



NELSON MANDELA BAY METROPOLIAN MUNICIPALITY
SUPPLY CHAIN MANAGEMENT POLICY
VERSION 4

Date of adoption:

Council resolves in terms of section 111 of the Local Government Municipal Finance Management Act 56 of 2003, to adopt the under-mentioned revised policy as the Supply Chain Management Policy of the Municipality from 19 September 2013.

Policy Custodian:

Budget and Treasury Directorate: Supply Chain Management Unit

TABLE OF CONTENTS

	PAGE
1. Definitions	5
CHAPTER 1	
<u>IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY</u>	
2. Supply chain management policy	10
3. Amendment of supply chain management policy	11
4. Delegation of supply chain management powers and duties	11
5. Sub-delegations	12
6. Oversight role of council	13
7. Supply chain management unit	13
8. Training of supply chain management officials	13
CHAPTER 2	
<u>SUPPLY CHAIN MANAGEMENT SYSTEM</u>	
9. Format of supply chain management system	14
Part 1: Demand management	
10. System of demand management	14
Part 2: Acquisition management	
11. System of acquisition management	15
12. Range of procurement processes	16
13. Special categories of bidders and suppliers	17
13.1 Exempted micro-enterprises	17
13.2 Qualifying small enterprises	17
13.3 Start-up enterprises	17
14. General preconditions for consideration of written quotations or bids	18
15. Lists of accredited prospective providers	19
16. Petty cash purchases	20
17. Written or price quotations	20
18. Formal written price quotations	21
19. Procedures for procuring goods or services through written quotations and formal written price quotations	21
20. Competitive bidding process	23
21. Process for competitive bidding	23
22. Bid documentation for competitive bids	23
23. Public invitation for competitive bids	24
24. Procedure for handling, opening and recording of bids	25
25. Negotiations with preferred bidders	26
26. Two-stage bidding process	26
27. Committee system for competitive bids	26
28. Bid specification committees	27
29. Specifications	27
29.1 General requirements	27
29.2 Functionality	28
29.3 80/20 Preference Points System	29
29.4 90/10 Preference Points System	30
29.5 Local production	31

29.6	B-BBEE status level certificates and scorecards	32
29.7	Additional Conditions	33
	29.7.1 Sub-contracting	34
	29.7.2 Specific goals	34
29.8	Miscellaneous Special Conditions of Contract	34
	29.8.1 General	34
	29.8.2 Cancelling of tender	35
	29.8.3 Declarations	35
	29.8.4 Remedies	35
30.	Procurement from tertiary institutions	36
31.	Re-invitation of tenders	36
32.	Bid evaluation committees	36
33.	Bid adjudication committees	40
34.	Procurement of banking services	41
35.	Procurement of ICT related goods or services	41
36.	Procurement of goods and services under contracts secured by other organs of state	42
37.	Procurement of goods necessitating special safety arrangements	42
38.	Appointment of consultants	42
39.	Deviation from, and ratification of minor breaches of, procurement processes	43
40.	Unsolicited bids	44
41.	Combating of abuse of supply chain management system	45

Part 3: Logistics, Disposal, Risk and Performance Management

42.	Logistics management	46
43.	Disposal management	47
44.	Risk management	48
45.	Performance management	48

Part 4: Other matters

46.	Prohibition on awards to <i>persons</i> whose tax matters are not in order	48
47.	Prohibition on awards to <i>persons</i> in the service of the state	49
48.	Awards to close family members of <i>persons</i> In the service of the state	49
49.	Ethical standards	49
50.	Inducements, rewards, gifts and favours to municipalities, officials and other role players	50
51.	Sponsorships	50
52.	Objections and complaints	51
53.	Resolution of disputes, objections, complaints and queries	51
54.	Contracts providing for compensation based on turnover	52
55.	Contract management – issue of variation orders	52
56.	Application of policy to municipal entities	52
57.	Fronting	53
58.	Commencement	53

Annexures:

“A”.	Code of Conduct for Supply Chain Management Practitioners and other role players.	54
-------------	---	----

1. Definitions

In this policy, the singular includes the plural and vice versa, any one gender includes both genders and, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the *Municipal Finance Management Act* has the same meaning as in this Act, and -

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

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

“Accredited prospective provider of goods and services” is a *person* or entity listed on the NMBM Supplier Database who/which has met and continues to meet the listing of criteria specified by the *Accounting Officer* pursuant to clause 15(1)(c);

“NMBM Supplier Database” means the list of *accredited prospective providers of goods and services* kept by the *Accounting Officer* pursuant to clause 15(1)(a) of this policy, either on his behalf by a service provider or directly;

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

“B-BBEE status level of contributor” means the *B-BBEE* status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment;

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

“Broad-Based Black Economic Empowerment Act” means the Broad-Based Black Economic Empowerment Act 53 of 2003;

“Chief Financial Officer” means the official of the *Municipality* designated as such in terms of section 80(2)(a) of the *Municipal Finance Management Act*;

“CIDB regulations” means any regulations issued in terms of the Construction Industry Development Board Act 38 of 2000;

“Codes of Good Practice” means the Codes of Good Practice on Black Economic Empowerment issued in terms of section 9 (1) of the *Broad-Based Black Economic Empowerment Act* and contained in General Notice 12 of 9 February 2007;

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

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

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

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

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

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

"Contract" means the agreement that results from the acceptance of a *tender* by the *Municipality* in accordance with this policy;

“Council” means the council of Nelson Mandela Bay Metropolitan Municipality;

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

“Designated Official” means the official of the *Municipality* to whom the *Accounting Officer* or the *Chief Financial Officer*, as the case may be, have, in accordance with sections 79 and 82 of the Municipal Finance Management Act 56 of 2003 delegated powers, functions and duties in connection with the application and implementation of this policy;

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

“emergency” includes the existence of one or more of the following:

- a) the possibility of human injury or death or suffering and death of livestock and animals;
- b) the possibility of damage to property;
- c) the prevalence of human suffering or deprivation of rights;
- d) the interruption of essential or support services which are critical to the effective functioning of the *Municipality*;
- e) the possibility of serious damage to the natural environment;
- f) the possibility that the security of the state could be compromised; and
- g) the possibility that failure to take necessary action may result in the *Municipality* not being able to render an essential community service the prevailing situation or imminent danger should be of such a nature and scale that it could not readily be alleviated by interim measures, in order to allow time for the formal procurement process

"Executive Mayor" means the councillor elected by the *Council* as Mayor in terms of Section 48 of the Local Government: Municipal Structures Act 117 of 1998 read with Section

58 of the *Municipal Finance Management Act*;

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

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

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

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

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

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

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

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

(a) A member of -

- (i) any municipal council;
- (ii) any provincial legislature; or
- (iii) the National Assembly or the National Council of Provinces;

(b) A member of the board of directors of any municipal entity;

(c) An official of any municipality or municipal entity;

(d) An employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Act and the Public Finance Management Act, 1 of 1999;

(e) A member of the accounting authority of any national or provincial public entity; or

(f) An employee of Parliament or a provincial legislature;

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

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

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

“List of accredited prospective providers” means the list of accredited prospective providers which the *Municipality* must keep in terms of paragraph 15 of this policy;

“Municipality” means the Nelson Mandela Bay Metropolitan Municipality, a metropolitan municipality established in terms of section 12 of the Local Government: Municipal Structures Act 117 of 1998 and includes any employee entitled to or duly authorized to perform any function or duty in terms of this policy and/or is responsible for the implementation of this policy or any part thereof;

“Municipal Finance Management Act” means the Local Government: Municipal Finance Management Act 56 of 2003 and, unless otherwise stated in this policy, any reference to “the Act” shall mean a reference to this Act;

“Municipal Systems Act” means the Local Government: Municipal Systems Act 32 of 2000 and includes the regulations under this Act;

“Municipal Supply Chain Management Regulations” means the Municipal Supply Chain Management Regulations, 2005, promulgated in Government Notice R309 dated 1 April 2005

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

“Non-responsive” in terms of a bid means a bid that does not comply in all material aspects with the requirements set out in or contained in an invitation to bid including the applicable specification;

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

- (a) the Preferential Procurement Policy Framework Act 5 of 2000;
- (b) the Broad-Based Black Economic Empowerment Act 53 of 2003;
- (c) The Construction Industry Development Board Act 38 of 2000;
- (d) The Local Government: Municipal Systems Act 32 of 2000 (Municipal Systems Act);

"Person" includes a juristic person;

“Preferential Procurement Regulations” means the Preferential Procurement Regulations, 2011 contained in Government Notice R 502 of 8 June 2011 promulgated in Government Gazette No. 34350 of this date;

"Rand value" means the total estimated value of a *contract* in South African currency calculated at the time of *tender* invitations, and includes *all applicable taxes* and excise duties;

“SANAS” means the South African National Accreditation System;

"Small enterprise" means a separate and distinct business entity, together with its branches or subsidiaries, if any, including cooperative enterprises, managed by one owner or more predominantly carried on in any sector or sub-sector of the economy mentioned in column 1 of the Schedule to the National Small Business Act 102 of 1996 which is contained in Annexure B to this policy and classified as a micro-, a very small, a small or a medium enterprise by satisfying the criteria mentioned in columns 3, 4 and 5 of the said schedule;

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

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

"Tender" means a written offer in a prescribed or stipulated form in response to an invitation by the *Municipality* for the provision of services, works or goods, through price quotations, advertised competitive tendering processes or proposals and **"bid"** has a corresponding meaning;

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

"Trust" means the arrangement through which the property of one *person* is made over or bequeathed to a *trustee* to administer such property for the benefit of another *person*;

"Trustee" means any *person*, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another *person*;

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

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

"Urgency" the need to do something quickly because it is very important;

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

"Written quotations" means quotations referred to in paragraph 12 (1) (c) of this policy.

CHAPTER 1
IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

2. Supply chain management policy

- (1) All officials and other role players in the supply chain management system of the *Municipality* must implement this policy in a way that –
- (a) gives effect to Section 217 of the Constitution and Part 1 of Chapter 11 and other applicable provisions of the Act;
 - (b) is fair, equitable, transparent, competitive and cost effective;
 - (c) complies with *the Regulations* and any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
 - (d) is consistent with *other applicable legislation*;
 - (e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
 - (f) is consistent with national economic policy concerning the promotion of investments and the conduct of business with the public sector.
- (2) This policy applies when the *Municipality* -
- (a) procures goods or services;
 - (b) disposes of goods no longer needed;
 - (c) selects *contractors* to provide assistance with the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
 - (d) selects external mechanisms referred to in section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.
- (3) This policy, except where provided otherwise, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including, but not limited to -
- (a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
 - (b) electricity from Eskom or another public entity, another municipality or a municipal entity.
- (4) Notwithstanding anything to the contrary in this policy, the *Municipality* shall not award a *contract* to a *contractor* in respect of the undertaking, carrying out or completion of any *construction works* or a portion thereof in terms of a competitive *tender* or quotation process provided for in this policy unless such *contractor* is registered with the Construction Industry Development Board established by section 2 of the Construction Industry Development Board Act 32 of 2000.

3. Amendment and adoption of the supply chain management policy

- (1) The *Accounting Officer* must at least annually review the implementation of this policy and, when necessary, submit proposals for the amendment thereof to the *Council* through the *Executive Mayor* acting in conjunction with the mayoral committee with a view to its adoption by the *Council*.
- (2) If the *Accounting Officer* submits proposed amendments to this policy to the *Council*, he must ensure that same comply with *the Regulations* and Treasury guideline standards determining standards for municipal supply chain management policies.
- (3) The *Accounting Officer* must report any deviation from *the Regulations* and *Treasury guideline* standards determining standards for municipal supply chain management policies to the National and Eastern Cape Provincial Treasuries.
- (4) When amending this policy, the need for uniformity in supply chain practices, procedures and forms between all spheres of organs of state particularly to promote accessibility of supply chain management systems for small businesses, must be taken into account.

