1.9 **Stage 8 : Handover**

The handover stage shall include as necessary the training of the end user's or the owner's staff in the operation of the delivered infrastructure.

The record information shall as relevant:

- (a) accurately document the condition of the completed works associated with a package;
- (b) accurately document the works as constructed or completed;
- (c) contain information on the care and servicing requirements for the works or a portion thereof;

- (d) contain information or instructions on the use of plant and equipment;
- (e) confirm the performance requirements of the design development report and production information;
- (f) contain certificates confirming compliance with legislation, statutory permissions and the like; and
- (g) contain guarantees that extend beyond the defects liability period provided for in the package.

Record information shall, as relevant, provide those tasked with the operation and maintenance of infrastructure with the information necessary to:

- (a) understand how the designers intended the works, systems, subsystems, assemblies and components to function;
- (b) effectively operate, care for and maintain the works, systems, subsystems, assemblies and components to function;
- (c) check, test or replace systems, subsystems, assemblies or components to ensure the satisfactory performance of works, systems, subsystems, assemblies and components over time;
- (d) develop maintenance plans;
- (e) determine stock levels for components and assemblies that need to be regularly replaced; and
- (f) budget for the operation and maintenance of the works, systems, subsystems and components over time.

Arrangements shall be put in place to secure and safeguard the works from the time that the contractor's liabilities for damage to the works end until such time that the works are handed over to the end user who shall accept such liabilities.

#### 4.1.10 **Stage 9 : Close out**

The close out report for the package shall outline what was achieved in terms of at least the following:

- (a) the following performance parameters:
  - expenditure incurred in infrastructure delivery for the financial year, against the budget made available to cover such expenditure at the start of the year;



- the average variance between planned and achieved completion of stages of all packages and projects;
  - an overview of all packages where stage 7 was completed within the financial year and the total of the prices and the time for completion at the start of the contract or when the order was issued exceed 20%, together with a brief explanation as to why such increases occurred;
  - the average time taken to award a contract, measured from the closing date for tender submission or the final submission made in terms of a proposal or competitive negotiations procedure to a decision being taken to award the contract;
  - the average time taken, in respect of all packages covered in the report, to complete stage 8 measured from the time that stage 7 is completed;
  - the average difference between the total of the prices in the payment certificate that was issued following the completion of stage 7, and the total of the prices at the end of stage 9;
  - the average time taken to award a contract above the threshold for quotations, measured from the closing date for tender submission or the final submission made in terms of a proposal or competitive negotiations procedure, to the acceptance of the tender evaluation report; and
  - the average number of days that payment is later than that required under the terms of a contract.
- (b) unit costs of completed work or major components thereof; and
- (c) key performance indicators relating to developmental objectives.

The close out report shall make suggestions for improvements on future packages of a similar nature. Such a report should also comment on the performance of the contractor and, if relevant, include building tuning or similar reports.

Stage 9 is complete when, as relevant, defects certificates or certificates of final completion are issued in terms of the contract, the final amount due to the contractor in terms of the contract is certified and the close out report is accepted.

## 4.2 Gateway reviews

### 4.2.1 Gateway reviews for major capital projects above a threshold

- 4.2.1.1 Accounting Officer shall appoint a gateway review team to undertake gateway reviews for major capital projects equal to or above R50-million.

4.2.1.2 All major capital projects having an estimated capital expenditure equal to or above R50-million shall have a gateway review of the end-of-stage 4 deliverable, prior to the acceptance of such deliverable.

The focus of such a review shall in the first instance be on the quality of the documentation, and thereafter on:

- (a) deliverability (the extent to which a project is deemed likely to deliver the expected benefits within the declared cost, time and performance envelope);
- (b) affordability (the extent to which the level of expenditure and financial risk involved in a project can be taken up on, given the organization's overall financial position, both singly and in the light of its other current and projected commitments); and
- (c) value for money.

4.2.1.3 A gateway review team shall comprise not less than three (3) persons who are not involved in the project associated with the works covered by the end of the stage 4 deliverable, and who are familiar with various aspects of the subject matter of the deliverable at the end of the stage under review. Such a team shall be led by a person who has at least six years postgraduate experience in the planning of infrastructure projects and is registered either as a professional engineer in terms of the Engineering Profession Act, a professional quantity surveyor in terms of the Quantity Surveying Profession Act or a professional architect in terms of the Architectural Profession Act. The members of the team shall, as relevant, have expertise in key technical areas, cost estimating, scheduling and implementation of similar projects.

4.2.1.4 The relevant treasury shall be notified of a proposed gateway review for a major capital project, three weeks prior to the conducting of such a review. Such notification shall be accompanied by a brief outline of the proposed project or package, the names and qualifications of the reviewers and the timeframes for the review. The relevant treasury may nominate additional persons to serve on the review team.

4.2.1.5 The gateway review team shall base its findings primarily on:

- (a) the information contained in the end-of-stage deliverables;
- (b) supplementary documentation, if any, provided by key staff obtained during an interview process; and
- (c) interviews with key staff members and stakeholders.

4.2.1.6 The gateway review team shall issue a report at the conclusion of a gateway review which indicates the team's assessment of the information at the end of a stage and provides findings or recommendations on areas where further work may be undertaken to improve such information.

4.2.1.7 The contents of the gateway review report shall be taken into account when accepting the stage 4 deliverable. A stage 4 deliverable shall not be accepted until such time that all code red risks have been addressed in the stage 4 end-of-stage deliverable.

## 5. **CONTROL FRAMEWORK FOR INFRASTRUCTURE PROCUREMENT**<sup>12</sup>

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:<sup>13</sup>

- (a) chief financial officer 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 authorized person may award the contract if satisfied with the recommendations contained in the evaluation report prepared in accordance with the provisions of the standard.

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<sup>12</sup> This clause is required to ensure compliance with the requirements of the standard.

<sup>13</sup> 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.

- 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

#### 6.1.1 Committee system for procurement<sup>14</sup>

##### 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.

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

6.1.1.1.4 No person who is a political officer bearer, a public office bearer including any councillor 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.

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<sup>14</sup> 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.