4. Delegation of supply chain management powers and duties

- (1) The *Council* hereby delegates all powers and duties to the *Accounting Officer* which are necessary to enable him -
 - (a) to discharge the supply chain management responsibilities conferred on Accounting Officers in terms of -
 - (i) chapters 8 or 10 of the Act; and
 - (ii) this policy; and
 - (b) to maximize administrative and operational efficiency in the implementation of this policy; and
 - (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this policy; and
 - (d) to comply with his responsibilities in terms of section 115 and other applicable provisions of the Act.
 - (2) Sections 79 and 106 of the Act apply to the sub-delegation of powers and duties delegated to an Accounting Officer in terms of subparagraph (1).
 - (3) The *Accounting Officer* may not sub-delegate any supply chain management powers or duties to a *person* who is not an official of the *Municipality* or to a committee which is not exclusively composed of officials of the *Municipality*.
 - (4) This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a *competitive bidding process* otherwise than through the committee system provided for in paragraph 27 of this policy.
-

5. Sub-delegations

- (1) The *Accounting Officer* may, in terms of section 79 of the Act, sub-delegate any supply chain management powers and duties, including those bestowed upon him in terms of legislation or delegated to him in terms of this policy or by resolution of the *Council*, but any such sub-delegation must be consistent with subparagraph (2) and paragraph 4 of this policy.
- (2) The power to make a final award -
 - (a) above R10 million (VAT included) may not be sub-delegated by the *Accounting Officer*;
 - (b) above R2 million (VAT included), but not exceeding R10 million (VAT included), may be sub-delegated but only to -
 - (i) the *Chief Financial Officer*;
 - (ii) a senior manager; or
 - (iii) a bid adjudication committee of which the *Chief Financial Officer* or a senior manager is a member;
 - (c) not exceeding R2 million (VAT included) may be sub-delegated but only to -
 - (i) the *Chief Financial Officer*;
 - (ii) a senior manager; or
 - (iii) a manager directly accountable to the *Chief Financial Officer* or a senior manager; or
 - (iv) a bid adjudication committee.
- (3) An official or bid adjudication committee to whom or which the power to make final awards has been sub-delegated in accordance with subparagraph (2) must, within five days of the end of each month, submit to the official referred to in subparagraph (4) a written report containing particulars of each final award made by such official or committee during that month, including -
 - (i) the amount of the award;
 - (ii) the name of the *person* to whom the award was made; and
 - (iii) the reason why the award was made to that *person*.
- (4) A written report referred to in subparagraph (3) must be submitted-
 - (a) to the *Accounting Officer*, in the case of an award by -
 - (i) the *Chief Financial Officer*;
 - (ii) a senior manager; or
 - (iii) a bid adjudication committee of which the *Chief Financial Officer* or a senior manager is a member;
 - (b) to the *Chief Financial Officer* or the senior manager responsible for the relevant bid, in the case of an award by -
 - (i) a manager referred to in subparagraph (2)(c)(iii); or
 - (ii) a bid adjudication committee of which the *Chief Financial Officer* or a senior manager is not a member.

- (5) Subparagraphs (3) and (4) do not apply to procurements out of petty cash.
- (6) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub-delegated, to make a final award in a *competitive bidding process* otherwise than through the committee system provided for in paragraph 27 of this policy.
- (7) No supply chain management decision-making powers may be delegated to a *person* who is not an employee of the *Municipality*.

6. Oversight role of the Council

- (1) A councillor cannot be a member of a bid committee or any other committee evaluating or approving quotations or bids nor attend any meeting of such committees as an observer.
- (2) The *Council* must maintain oversight over the implementation of this policy to ensure that the *Accounting Officer* implements all supply chain management activities in accordance therewith.
- (3) For the purposes of such oversight, the *Accounting Officer* must -
 - (a) within 30 days of the end of each financial year, submit a report on the implementation of this policy to the *Council* through its *Executive Mayor*;
 - (b) whenever there are serious and material problems in the implementation of this policy, immediately submit a report thereon to the *Council* through its *Executive Mayor*.
- (4) The *Accounting Officer* must, within 10 days of the end of each quarter, submit a report on the implementation of this policy to the *Executive Mayor*.
- (5) The aforesaid reports must be made public in accordance with section 21A of the *Municipal Systems Act*.

7. Supply chain management unit

- (1) A supply chain management unit is established to implement this policy.
- (2) The supply chain management unit must, where possible operate under the direct supervision of the *Chief Financial Officer* or an official to whom this duty is hereby delegated by the *Accounting Officer* in terms of section 82 of the Act.

8. Training of supply chain management officials

The training of officials involved in implementing this policy should be in accordance with any *Treasury guidelines* on supply chain management training and applicable prescribed competency level requirements.

CHAPTER 2
SUPPLY CHAIN MANAGEMENT SYSTEM

9. Format of supply chain management system

This policy provides systems for -

- (i) Demand management;
- (ii) Acquisition management;
- (iii) Logistics management;
- (iv) Disposal management;
- (v) Risk management; and
- (vi) Performance management.

Part 1: Demand management

10. System of demand management

- (1) The *Accounting Officer* must establish and implement an appropriate demand management system in order to ensure that the resources required by the *Municipality* support its operational commitments and its strategic goals as outlined in the *Municipality's* Integrated Development Plan.
- (2) The demand management system must -
 - (a) include timely planning and management processes to ensure that all goods and services required by the *Municipality* are quantified, budgeted for and timely and effectively delivered at the right locations and at the critical delivery dates and are of the appropriate quality and quantity procured at a fair cost;
 - (b) take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature;
 - (c) provide for the compilation of the required specifications to ensure that municipal needs are met;
 - (d) allow for the undertaking of appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.
- (3) The *Accounting Officer* must, prior to making an invitation for *tenders*-
 - (a) properly plan for, and, as far as possible, accurately estimate the costs for the provision of services, works or goods for which an invitation to *tenders* is to be made;
 - (b) determine and stipulate, in such invitation, the appropriate preference point system to be utilized in the evaluation and adjudication of such *tenders*; and
 - (c) determine whether the services, works or goods for which an invitation to *tender* is to be made has been designated for local production and content in terms of section 9 of the *Preferential Procurement Regulations* and paragraph 29(5) of this policy.
- (4) The *Accounting Officer* must indicate in the invitation to submit a *tender* and in the

tender specification -

- (a) whether such *tender* will be evaluated on *functionality* and, in such event, the following shall be clearly stated:
 - (i) the evaluation criteria for measuring *functionality* which criteria must be objective;
 - (ii) the weight of each criterion which should not be generic but be determined separately for each bid on a case by case basis;
 - (iii) the applicable values that will be utilized when scoring each criterion which values must be objective;
 - (iv) the minimum qualifying score for *functionality* in order to enable the bid concerned to be further evaluated in terms of this policy provided that the aforesaid qualifying score:
 - (a) should not be generic but be determined separately for each bid on a case by case basis; and
 - (b) should not be prescribed so low that it may jeopardize the quality of the service required nor so high that it may be restrictive to the extent that it jeopardizes the fairness of the supply chain management system;
 - (b) the fact that no *tender* will be regarded as an acceptable *tender* if it fails to achieve the minimum qualifying score for *functionality* as indicated in the invitation to *tender* and the relevant tender specification; and
 - (c) that *tenders* that have achieved the minimum qualification score for *functionality* will be evaluated further in terms of the preference point systems referred to in paragraphs 29(3) and 29(4) of this policy.
- (5) Any system designed in terms of this paragraph shall take cognizance of the provisions of this policy.

Part 2: Acquisition management

11. System of acquisition management

- (1) The *Accounting Officer* must implement an efficient system of acquisition management in order to ensure -
 - (a) that goods and services are procured by the *Municipality* in accordance with authorized processes only;
 - (b) that goods and services up to and including R200 000 are procured by the Municipality from service providers listed on the *NMBM Supplier Database*
 - (c) that bids which exceeds R200 000, bidders who are not registered on the NMBM database are not precluded from submitting their bids, but must however be registered on said database prior to the award of that particular bid;

- (d) that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
 - (e) that the threshold values for the different procurement processes are complied with;
 - (f) that bid documentation, evaluation and adjudication criteria and the general conditions of a *contract*, are in accordance with any applicable legislation; and
 - (g) that any National *Treasury guidelines* on acquisition management are properly taken into account.
 - (h) that the Municipality may not enter into any contract that will impose financial obligations beyond three years covered in the annual budget for that financial year unless the requirements of section 33 of the MFMA have been fully complied with.
- (2) When procuring goods or services from an organ of state as contemplated in section 110 (2) of the Act, the *Accounting Officer* must make public the fact that such goods or services are procured otherwise than through the Municipality's supply chain management system, including -
- (a) the kind of goods or services; and
 - (b) the name of the supplier.

12. Range of procurement processes

- (1) Goods and services may only be procured by way of -
- (a) petty cash purchases up to a transaction value of R 2,000 (VAT included)
 - (b) three written price quotations for procurements of a transaction value over R2,000 up to R10,000 (VAT included);
 - (c) three formal (closed) written price quotations for procurements of a transaction value over R 10,000 up to R200,000 (VAT included); and
 - (d) a *competitive bidding process* for -
 - (i) procurements above a transaction value of R200 000 (VAT included); and
 - (ii) the procurement of *long term contracts* (exceed 1 year).
- (2) The *Accounting Officer* may, in writing:
- (a) lower but not increase, the different threshold values specified in subparagraph (1) above; or
 - (b) direct that -
 - (i) *written quotations* be obtained for any specific procurement of a transaction value lower than R2 000;

- (ii) *formal written price quotations* be obtained for any specific procurement of a transaction value lower than R10 000; or
 - (iii) a *competitive bidding process* be followed for any specific procurement of a transaction value lower than R200 000.
- (3) Calls for quotations and bids for the procurement of goods or services may not be deliberately split into parts or items of a lesser value merely to avoid complying with the requirements of this policy or any applicable legislation. 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.

13. Special categories of bidders and suppliers

In order to promote *B-BBEE* and comply with applicable legislation including the *Codes of Good Practice*, this policy recognizes the following special categories of bidders and suppliers:

13.1 Exempted Micro-Enterprise

- (a) An exempted Micro-Enterprise (EME) is an entity with an annual turnover of R5 million or less
- (b) The current thresholds for the Tourism and Construction Sector charters are R2.5 million and R1.5 million respectively.
- (c) Exempted Micro-Enterprises are deemed to possess a *B-BBEE* Status of "Level Four Contributor", having a *B-BBEE* procurement recognition of 100%.
- (d) An Exempted Micro-Enterprise qualifies for a promotion to a *B-BBEE* Status of "Level Three Contributor" having a *B-BBEE* procurement recognition of 110% if it is more than 50% owned by *black people* or by black women.
- (e) Exempted Micro-Enterprises are allowed to be measured in terms of the QSE scorecard contained in the applicable code of good practice in the event of them wishing to maximize their points and move to the next procurement recognition level.
- (f) Sufficient evidence of qualification as an Exempted Micro-Enterprise is an auditor's certificate or similar certificate issued by an *Accounting Officer* of a closed corporation or a verification agency accredited by *SANAS*

13.2 Qualifying Small Enterprise

- (a) Any enterprise with an annual *Total Revenue* of between R5 million and R35 million qualifies as a *Qualifying Small Enterprise*.
- (b) Enterprises claiming qualifying *small enterprise* status must include in any bid submitted to the Municipality, an original and valid *B-BBEE* status level certificate or a certified copy thereof, substantiating their *B-BBEE* rating. This certificate must be issued by a verification agency accredited by *SANAS* or a Registered Auditor approved by the Independent Regulatory Board of Auditors.