6.1.1.1.5 Committee decisions shall as far as possible be based on the consensus principle i.e. the general agreement characterized 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 (5) 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 (60%) 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 Steve Tshwete Local Municipality 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 <b>PG1</b>	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.	Head of department
2*	Decide on procurement strategy	2.5 <b>PG2</b>	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	Head of department
3	Solicit tender offers	3.2 <b>PG3</b>	Obtain approval for procurement documents	Grant approval for the issuing of the procurement documents	Procurement documentation committee
		3.3 <b>PG4</b>	Confirm that budgets are in place	Confirm that finance is available for the procurement to take place	Assistant director budget office
4	Evaluate tender offers	4.2 <b>PG5</b>	Obtain authorization to proceed with next phase of tender process in the qualified, proposal or competitive negotiations procedure	Review evaluation report, ratify recommendations and authorize progression to the next stage of the tender process	Evaluation committee
		4.7 <b>PG6</b>	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

\* 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

**Table 2 (concluded)**

Activity		Sub-Activity		Key action	Person assigned responsibility to perform key action
5	Award contract	5.3 <b>PG7</b>	Award contract	Formally accept the tender offer in writing and issue the contractor with a signed copy of the contract	Municipal manager <sup>15</sup>
		5.5 <b>GF1</b>	Upload data in financial management and payment system	Verify data and upload contractor's particulars and data associated with the contract or order	Supply chain manager
6	Administer contracts and confirm compliance with requirements	6.4 <b>PG8A</b>	Obtain approval to waive penalties or low performance damages.	Approve waiver of penalties or low performance damages	Executive director infrastructure services
		6.5 <b>PG8B</b>	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	Executive director corporate services
		6.6 <b>PG8C</b>	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 <sup>16</sup>	Approve amount of time and cost overruns up to the threshold	Project manager
		6.7 <b>PG8D</b>	Obtain approval to exceed the total of prices, excluding contingencies and price adjustment for inflation, or the time for completion at award of a	Approve amount of time and cost overruns above a the threshold	Bid adjudication committee

<sup>15</sup> 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.

<sup>16</sup> 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



Activity	Sub-Activity	Key action	Person assigned responsibility to perform key action
		contract or the issuing of an order by more than 20% and 30%, respectively	
	6.8 PG8E	Obtain approval to cancel or terminate a contract	Municipal Manager
	6.9 PG8F	Obtain approval to amend a contract	Bid adjudication committee

**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 <b>FG1</b> Confirm justifiable reasons for selecting a framework contractor 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	Project manager
3 <b>FG2</b> Obtain approval for procurement documents	Grant approval for the issuing of the procurement documents	Head of department
4 <b>FG3</b> Confirm that budgets are in place	Confirm that finance is available so that the order may be issued	Assistant director budget office
6 <b>FG4</b> Authorize 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	Head of supply chain management

### 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 Steve Tshwete Local Municipality with requisite skills. Other members shall include a supply chain management practitioner<sup>17</sup> and, where relevant, include an official from the department requiring infrastructure delivery of an official from legal and administration and technical expert.

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.

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<sup>17</sup> A supply chain management practitioner in the context of infrastructure delivery includes a built environment professional

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 or chief executive or chief financial officer or designation of delegate*] 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 committee**<sup>18</sup>

6.1.1.4.1 The tender committee shall comprise the following persons or their mandated delegate:<sup>19</sup>

- (a) the chief financial officer or, if the chief financial officer is not available, any another senior finance official designated by the chief financial officer;
- (b) senior official from supply chain management;
- (c) legal advisor in advisory capacity; and
- (d) a technical expert in the relevant field who is an official, if such an expert is needed in advisory capacity.
- (e) executive director corporate services.

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:

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<sup>18</sup> 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

<sup>19</sup> 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.

- (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 authorized 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 authorized 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.

6.1.1.4.6 The tender committee shall report to the municipal manager 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 (5) 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 provincial treasury shall be informed where such tenderers are disregarded.

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

**6.1.2.1 Award of a contract**

6.1.2.1 The authorized 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 head of department, 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 authorized person shall immediately notify the municipal manager if a tender other than the recommended tender is awarded, save where the recommendation is changed to rectify an irregularity.

Such person shall, within ten (10) working days, notify in writing the Auditor-General, the National Treasury and 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 authorized 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 designated person, as relevant, and either:

- (a) authorize 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 delivery<sup>20</sup>

#### 6.1.3.1 General requirements

- 6.1.3.1.1 All personnel and agents of Steve Tshwete Local 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;

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<sup>20</sup> 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

- (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 Steve Tshwete Local Municipality 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;
- (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 Steve Tshwete 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 Steve Tshwete 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 Steve Tshwete 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 Steve Tshwete Local Municipality proprietary information.



6.1.3.2.2 The employees and agents of Steve Tshwete 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 Steve Tshwete Local Municipality's interest to do so, submit a tender for work associated with such documents provided that:

- (a) Steve Tshwete 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 Steve Tshwete Local Municipality.

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 Steve Tshwete Local Municipality and a tenderer or respondent shall be disclosed and recorded in the tender evaluation report.

6.1.3.3.3 Steve Tshwete 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 Steve Tshwete 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 Steve Tshwete 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 Steve Tshwete 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 Steve Tshwete Local Municipality 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 Steve Tshwete Local Municipality 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*<sup>21</sup>.

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 Steve Tshwete Local Municipality shall without delay report to the municipal manager 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 Steve Tshwete Local Municipality shall promptly report to the municipal manager 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 system<sup>22</sup>

The municipal manager 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 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;

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<sup>21</sup> SCM Regulation permits the receipt of gifts and hospitality provided that they are declared to the municipal manager or the chief executive

<sup>22</sup> 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.

- (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 state<sup>23</sup>

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;
- (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.

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<sup>23</sup> The clause aligns with SCM Regulation 44 issued in terms of the MFMA.

#### 6.1.6 Collusive tendering<sup>24</sup>

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 restrictions<sup>25</sup>

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 Steve Tshwete Local Municipality; or

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<sup>24</sup> 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.

<sup>25</sup> This sub-clause is aligned with the requirements of SCM Regulation 38 issued in terms of the MFMA.

- (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 Steve Tshwete Local Municipality that the statement was made in good faith or reasonable steps were taken to confirm the correctness of the statements;
- (g) a head of department 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 Steve Tshwete Local Municipality.

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 Steve Tshwete Local Municipality for a period of time.

6.1.7.3 The municipal manger shall:

- (a) record the names of those placed under restrictions in an internal register which shall be accessible to employees and agents of Steve Tshwete Local Municipality who are engaged in procurement processes; and
- (b) notify the National Treasury and 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 Steve Tshwete Local Municipality's infrastructure delivery management system shall be addressed to the municipal manger. Such complaints shall be in writing.

6.1.8.2 The executive director corporate services shall investigate all complaints regarding the infrastructure procurement and delivery management system and report on actions taken to the municipal manger who will decide on what action to take.

## 6.2 Acquisition management

### 6.2.1 Unsolicited proposal<sup>26</sup>

6.2.1.1 The Steve Tshwete 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 Steve Tshwete 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 municipality and an invitation to the public or other potential suppliers and providers to submit their comments within thirty (30) days after the notice;

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<sup>26</sup> The clause aligns with SCM Regulation 37 issued in terms of the MFMA.



- (b) the Steve Tshwete Local Municipality has obtained comments and recommendations on the offer from the National Treasury and 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 provincial treasury; and
- (d) the provisions of 6.2.1.3 are complied with.

6.2.1.3 The municipal manager shall, within seven (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 provincial treasury and Auditor-General. A contract shall in such circumstances not be entered into or signed within thirty (30) days of such submission.

## 6.2.2 Tax and rates compliance<sup>27</sup>

### 6.2.2.1 **SARS tax clearance**

6.2.2.1.1 Where a 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 seven (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 must be verified via CSD or e-filing. Accounting officer should reject a bid/quote submitted if such bidder fails to provide proof of tax compliance status within the timeframe as stated above.

6.2.2.1.2 Where goods and services have been delivered satisfactorily without any dispute, accounting officers should not delay processing payment of invoices due to outstanding tax matters.

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<sup>27</sup> This sub-clause aligns with the provisions of SCM Regulation 43 issued in terms of the MFMA. .

### 6.2.2.2 Municipal rates and taxes<sup>28</sup>

No contract may be awarded to a tenderer who, or 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 three (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 Steve Tshwete 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 Steve Tshwete Local Municipality's website and on the National Treasury eTender Publication Portal.<sup>29</sup> Advertisements shall be placed by *[name of designated person]*

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 *[name of designated person]*.

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<sup>28</sup> This subclause aligns with the provisions of SCM Regulation 38 issued in terms of the MFMA.

<sup>29</sup> 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.

6.2.4.3 Where deemed appropriate by *[name of designated person]* 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 *[name of designated person]*.

6.2.4.4 Such advertisements shall be advertised for a period of at least thirty (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 ten (10) working days before the closing date for tenders and at least five (5) working days before any compulsory clarification meeting. Procurement documents shall be made available not less than seven (7) days before the closing time for submissions.

6.2.5 Publication of submissions received and the award of contracts<sup>30</sup>

6.2.5.1 The *[designated person]* shall publish within ten (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 thirty (30) days.

6.2.5.2 The *[designated person]* shall publish within seven (7) working days of the award of a contract the following on the Steve Tshwete Local Municipality's website

- (a) the contract number;
- (b) contract title;
- (c) brief description of the goods, services or works;
- (d) the total of the prices, if practical;

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<sup>30</sup> 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.

- (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 *[designated person]* shall submit within seven (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 *[designated person]*.

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 *[designated person]*.

#### 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 Steve Tshwete Local Municipality.

6.2.6.3 The disposal committee shall make recommendations to *[designated 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

*[designated person]* shall submit any reports required in terms of the standard to the National Treasury or provincial treasury.

## 7. INFRASTRUCTURE PROCUREMENT

### 7.1 Usage of procurement procedures<sup>31</sup>

The Steve Tshwete Local Municipality shall not apply the following procedures:

- (a) *[identify procedure]*;
- (b) *[identify procedure]*;

### 7.2 Procurement documents

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

Form of contract <sup>32</sup>	Code	Usage

7.2.2 The Steve Tshwete Local Municipality's preapproved templates for Part C1 (Agreements and contract data) of procurement documents shall be utilized to obviate the need for legal review prior to the awarding of a contract. All modifications to the standard templates shall be approved by *[designated person]* 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.<sup>33</sup>

7.2.4 *[state additional requirements, if any e.g. use of standard access specifications, health and safety specifications etc.]*<sup>34</sup>

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

- (a) consultancy services;<sup>35</sup> and
- (b) goods and services or any combination thereof where the total of the prices is expected to exceed R10 m including VAT.<sup>36</sup>

<sup>31</sup> Delete this clause if there are no restriction. Amend if there are specific circumstance under which a procurement procedure is to be used.

<sup>32</sup> Reproduce from Table 11 of the standard the forms of contract which the municipality or municipal entity wishes to make use of.

<sup>33</sup> This sub-clause aligns with SCM Regulation 21 issued in terms of the PFMA.

<sup>34</sup> Include if requirements are not included in the templates.

<sup>35</sup> The clause aligns with SCM Regulation 35(3) issued in terms of the MFMA.

<sup>36</sup> The clause aligns with SCM Regulation 35(3) issued in terms of the MFMA.

### 7.3 Payment of contractors<sup>37</sup>

The Steve Tshwete Local Municipality shall settle all accounts within thirty (30) days of invoice or statement as provided for in the contract.

### 7.4 Approval to utilize specific procurement procedures<sup>38</sup>

7.4.1 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) *[designated person / committee]* shall authorize the use of the negotiated procedure above the thresholds provided in the standard.
- (b) *[designated person / committee]* shall authorize 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 forty-eight (48) hours; and
- (c) the proposal procedure using the two-envelope system, the proposal procedure using the two-stage system or the competitive negotiations procedure<sup>39</sup>.

7.4.2 The person authorized to pursue a negotiated procedure in an emergency is *[designated person]*.

### 7.5 Receipt and safeguarding of submissions<sup>40</sup>

7.5.1 A dedicated and clearly marked tender box shall be made available to receive all submissions made.<sup>41</sup>

7.5.2 The tender box shall be fitted with two locks and the keys kept separately by two *[designated persons]*. Such personnel shall be present when the box is opened on the stipulated closing date for submissions.

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<sup>37</sup> 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.

<sup>38</sup> This clause is necessary to enable the standard to be implemented.

<sup>39</sup> 7.5.1 c) is an optional statement and needs to be deleted if this control is not required.

<sup>40</sup> This section may not be necessary if the policy for general goods and services already covers these requirements.

<sup>41</sup> Modify as necessary. Preferably describe the location and accessibility of the box.

## 7.6 Opening of submissions<sup>42</sup>

7.6.1 Submissions shall be opened by an opening panel comprising two (2) people nominated by *[designated persons]* who have declared their interest or confirmed that they have no interest in the submissions that are to be opened.

7.6.2 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 (1) 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

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<sup>42</sup> This section may not be necessary if the policy for general goods and services already covers these requirements.

(h) stamp each returnable document in each tender submission.

7.6.3 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).

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

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

#### 7.7 Use of another organ of state's framework agreement<sup>43</sup>

The Steve Tshwete Local 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 *[municipal manager or chief executive or delegated official]* shall make the necessary application to that organ of state to do so.

#### 7.8 Insurances<sup>44</sup>

7.8.1 Contractors shall be required to take out all insurances required in terms of the contract<sup>45</sup>

7.8.2 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 *[designated person]*.

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

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<sup>43</sup> This clause aligns with SCM Regulation 32 issued in terms of the MFMA and clause 7.3 of the Standard.