13.3 Start-up enterprises

- (a) Start-up enterprises must be measured as Exempted Micro-Enterprises for the first year following their formation or incorporation. This provision applies regardless of the expected *Total revenue* of the start-up enterprise.
- (b) Start-up Enterprises are deemed to have a “B-BBEE Status of Level Four Contributor”.
- (c) In order to qualify as a Start-up Enterprise, the enterprise must provide an independent confirmation of its status.
- (d) Despite subparagraphs (a) and (b), Start-up Enterprises must submit a QSE Scorecard when tendering for any *contract* or seeking any other business with a value higher than R5 million but less than R35 million. For *contracts* above R35 million, they should submit the generic scorecard. The preparation of such scorecards must use annualized data.
- (e) The *Accounting Officer* shall reserve the right to require a Start-up Enterprise referred to in subparagraph (d) to submit a *verification certificate* issued by either a verification agency approved by SANAS or a Registered Auditor approved by the Independent Regulatory Board of Auditors.

14. General preconditions for consideration of written quotations or bids

- (1) A written quotation or bid may not be considered unless the provider who submitted the quotation or bid concerned -
 - (a) has furnished his/her -
 - (i) full name or names including trading name;
 - (ii) identification number or company or other registration number;
 - (iii) tax reference number and VAT registration number, if any;
 - (b) has provided the *Municipality* with an original valid tax clearance certificate from the South African Revenue Services stating that his tax matters are in order;
 - (c) has provided the *Municipality* with a “Certificate of Independent Bid Determination” on Form MBD 9 or a similar form;
 - (d) has certified that he and, in the event of the bidder being a company, also any of its directors, is not indebted to the *Municipality* or to any other municipality or municipal entity for rates, taxes and/or municipal service which are in arrear for a period of more than three months and that no dispute exists between such bidder and the relevant municipality or municipal entity in respect of any such arrear amounts;
 - (e) has submitted an MBD4 certifying-
 - (i) that he is not *in the service of the state* or has been *in the service of the state* in the previous twelve months;
 - (ii) that, in the event of the bidder not being a natural *person*, none of its

directors, managers, principal shareholders or stakeholders are *in the service of the state* nor have they been *in the service of the state* in the previous twelve months; or

(iii) that neither his spouse, child or parent nor a director, manager, shareholder or stakeholder referred to in subparagraph (ii) is *in the service of the state* or has been *in the service of the state* in the previous twelve months.

(g) If it is a partnership, joint venture or consortium, has submitted an agreement in writing recording the establishment of such partnership, joint venture or consortium, signed by or on behalf of each of the parties thereto and providing *inter alia*:

- (i) full details of each of the parties thereto,
- (ii) which of the parties thereto is the leader and will represent it for the purposes of engagement with the *Municipality*,
- (iii) for the joint and several liability of the parties thereto to the *Municipality* for the due fulfilment of any *contract* concluded with the *Municipality* as a result of the bid
- (iv) is registered on the NMBM Supplier Database.

(2) This paragraph must be read in conjunction with paragraph 22 of this policy.

15. Lists of accredited prospective providers

(1) The *Accounting Officer* must -

- (a) keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements through *written quotations* and *formal written price quotation*; and
- (b) at least once a year through newspapers commonly circulating locally, the municipal website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
- (c) specify the listing criteria for accredited prospective providers; and
- (d) disallow the listing of any prospective provider whose name appears on the National Treasury's database as a *person* prohibited from doing business with the public sector.

(2) The aforesaid list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.

(3) The aforesaid list must also be compiled per commodity and per type of service.

16. Petty cash purchases

The conditions for the procurement of goods by means of petty cash purchases referred to in paragraph 12(1) (a) of this Policy, are as follows–

- (a) the *Chief Financial Officer* (CFO) shall determine the terms on which a manager may delegate responsibility for petty cash to an official reporting to the manager;
- (b) Subject to paragraph 12 1(a), the CFO shall determine the maximum number of petty cash purchases or the maximum amounts per month for each manager;
- (c) the CFO shall determine any types of expenditure from petty cash purchases that are excluded, where this is considered necessary;
- (d) Petty cash purchases may only be made in accordance with the Petty Cash policy of the *Municipality*.
- (e) The *Accounting Officer* may delegate responsibility for the management of petty cash to an official directly or indirectly reporting to the *Chief Financial Officer*.
- (f) No item that is an approved stores item may be purchased by means of a petty cash transaction.
- (g) No fixed asset regardless of value may be purchased through petty cash.
- (h) The *Council* must, from time to time, determine the maximum amount of the permissible petty cash expenditure per month;
- (i) A weekly reconciliation report must be provided to the *Chief Financial Officer* within five days of the end of each month by the official authorized to make petty cash purchases and such report shall contain particulars of each *final award* made by such official during that month, including:
 - (i) the total amount of petty cash purchases for that month; and
 - (ii) receipts and supporting documents for each purchase.

17. Written price quotations

- (1) The conditions for the procurement of goods or services through *written quotations* are as follows:
 - (a) Quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the *Municipality*, provided that if quotations are obtained from providers who are not so listed, such providers must meet the listing criteria for registration on the *Municipality's Supplier Database*, subject to authorization by the *Accounting Officer* or any other official designated by the *Accounting Officer*;
 - (b) To the extent feasible, providers must be requested to submit such quotations in writing;

- (c) If it is not possible to obtain at least three quotations, the reasons for such inability must be recorded on the invitation to submit quotations and reported quarterly to the *Chief Financial Officer*;
- (d) The designated officer must record the names of the potential providers requested to provide quotations with their quoted prices.

18. Formal written price quotations

- (1) The conditions for the procurement of goods or services through *formal written price quotations*, are as follows:
 - (a) Quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the *Municipality*;
 - (b) In the event of it not being possible to obtain quotations from at least three different providers whose names appear on the list of accredited prospective providers of the *Municipality*, quotations may be obtained from providers who are not so listed, provided that such providers meet the listing criteria set out in paragraph 14 (1) (b) and (c) of this policy and, provided further, that the reasons for obtaining such quotations from the providers concerned must be recorded on the invitation to submit quotations and be approved by the *Accounting Officer*.