<sup>44</sup> Align with the manner in which the municipality or municipal entity wishes to manage risk.

<sup>45</sup> Alternatively state that the insurances shall be principal or employer controlled.



**Table 4: Minimum insurance cover<sup>46</sup>**

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 double the contract amount								
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	<table border="0"> <tr> <td data-bbox="836 676 1252 737">geotechnical, civil and structural engineering</td> <td data-bbox="1300 676 1466 737">R5,0-million</td> </tr> <tr> <td data-bbox="836 745 1170 806">electrical, mechanical and engineering</td> <td data-bbox="1300 745 1466 806">R3,0-million</td> </tr> <tr> <td data-bbox="836 814 992 842">architectural</td> <td data-bbox="1300 814 1466 842">R5,0-million</td> </tr> <tr> <td data-bbox="836 850 894 863">other</td> <td data-bbox="1300 850 1466 863">R3,0-million</td> </tr> </table>	geotechnical, civil and structural engineering	R5,0-million	electrical, mechanical and engineering	R3,0-million	architectural	R5,0-million	other	R3,0-million
geotechnical, civil and structural engineering	R5,0-million								
electrical, mechanical and engineering	R3,0-million								
architectural	R5,0-million								
other	R3,0-million								

7.8.4 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]*.

7.8.5 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.

7.8.5 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.

7.8.6 The Steve Tshwete Local 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.

<sup>46</sup> Modify as necessary

7.8.7 Where payment is to be made in multiple currencies, either the contractor or Steve Tshwete Local 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.

## 7.9 Written reasons for actions taken

7.9.1 Written reasons for actions taken shall be provided by a *[designated person]*.

7.9.2 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.

7.9.3 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.

## 7.10 Request for access to information<sup>47</sup>

7.10.1 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 Steve Tshwete Local Municipality’s 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 Steve Tshwete Local Municipality.

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<sup>47</sup> Amend as necessary

7.10.2 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.

**PROCUREMENT PLAN**

Under separate cover.

## **GUIDELINES ON THE IMPLEMENTATION OF DEMAND MANAGEMENT FOR STLM**

### **1. PURPOSE**

- 1.1 This guide aims to provide Accounting Officer of STLM and municipal entities with a general understanding of the procedures to be followed when implementing demand management (DM) and the compilation of procurement plans.

### **2. OBJECTIVE**

- 2.1 The objective of this guide is to assist STLM (*hereinafter referred to as "the institution"*) with the planning for the procurement of goods, works or services in a pro-active manner and to move away from merely reacting to purchasing requests.

### **3. INTRODCUTION**

- 3.1 Supply Chain Management (SCM) could be described as a business process that ensures that goods, works or services are delivered to the right place, in the right quantity, with the right quality, at the right cost and at the right time.
- 3.2 Demand Management is the first element of the SCM function. The objective is to ensure that the resources required to fulfil the needs identified in the Integrated Development Plan (IDP) of the institution are delivered at the right time, price and place and that the quantity and quality will satisfy those needs of the user (ultimately the provision of services to the community). As part of this element of SCM, a total needs analysis must be undertaken. This analysis must be included as part of the strategic planning process of the institution and will, therefore, incorporate future needs.
- 3.3 It is vital for managers to understand and utilize sound good practice techniques to assist them in their planning, implementation and control activities. As part of the strategic plan of the institution, resources required for the fulfilment of its obligations should be clearly analyzed. This entails a detailed analysis of the goods, works or services required, including how much can be accomplished, how quickly and with what materials, equipment, resources, etc.

- 3.4 When implemented correctly, demand management within SCM forms an integral part of a series of activities that will contribute to achieving the measured goals of the institution by ensuring that goods, works or services are delivered as originally envisaged; with a reliable standard of quality and to the satisfaction of end-users. Correct implementation also ensures that, controls exist for management to detect variances early and rectify them in a planned and orderly manner and to foster a culture of compliance, thereby assisting management achieve its goals and satisfy the executive and general public.

#### 4. **STEPS TO BE IMPLEMENTED FOR DEMAND MANAGEMENT**

##### 4.1 **Participation in the strategic planning process**

4.1.1 As part of the strategic planning exercise of an institution, the various functions to be executed must be identified. Pursuant thereto, it is necessary to determine the different resources required to execute the identified functions, i.e. water services, sanitation, refuse removal, electrical, etc. These resources must be budgeted for. It is of vital importance to know, even at this stage, the estimated costs of the required resources, including the estimated costs of the required goods, works or services.

4.1.2 Demand management must be co-ordinated by SCM officials of the institution in consultation with end-users. This includes a detailed analysis of the goods, works or services required, such as:

- the scope of the work to be executed
- the time required to complete the project; and
- the material, resources, equipment required to execute the project.

The outcome of this activity should be a detailed planning document that outlines what goods, works or services should be procured, the manner in which they should be procured as well as the timelines to execute the procurement functions.

##### 4.2 **Procurement planning**

4.2.1 Procurement planning should take place at the beginning of the financial year when the institution's IDP, Service Delivery and Budget Implementation Plan (SDBIP) and annual budget have been approved. Procurement plans cannot be developed in isolation; it should instead form part of the institution's and other functional strategies. The SCM Unit must perform hand-in-hand with user departments / directorates in the formulation of procurement plans.

### 4.3 **Analysis of the goods, works or services required**

- 4.3.1 During the strategic planning phase of the institution, the goods, works or services or required to execute the identified functions are determined. The SCM Unit should assist the process in ensuring that the identified goods, works or services are the optimum resources required to achieve the goals and objectives of the institution.
- 4.3.2 The SCM unit of the institution must analyze the goods, works or services required and execute, among others, the following:
- (a) List the functions to be executed by the institution;
  - (b) Conduct an analysis of the past expenditure as this exercise may, among others, contribute in determining the manner in which the institution fulfilled its needs in the past; and
  - (c) Compile as detailed list of the goods, works or services required to execute the functions listed as per sub-paragraph (a) above.

### 4.4 **Planning to obtain the required goods, works or services**

- 4.4.1 Together with the end-user, the SCM Unit should apply strategic sourcing principles to determine the optimum manner in which to acquire the required goods, works or services. This entails, among others, the following:
- (a) Conducting an industry and market analysis of the goods, works or services to be obtained. This must include the determination of a reasonable price for the required goods, works or services;
  - (b) Confirmation that sufficient funds have been allocated for the procurement of the required goods, works or services. If this is not so, the end-user must be informed accordingly. The procurement process should not proceed if funds are not available. Documentary proof must be obtained to substantiate availability of budgetary provisions;
  - (c) Considering the optimum method to satisfy the need, for example whether the procurement should be by means of price quotation, advertised competitive bids; limited bids; procuring the goods, works or services from other institutions , or on transversal term contracts nor *ad hoc* contracts;
  - (d) The frequency of the requirement(s) must be established in order to determine whether it would cost-effective to arrange a specific term contract for the goods, works or service;

- (e) Establishing whether it would be cost-effective to have the goods available as a store item within the institution. Should this be the case, the minimum and maximum storage levels of these items should be determined and managed; and
- (f) Establishing the lead time required by the potential suppliers to deliver the required goods, works or services after receipt of an official order.

#### 4.5 **Compilation of Procurement Plan**

4.5.1 Completion of the above-mentioned activities should result in the compilation of the procurement plan to be implemented by the SCM Unit. This plan should indicate:

- (a) a description of the goods, works or service;
- (b) the end-user;
- (c) the contact person representing the end-user;
- (d) estimated value;
- (e) date of submission of specifications;
- (f) date of advertisement of the bid;
- (g) closing date of the advertised bid;
- (h) estimated evaluation time;
- (i) envisaged date of the Bid Adjudication Committee meeting;
- (j) envisaged date of Accounting Officer approval (*for all procurement above R 10 million*); and
- (k) envisaged date of issuance of an official order, etc.

4.5.2 An example explaining the procedures to be followed to establish the timeframes when dealing with advertised competitive bids is contained herein.

#### 4.6 **Compilation of a bid register**

4.6.1 The SCM Unit should compile a bid register that will manage the procurement process for each requirement. This should be used as a tool to monitor and evaluate the procurement process. For all bids in excess of R 200 000, relevant information must be captured in the *template* reflecting the *schedule of the procurement plan* in respect of advertised competitive bids.

#### 4.7 **Governance, Risk and Compliance Management**

4.7.1 The SCM Unit should on a continuous basis monitor and assess the validity and accuracy of, and compliance to the procurement plan.



## **EXAMPLE OF THE PROCEDURES TO BE FOLLOWED TO ESTABLISH TIMEFRAMES WHEN DEALING WITH ADVERTISED COMPETITIVE BIDS**

### **Requirement**

The Institution is a municipality, mandated, amongst others, to render water services to residents located in the Eastern Cape Province.

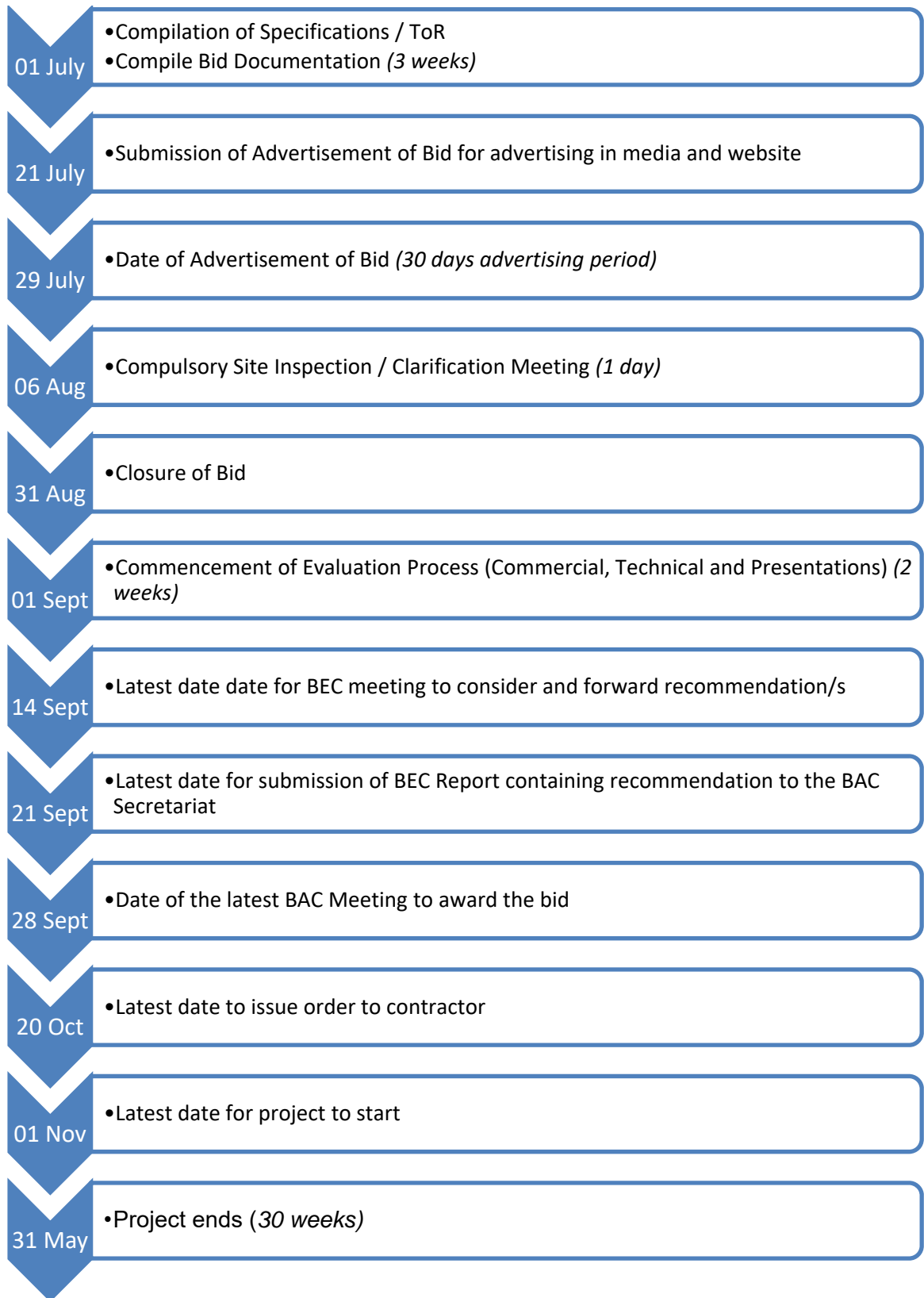
The scope of work involves new mixing channels, modifications to the settling tank, new filters, building work and the construction of two sludge ponds. Due to the specialized nature of this infrastructure project, relevant experience and expertise is required in the following areas:

- Construction of Water Treatment Plants
- Re-enforced concrete structures
- Filter bed construction

### **Background information**

- This project is funded by the Institution's own fund amounting to R69 million.
- The project is estimated to be completed within *30 weeks* after the start date.
- The Bid Adjudication Committee (BAC) meetings are scheduled for the third Thursday of every month.
- The Bid Evaluation Committee (BEC) meetings are scheduled for every first Thursday of the month.
- Reports containing recommendations for awards must be submitted to the secretariat of the BAC six (6) working days prior to the specific BAC meeting.
- The closure date for the submission of bids may not be less than 30 days.
- The project requires a compulsory 1-day site meeting / briefing session.