19. Procedures for procuring goods or services through *written quotations* and *formal written price quotations*

- (1) The procedure for the procurement of goods or services through *written or quotations* or *formal written price quotations* is as follows:
 - (a) When using the list of accredited prospective providers, the *Accounting Officer* must promote on-going competition amongst providers by inviting providers to submit quotations on a rotation basis;
 - (b) All requirements in excess of R30 000 (VAT included) that are to be procured by means of *formal written price quotations* must, in addition to the requirements of paragraph 17, be advertised for at least seven days on the website of and on the official notice board of the *Municipality*;
 - (c) Offers received must be evaluated on a comparative basis taking into account unconditional discounts;
 - (d) Offers below R30 000 (all taxes included) must be awarded based on compliance with specifications, conditions of *contract*, ability, capacity and capability to deliver the required goods and/or services and lowest price; provided that the *Accounting Officer* may direct, in appropriate cases, that the formula referred to in subparagraph (e) be used to calculate points for price;
 - (e) Offers above R30 000 (*all applicable taxes* included) must be awarded based on compliance with specifications, conditions of *contract*, ability, capacity and capability to deliver the required goods and/or services and lowest price provided that the *Accounting Officer* may direct, in appropriate cases, that the following formula be used to calculate points for price:

$$P_s = 80 \left[1 - \frac{P_t - P_{min}}{P_{min}} \right]$$

Where:

P_s = Points scored for *comparative price of tender* or offer under consideration;

P_t = *Comparative price of tender* or offer under consideration; and

P_{min} = *Comparative price of lowest acceptable tender* or offer.

- (f) Prior to the award of a *contract* with a price in excess of R10 000, the *Designated Official* must verify the status of recommended bidders (including their directors(s), owners(s) or *trustee(s)*) by checking the Data Base of Restricted Suppliers maintained by National Treasury in order to ensure that no recommended bidder or any of its directors/owners/*trustees* are listed as companies or *persons* prohibited from doing business with the public sector;
- (g) A call for quotations in terms of afore-going paragraphs must be in writing and contain a specification for the goods and/or services to be procured as well as details of the preference points system to be used in adjudicating quotations;
- (h) The *Designated Official* must, in writing, notify the *Chief Financial Officer* within 3 days after the end of each month of all **written** and *formal written price quotations* accepted or approvals given in terms of the afore-going subparagraphs;
- (i) The *Chief Financial Officer* must ensure that adequate systems are in place to meet the requirements for proper record keeping;
- (j) Acceptable offers must be awarded to the bidder who scored the highest points in accordance with the stipulated preference points system.
- (k) Single source selection may be appropriate only if it presents a clear advantage over competition:
 - (i) for services that represent a natural continuation of previous work carried out by the consultant, and continuity of downstream work is considered essential;
 - (ii) where rapid selection is essential;
 - (iii) for very small appointments;
 - (iv) when only one consultant is qualified, or has experience of exceptional worth for the project.
 - (v) The reasons for single-source selection must be fully motivated in a report and approved by the *Chief Financial Officer* or an official designated by the *Chief Financial Officer* prior to conclusion of a *contract*, provided that the award is for an amount not exceeding R200 000 including VAT. In cases where the estimated value of fees for a single-source selection of a consultant exceeds R200 000 including VAT the appointment must be approved by the Bid Adjudication Committee.

20. Competitive bidding process

- (1) Subject to paragraph 11 (2) of this policy, goods or services above a transaction value of R200 000 (VAT included) and *long term contracts* may only be procured through a *competitive bidding process*.

- (2) No requirement for goods or services above an estimated transaction value of R200 000 (VAT included) may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a *competitive bidding process*.
- (3) The *Accounting Officer* may split unduly large quantities of work into smaller *contracts* (units) to promote manageability and provide opportunities for emerging entrepreneurs. This procedure may only be followed when technically, logistically and financially feasible.

21. Process for competitive bidding

- (1) The procedures for the following stages of a *competitive bidding process* are as follows:
 - (a) Compilation of bidding documentation as detailed in paragraph 22;
 - (b) Public invitation of bids as detailed in paragraph 23;
 - (c) Site meetings or briefing sessions as detailed in paragraph 23;
 - (d) Handling of bids submitted in response to public invitation as detailed in paragraph 24;
 - (e) Evaluation of bids as detailed in paragraph 32;
 - (f) Award of *contracts* as detailed in paragraph 33;
 - (g) Administration of *contracts* - after the award of a bid, the *Accounting Officer* and the bidder must enter into a written agreement.
 - (h) Proper record keeping;
 - (i) Original/legal copies of written *contracts* agreements should be kept in a secure place for reference and audit purposes.

22. Bid documentation for competitive bids

- (1) Bid documentation for a *competitive bidding process* must, in addition to the requirements of paragraph 14 -
 - (a) Take into account -
 - (i) the general conditions of *contract* and any special conditions of *contract*, if specified;
 - (ii) any *Treasury guidelines* on bid documentation;
 - (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to *construction works*;
 - (iv) relevant *B-BBEE* verification and certification requirements;

- (v) relevant *local content* or production requirements.
- (b) Include the preference points system to be used in adjudicating bids, namely 80/20 or 90/10 as prescribed in the *Preferential Procurement Regulations*;
- (c) Indicate the period for which bids are to remain valid and binding;
- (d) The validity period is calculated from the bid closure date and bids shall remain in force and binding until the end of the final day of that period;
- (e) The validity period may be extended by the Director: Supply Chain Management provided that the original validity period has not expired and that all bidders are given an opportunity to extend such period. Any such extension shall be given by the bidder in writing.
- (f) Bidder who fail to respond to such a request before the validity of their bid expire, or who decline such a request shall not be considered further in the evaluation process.
- (g) Compel bidders to submit a "Certificate of Independent Bid Determination" on form MBD 9 or similar document;
- (h) If the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish -
 - (i) if the bidder is required by law to prepare annual financial statements for auditing, his audited annual financial statements -
 - (a) for the past three years; or
 - (b) since establishment, if established during the past three years;
 - (ii) a certificate signed by the bidder certifying that he has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
 - (iii) particulars of any *contracts* awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such *contracts*;
 - (iv) a statement indicating whether or not any portion of the goods or services required by the *Municipality* are expected to be sourced from outside the Republic, and, if so, what portion and also whether or not any portion of the payment to be made by the *Municipality* is expected to be transferred out of the Republic; and
- (f) Stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