The following is *Sequence of Activities by Accounting Officers of Municipalities and Municipal Entities, reflecting SCM Regulation 10 issued May 2005 in terms of the MFMA, 2004*



The results regarding the envisaged dates of advertisement of each bid should thereafter be captured on the Schedule of Procurement Plan in respect of advertised competitive bids (Annexure B) as stipulated in the Circular.

## PROCUREMENT PLAN

<b>Project Name:</b>	
<b>Prepared by:</b>	
<b>Bid Number:</b>	
<b>Date (MM/DD/YYYY):</b>	

**Project Initiation Phase** – This portion of the Procurement Plan document is used to provide the Bid Specification Committee with general information about the need to purchase of goods and services. No approval signatures are required.

<b>1. Procurement Statement</b>
<i>Describe, in general terms, what products, works or services are being considered for procurement:</i>

<b>2. Estimated Cost</b>
<i>Provide an estimated total cost of all procurements in this project. Example: R1,567,000</i>

<b>3. Supplier / Service Provider Selection</b>
<i>Describe what approach the project team will take to select a product or vendor (e.g. RFI, RFP).</i>

**Project Planning Phase** – This portion of the Procurement Plan document provides detailed information about how vendors, products and services will be chosen, what kind(s) of contract(s) will be used, how vendors will be managed and who will be involved at each stage of the process. This document should be approved by appropriate individuals before the actual procurement process begins.

<b>1. Procurement Definition</b>
<i>Describe, in specific terms, what items will be procured and under what conditions:</i>

<b>2. Selection Process &amp; Criteria</b>
<i>Describe the selection process. List selection criteria. Describe any analytical selection tool that you will use.</i>

<b>3. Project Procurement Team</b>				
<i>List all stakeholders who are involved in the Procurement Process, along with contact information and a description of their Procurement Role. Enter an [ X ] next to each project team member who is authorized to enter into contract agreements or purchase for the Team (insert rows as needed):</i>				
<table border="0" style="width: 100%;"> <tr> <td style="width: 5%; text-align: center;">X</td> <td style="width: 30%;">Name:</td> <td style="width: 30%;">Phone / email:</td> <td style="width: 35%;">Procurement Role:</td> </tr> </table>	X	Name:	Phone / email:	Procurement Role:
X	Name:	Phone / email:	Procurement Role:	
<table border="0" style="width: 100%;"> <tr> <td style="width: 5%; text-align: center;">[ ]</td> <td style="width: 30%;"></td> <td style="width: 30%;"></td> <td style="width: 35%;"></td> </tr> </table>	[ ]			
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<b>4. Contract Type</b>
<i>Document which types of contract(s) will be used and the actions required to initiate the contract.</i>

<b>5. Conditions of Contract</b>
<i>Provide the standards for documentation that will be used for each contract (eg. General Conditions of Contract, Special Conditions of Contract)</i>

<b>6. Service Provider / Supplier Management</b>
<i>Describe what steps the project team will take to ensure that the vendor provides all of the products and/or services (and only the products and/or services) that were agreed upon, and that appropriate levels of quality are maintained.</i>

<b>7. Links to related planning documents</b>
<i>Provide hyperlinks to related documents, such as the Change Request Management Plan, Vendor Payment Plan, etc., or attach as addenda.</i>

<b>8. Project Procurement Plan / Signatures</b>			
<b>Project Name:</b>			
<b>Project Manager:</b>			
<b>Bid Number</b>			
<i>I have reviewed the information contained in this Project Procurement Plan and agree:</i>			
Name	Role	Signature	Date (MM/DD/Y YYY)

*The signatures above indicate an understanding of the purpose and content of this document by those signing it. By signing this document, they agree to this as the formal Project Procurement Plan.*

**SCHEDULE OF PROCUREMENT PLANS IN RESPECT OF ADVERTISED COMPETITIVE BIDS  
(GOODS, INFRASTRUCTURE PROJECTS OR SERVICES IN EXCESS OF R200 000 INCLUDING ALL APPLICABLE TAXES)  
FOR THE ..... FINANCIAL YEAR**

Name of Municipality or Municipal Entity	
Name of Accounting Officer / Delegated Official	
Signature of Accounting Officer / Delegated Official	
Telephone Number and email address	

<b>Bid Number</b>	<b>Project Name &amp; Brief Description</b>	<b>Estimated value (including all applicable taxes)</b>	<b>Envisaged date of advertisement in the website, newspapers or other media</b>	<b>Envisaged closing date of bid</b>	<b>Envisaged date of award</b>	<b>Responsible department within municipality</b>



**NATIONAL TREASURY**  
**MFMA Circular No. 62**  
**Municipal Finance Management Act No. 56 of 2003**

## **Supply Chain Management: Enhancing compliance and accountability**

The Municipal Finance Management Act (No. 56 of 2003), (MFMA) requires that the resources of municipalities and municipal entities are used effectively, efficiently and economically.

This circular aims to enhance compliance, improve accountability and transparency, update measures required to combat fraud, promotes transparency in supply chain management practices in municipalities and municipal entities as required by regulation 2.1(b) of the Municipal Supply Chain Management Regulations.

A number of circulars have been issued since the MFMA came into effect to explain supply chain management reforms and assist in its implementation in municipalities and municipal entities. This circular must be read in conjunction with previous circulars on supply chain management.

Supply Chain Management compliance and implementation weaknesses have been highlighted in recent audit findings. These practices at municipalities and municipal entities are impacting negatively on sound financial management, weakening the spirit and ethos of the MFMA and affecting service delivery. These include the circumvention of official competitive bidding processes, among others.

It is therefore imperative that accounting officers of municipalities and municipal entities establish mechanisms to urgently identify the risks and weaknesses facing their respective supply chain management environments with the aim of introducing improved mitigation strategies and internal processes to address these weaknesses

It must be emphasized that the relevant treasuries are committed to assisting municipalities and municipal entities to improve the status of their financial management. Government has also elevated the combating and prevention of corruption as an output in Outcome 12. The Minister of Finance has therefore established a Multi-Agency Working Group to coordinate and investigate corruption related to supply chain management practices across government.

The measures below are therefore intended to provide municipalities and municipal entities with guidelines to improve accountability and transparency and to ensure value for money in the procurement of goods, services and/or infrastructure projects.

### **Guideline on the implementation of Demand Management and the submission of Procurement Plans in respect of advertised competitive bids**

The “Guidelines on the Implementation of Demand Management” (Annexure A) aims to provide accounting officers of municipalities and municipal entities with a general understanding of the procedures to be followed when implementing demand management and the compilation of procurement plans.

The objective of this guide is to assist municipalities and municipal entities 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.

Accounting officers of municipalities may, upon request, make available to the relevant treasury 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.

Accounting officers of municipal entities must submit the procurement plans to the accounting officer of their parent municipality.

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.

The relevant information should preferably be furnished in the format contained in the Procurement Plan Template enclosed as Annexure B. 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.

**Publication of names of bidders in respect of advertised competitive bids, above the threshold value of R200 000 (all applicable taxes included)**

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. Copies should be made available at municipal offices and libraries. The municipality/municipal entity should endeavor 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. See below regarding information to be posted on the municipal website, after awarding of bids.

**Verifying the names and identity numbers of directors / trustees / shareholders of companies, enterprises, closed corporations and trusts against the relevant municipal staff structure**



The Municipal Bidding Document (MBD 4) "*Declaration of Interest*" attached as Annexure C has been augmented to require 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. 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.

Accounting officers of municipalities and municipal entities are required to utilize the attached revised MBD 4 form 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.

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.

Municipalities and municipal entities may not have access to all HR databases across government and entities to verify upfront whether a prospective bidder is in the service of the state as defined in the SCM Regulations. It is therefore understood that municipalities and municipal entities will not be able to verify this information but will rely on the content and disclosures made by bidders.

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.

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

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.

The measures contained in MFMA Circular 43 relating to the restriction of suppliers in terms of the Preferential Procurement Regulations are still relevant. Municipalities and municipal entities are therefore encouraged to; once again, familiarize themselves with the content of this circular.

The revised MBD 4 attached to this Circular replaces the MBD 4 issued in terms of MFMA Circular 25 dated 30 October 2005.

In addition to the above, accounting officers of municipalities and municipal entities must ensure that:

- (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.

#### **Definition of “Principal Shareholder”**

Regulation 44(b) of the Municipal Supply Chain Management Regulations prohibits a municipality or municipal entity from making any awards, 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. Although the regulation is clear, an elaboration of the terms ‘principal shareholder or stakeholder’ is provided to assist interpretation and application.

Whilst many have initially pointed to 50% + 1% as explaining who is a principal shareholder, there are other permutations that must be considered when determining the definition. Any interpretation of regulation 44 without due consideration of the problem the regulation seeks to remedy will always be defective, as it risks being incomplete. One has to consider a scenario where the shareholders have equal shareholding in the entity, say two shareholders holding 50% each or 4 shareholders holding 25% each. Does this imply non-existence of a principal shareholder?

Certainly not, because careful reading of regulation 44(b) refers to any principal shareholder, which implies that there could be more than one principal shareholder. This would be the case where the shareholding is equal irrespective of the number of shareholders. It could also happen that one shareholder has the largest holding, though not more than 50%, in comparison to other shareholders either directly or indirectly (e.g. through another company).

Consideration should also be given to the issue of influence, 'control' and voting rights at meetings, especially decision making at annual, general or board meetings. This is particularly important in cases where there is equal shareholding but one of the members or shareholders have been nominated or appointed as chairperson and the articles of association give such person the power to make final decisions where there is no agreement amongst members or even to provide the decisive vote where there is a tie. In this instance, this person can be regarded as the principal shareholder for purposes of regulation 44(b) of the Municipal Supply Chain Management Regulations.

It is evident from the above that due consideration for the problem which the regulation seek to remedy is given. To this end one needs to be mindful of the implied assumption in the regulation and that is that any person in the employ of the state could, by that reason, be conflicted in the procurement process. This is exactly what section 112(1)(j) of the MFMA is trying to manage by stating that the supply chain management policy of a municipality must address the compulsory disclosure of any conflicts of interests' prospective contractors may have in specific tenders and the exclusion of such prospective contractors from those tenders or bids.

The remedy is therefore to manage that interest which is likely to unduly influence the decision-making process during the procurement of goods or services. It should therefore follow that any procurement policy that does not give effect to the potential conflict of interest, as denoted by shareholding, is thus defective. It is therefore important that a case by case analysis be undertaken as it would provide the most appropriate response to the meaning of principal shareholder.

### **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.

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.

Requirements may not be deliberately split into parts or items of lesser value merely to avoid the information being submitted.

**Verification from the Chief Financial Officer prior to the award of contracts above the value of R10 million**

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.

**Confirmation of bidding process for bids in excess of R10 million (all applicable taxes included)**

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.

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.

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.

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.

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.

### **Legal sound written contracts or service level agreements**

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.

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.

### **Publication of awards in respect of advertised competitive bids (above the threshold value of R200 000)**

Section 75 (1) (g) of the MFMA prescribes that the accounting officer of a municipality must place on the website all supply chain management contracts above a prescribed value. Municipal Supply Chain Management Regulation 23 (c) requires of accounting officers of municipalities and municipal entities to publish their bid results on the website. This relates to bids above R200 000 (including all applicable taxes).

The following information on the successful bids must be made available on the municipal or municipal entity's website:

- (a) Contract numbers and description of goods, services or infrastructure projects;
- (b) Names of the successful bidder(s) and the B-BBEE level of contribution claimed;
- (c) The contract price(s), and;
- (d) Brand names and dates for completion of contracts.

Records of such publication must be retained for audit purposes.

### **Placing of orders for payment in another financial year**

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.

The prohibition above does not apply to multi-year contracts and projects adopted over multi-years in terms of MFMA sections 19 and 33.

### **Management of expansion or variation of orders against the original contract**

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.

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.

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.

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.

### **Payment within 30 days**

The contents of MFMA Circular 49 issued in 2009 with regards to the payment of suppliers within 30 days are confirmed. Municipalities and municipal entities are encouraged to familiarize themselves with the content of that Circular.

### **Transitional arrangements and auditing of this Circular**

The Circular is also applicable to those bids that are in the process of being finalized.

For example, if a bid was advertised prior to the issuance of this Circular and has not yet been awarded, the contents of this Circular will apply.

### **National Treasury**

*Phone*

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*Website*

***Private Bag X115, Pretoria  
0001***

***012 315 5850***

***012 315 5230***

***mfma@treasury.gov.za***

***www.treasury.gov.za/mfma***

**MBD 4  
DECLARATION OF INTEREST**

- 1. No bid will be accepted from persons in the service of the state<sup>1</sup>.
- 2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.
- 3 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

- 3.1 Full Name of bidder or his or her representative  
.....
- 3.2 Identity Number .....  
.....
- 3.3 Position occupied in the Company (director, trustee, hareholder<sup>2</sup>)  
.....  
.....
- 3.4 Company Registration Number .....
- 3.5 Tax Reference Number .....
- 3.6 VAT Registration Number .....
- 3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.
- 3.8 Are you presently in the service of the state? **YES / NO**
- 3.8.1 If yes, furnish particulars .....
- .....