23. Public invitation for *competitive bids*

- (1) The procedure for the invitation of *competitive bids* is as follows:
 - (a) any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website

of the *Municipality* and in any other appropriate manner (which may include an advertisement in the Government Tender Bulletin); and

- (b) the information contained in a public advertisement, must include -
- (i) subject to subparagraph 2, the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included) or which are of a long term nature, or 14 days in any other case, reckoned from the date on which the advertisement is placed in a newspaper;
 - (ii) a statement that bids may only be submitted on the bid documentation provided by the *Municipality*; and
 - (iii) the date, time and venue of any compulsory site meetings or briefing session;
 - (iv) a statement to the effect that a bid from a prospective bidder who did not attend a prescribed compulsory site meeting or briefing session referred to in subparagraph (iii) will not be considered.
 - (v) The period of validity may be extended by the *Accounting Officer* /his or her delegate due to unforeseen circumstances provided that the original validity period has not expired and that all bidders are given an opportunity to extend such period and such extension shall be agreed upon by the bidder in writing.
- (2) The *Accounting Officer* may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of *urgency* or *emergency* or in any exceptional case where it is impractical or impossible to follow the official procurement process and such fact shall, for auditing purposes, be recorded in the authority to invite bids.
- (3) Bids submitted must be sealed and marked in a manner stipulated in the invitation to bid.
- (4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies which must reach the *Accounting Officer* or delegated official before the closing time for the receipt of bids on the bid closing date as stipulated in the invitation to bid.
- (5) Where the *Municipality* invites bids for *construction works* with a value in excess of R30 000, it must publish such invitations on the website of the CIDB.
- (6) The *Municipality* must also comply with the applicable provisions of the Standard for Uniformity in Construction Procurement contained in Board Notice No. 86 of 2010 issued by the Construction Industry Development Board insofar as such provisions relate to the invitation of bids.

24. Procedure for handling, opening and recording of bids

- (1) The procedures for the handling, opening and recording of bids, are as follows:
- (a) Bids -

- (i) must be opened only in public;
 - (ii) must be opened at the same time and as soon as possible after the published closing time or period for the submission of bids; and
 - (iii) received after the published closing time or period should not be considered and be returned to the bidder, unopened, immediately.
- (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price; except where the two envelope system has been used, only the bidders name will be read out.
- (c) No information, except the information referred to in subparagraph (b), relating to a bid should be disclosed to bidders or other *persons* until the successful bidder is notified of the award of the relevant bid; and
- (d) A minimum of four *Designated Officials* opening received bids must -
- (i) date stamp and initial the returnable schedules, pricing schedule as well as the bill of quantities.
 - (ii) record in a register to be provided for this purposes, all bids received before the closing time or period for the submission of same;
 - (iii) make the aforesaid register available for public inspection during the normal office hours of the *Municipality*; and
 - (iv) publish the entries in the aforesaid register and the bid results on the website of the *Municipality*.

25. Negotiations with preferred bidders

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

26. Two-stage bidding process

- (1) A two-stage bidding process is permissible for -
- (a) large complex projects;

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

27. Committee system for *competitive bids*

- (1) A committee system for *competitive bids* shall be established, consisting of the following committees for procurement as the *Accounting Officer* may determine:
 - (a) a bid specification committee;
 - (b) a bid evaluation committee; and
 - (c) a bid adjudication committee;
- (2) The *Accounting Officer* shall, in writing, appoint the members of each committee taking into account the provisions of section 117 of the Act in terms of which no councillor may be a member of any such committee or attend any of its meetings as an observer.
- (3) A neutral or independent observer, appointed by the *Accounting Officer*, may attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.
- (4) The committee system must be consistent with -
 - (a) paragraphs 28, 32 and 33 of this policy; and
 - (b) any *other applicable legislation*.
- (5) The *Accounting Officer* may, in appropriate cases and in his sole discretion, apply the committee system to *formal written price quotations*.

28. Bid specification committees

- (1) Bid Specification committee must consist of at least three members of which one must be a SCM official
- (2) A bid specification committee must be composed of an appointed Chairperson, Supply Chain Management Practitioner, one or more officials of the *Municipality* preferably the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.
- (3) A bid specification committee must compile the specifications for procurement of goods or services by the *Municipality*.
- (4) No *person*, advisor or corporate entity involved with the bid specification committee,

or director of such a corporate entity, may bid for any resulting *contracts*.

- (5) Where a bid specification is compiled with due regard to the findings and recommendations contained in a prior, associated feasibility study, the *person*, advisor or corporate entity who or which prepared the said feasibility study may be prohibited from bidding for the resulting *contracts* in circumstances where such *person*, advisor or corporate entity may obtain an unfair advantage or where a conflict of interest may arise.
- (6) A specification referred to in this paragraph must be approved by the *Accounting Officer* in writing prior to publication of the invitation for bids in terms of paragraph 23.

29. Specifications

(1) General Requirements

(i) Specifications -

- (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services to the *Municipality*;
- (b) 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;
- (c) must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
- (d) may not create trade barriers in *contract* requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification;
- (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word "equivalent";

(ii) Samples

- (a) Where samples are called for in the bid documents, samples (marked with the bid and item number as well as the bidder's name and address) shall be delivered separately to the addressee mentioned in the bid documents.
- (b) Bids may not be included in parcels containing samples.
- (c) If samples are not submitted as required in the bid documents or within any further time stipulated by the Chairperson of the Bid Evaluation Committee in writing, then the bid concerned may be declared non-responsive.