<sup>1</sup>MSCM Regulations: "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 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.

<sup>2</sup> Shareholder” means 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.

3.9 Have you been in the service of the state for the past twelve months? ..... **YES / NO**

3.9.1 If yes, furnish particulars .....  
.....

3.10 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid? ..... **YES / NO**

3.10.1 If yes, furnish particulars .....  
.....

3.11.1 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid ..... **YES / NO**

3.11.1 If yes, furnish particulars .....  
.....

3.12.1 Are any of the company’s directors, trustees, managers, principle shareholders or stakeholders in service of the state? ..... **YES / NO**

3.12.1 If yes, furnish particulars .....  
.....

3.13.1 Are any spouse, child or parent of the company’s directors, trustees, managers, principle shareholders or stakeholders in service of the state? ..... **YES / NO**

3.13.1 If yes, furnish particulars .....  
.....

3.14.1 do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract? ..... **YES / NO**

3.14.1 If yes, furnish particulars .....  
.....



4. Full details of directors / trustees / members / shareholders.

FULL NAME	IDENTITY NUMBER	STATE EMPLOYEE NUMBER

.....  
**SIGNATURE**

.....  
**DATE**

.....  
**CAPACITY**

.....  
**NAME OF BIDDER**

## **PREFERENTIAL PROCUREMENT REGULATIONS, 2017**

**GOVERNMENT GAZETTE 40553**

**20 JANUARY 2017**

### **NATIONAL TREASURY**

**NO. R. 32**

## **PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000: PREFERENTIAL PROCUREMENT REGULATIONS, 2017**

The Minister of Finance has, in terms of section 5 of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000), made the regulations set out in the Schedule.

### **SCHEDULE**

#### **Preferential Procurement Regulations, 2017**

##### **Contents**

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2. Application
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4. Prequalification criteria for preferential procurement
5. Tenders to be evaluated on functionality
6. 80/20 preference point system for acquisition of goods or services for Rand value equal to or above R30 000 and up to R50 million
7. 90/10 preference point system for acquisition of goods or services with Rand value above R50 million
8. Local production and content
9. Subcontracting as condition of tender
10. Criteria for breaking deadlock in scoring
11. Award of contracts to tenderers not scoring highest points
12. Subcontracting after award of tender
13. Cancellation of tender
14. Remedies
15. Circulars and guidelines
16. Repeal of Regulations and saving
17. Short title and commencement



## Definitions

1. In these Regulations, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act must bear the meaning so assigned –
  - “**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 of an entity in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
  - “**black designated groups**” has the meaning assigned to it in the codes of good practice issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
  - “**black people**” has the meaning assigned to it in section 1 of the Broad-Based Black Economic Empowerment Act;
  - “**Broad-Based Black Economic Empowerment Act**” means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
  - “**co-operative**” means a co-operative registered in terms of section 7 of the Cooperatives Act, 2005 (Act No. 14 of 2005);
  - “**designated group**” means -
    - (a) black designated groups;
    - (b) black people;
    - (c) women;
    - (d) people with disabilities; or
    - (e) small enterprises, as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);
  - “**designated sector**” means a sector, sub-sector or industry or product designated in terms of regulation 8(1)(a);
  - “**EME**” means an exempted micro enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
  - “**functionality**” means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents;
  - “**military veteran**” has the meaning assigned to it in section 1 of the Military Veterans Act, 2011 (Act No. 18 of 2011);
  - “**National Treasury**” has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
  - “**people with disabilities**” has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998);
  - “**price**” includes all applicable taxes less all unconditional discounts;
  - “**proof of B-BBEE status level of contributor**” means -
    - (a) the B-BBEE status level certificate issued by an authorized body or person;
    - (b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
    - (c) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act;

**“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

**“Rand value”** means the total estimated value of a contract in Rand, calculated at the time of the tender invitation;

**“rural area”** means -

- (a) a sparsely populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or
- (b) an area including a large settlement which depends on migratory labour and remittances and government social grants for survival, and may have a traditional land tenure system;

**“stipulated minimum threshold”** means the minimum threshold stipulated in terms of regulation 8(1)(b);

**“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);

**“township”** means an urban living area that any time from the late 19th century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994;

**“treasury”** has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and

**“youth”** has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).

## Application

2. These Regulations apply to organs of state as envisaged in the definition of organ of state in section 1 of the Act<sup>1</sup>.

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

3. 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

<sup>1</sup> The definition of “organ of state” in section 1 of the Act in paragraph (a) to (e) includes-

- a national or provincial department as defined in the Public Finance Management Act, 1999;
- a municipality as contemplated in the Constitution;
- a constitutional institution as defined in the Public Finance Management Act;
- Parliament;
- a provincial legislature.

Paragraph (f) of the definition of organ of state in section 1 of the Act includes any other institution or category of institutions included in the definition of “organ of state” in section 239 of the Constitution and recognised by the Minister by notice in the *Government Gazette* as an institution or category of institutions to which the Act applies. Government Notice R. 501 of 8 June 2011 recognises, with effect from 7 December 2011, all public entities listed in Schedules 2 and 3 to the Public Finance Management Act, 1999, as institutions to which the Act applies. Note should be taken of notices issued from time to time in terms of paragraph (f) of this definition. The application of these Regulations is also subject to applicable exemptions approved in terms of section 3 of the Act.

- (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 criteria 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:

$$Ps = 80 \left[ 1 - \frac{Pt - Pmin}{Pmin} \right]$$

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>B-BBEE Status Level of Contributor</b>	<b>Number of Points</b>
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 sub regulation (2) must be added to the points scored for price under sub regulation (1).
- (7) The points scored must be rounded off to the nearest two decimal places.
- (8) Subject to sub regulation (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 -

$$P_s = 90 \left[ 1 - \frac{P_t - P_{min}}{P_{min}} \right]$$

$P_s$  = Points scored for price of tender under consideration;

$P_t$  = Price of tender under consideration; and

$P_{min}$  = Price of lowest acceptable tender.

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



<b>B-BBEE Status Level of Contributor</b>	<b>Number of Points</b>
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 sub regulation (2) must be added to the points scored for price under sub regulation (1).
- (7) The points scored must be rounded off to the nearest two decimal places.
- (8) Subject to sub regulation (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 sub regulation (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; or
  - (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 sub regulation (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 sub regulation (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 sub regulation (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 sub regulation (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.