- (d) Samples shall be supplied by a bidder at his/her own expense and risk. NMBM 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.
- (e) 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.
- (f) All goods/materials supplied shall comply in all respects to that *contract* sample.

(2) Functionality

- (a) Where *functionality* is utilized as an evaluation criterion, specifications must clearly specify:
 - (i) the evaluation criteria for measuring *functionality* which criteria must be objective, the weight of each criterion, the applicable values and the minimum qualifying score for *functionality*; and
 - (ii) the fact that no *tender* will be regarded as an acceptable *tender* if it fails to achieve the minimum qualifying score for *functionality* as indicated in the tender specification concerned; and
 - (iii) that *tenders* that have achieved the minimum qualification score for *functionality* will be evaluated further in terms of the preference point systems referred to in subparagraphs (3) and (4) below.

(3) 80/20 Preference Points System

- (a) Where applicable, specifications must include the following preference points evaluation system for the acquisition of services, works or goods up to a *Rand value* of R1 000 000 (*all applicable taxes* included):
 - (i) the following formula will be used to calculate the points for price in respect of *tenders* (including price quotations) with a *Rand value* equal to, or above R 30 000 and up to a *Rand value* of R1 000 000 (*all applicable taxes* included):

$$P_s = 80 \left(1 - \frac{P_t - P_{min}}{P_{min}} \right)$$

Where:

P_s = Points scored for *comparative price* of *tender* or offer under consideration;

P_t = *Comparative price* of *tender* or offer under consideration; and

P_{min} = *Comparative price* of lowest acceptable *tender* or offer.

- (ii) subject to subparagraph (iii), points must be awarded to a tenderer for attaining the *B-BBEE status level of contributor* in accordance with the

following tables:

B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

Or

In respect of Exempted Micro Enterprises (EME's)

Black Ownership of EME	Deemed B-BBEE Status Level of Contributor	Number of Preference Points
More than 50%	3	16
Less than 50%	4	12

- (iii) a maximum of 20 points may be allocated under subparagraph (ii);
- (iv) the points scored by a tenderer in respect of *B-BBEE* contribution contemplated in subparagraph (ii) must be added to the points scored for price as calculated in accordance with subparagraph (i);

- (b) The *B-BBEE* status level attained by a tenderer must be used to determine the number of points contemplated in subparagraph 3.1 (ii).
- (c) Specifications must also must provide, as a special condition of *contract*, that, in the event of all *tenders* received exceeding the estimated *Rand value* of R1 000 000, the *tender* invitation will be cancelled, provided that if one or more of the acceptable *tenders* received are within the aforesaid threshold of R1 000 000, all *tenders* received will be evaluated in accordance with this preference point system.

(4) 90/10 Preference Points System

- (a) Where applicable, specifications must include the following preference points evaluation system for the acquisition of services, works or goods with a *Rand value* above R1 000 000 (*all applicable taxes* included):
 - (i) the following formula will be used to calculate the points for price in respect of *tenders* with a *Rand value* above R1 000 000 (*all applicable taxes* included):

$$Ps = 90 - 1 - \frac{Pt - Pmin}{Pmin} \left[\right]$$

Where:

Ps = Points scored for *comparative price* of *tender* or offer under consideration;

Pt = *Comparative price* of *tender* or offer under consideration; and

Pmin = *Comparative price* of lowest acceptable *tender* or offer.

- (ii) subject to subparagraph (iii), points must be awarded to a tenderer for attaining the *B-BBEE status level of contributor* in accordance with the following table:

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

Or

In respect of Exempted Micro Enterprises (EME's)

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

- (iii) a maximum of 10 points may be allocated under subparagraph (ii).
- (iv) the points scored by a tenderer in respect of the level of *B-BBEE* contribution contemplated in subparagraph (ii) must be added to the points scored for price as calculated in accordance with subparagraph (i);
- (b) The *B-BBEE* status level attained by a tenderer must be used to determine the number of points contemplated in subparagraph 4.1 (ii).
- (c) Specifications must also must provide as a special condition of *contract*, that, in the event of all *tenders* received being equal to, or below R1 000 000, the invitation to *tender* will be withdrawn and all *tenders* received shall be regarded as having been cancelled provided that, If one or more of the acceptable *tenders* received are above the prescribed threshold of R1 000 000, all *tenders* received will be evaluated in accordance with this preference point system.

(5) Local Production

- (a)** Where, in the case of *tenders* in *Designated Sectors*, local production and content is of critical importance, the tender specification must clearly state, as a condition of *tender*, that only locally produced goods, services or works or locally manufactured goods, with a *stipulated minimum threshold* for local production and content, will be considered.
- (b)** The tender specification must also stipulate:
- (i)** that the exchange rate to be used for the calculation of *local content* or local production will be the exchange rate published by the South African Reserve Bank at 12:00 on the date, one week (7 calendar days) prior to the closing date of the invited bid;
 - (ii)** that only the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:201x will be used to calculate *local content* in accordance with the following formula:

$$LC = 1 - \frac{X}{Y} \times 100$$

Where

x *imported content*
y bid price excluding value added tax (VAT)

and that the prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by the South African Reserve Bank at 12:00 on the date, one week (7 calendar days) prior to the closing date of the bid;

- (iii)** that the Form MBD 6.2 (Declaration Certificate for *Local content*) duly complete and signed must form part of the bid documentation;
 - (iv)** that the *Municipality* reserves the right to verify the accuracy of the rates of exchange quoted by the bidder in paragraph 4.1 of the aforesaid Certificate.
- (c)** The *Accounting Officer* may decide to include in any invitation to bid a specific bidding condition that only locally produced goods, services or works or locally manufactured goods with a *stipulated minimum threshold* for local production and content, will be considered on condition that such prescript and threshold(s) are in accordance with the specific directives issued for this purpose by National Treasury in consultation with the Department of Trade and Industry and, in such event, the requirements stipulated in subparagraph 5.2 shall be inserted in the tender specification.
- (d)** Where necessary, bid specifications for *tenders* referred to in subparagraph 5.1 may state that a two- stage tendering process will be followed, where the first stage will involve *functionality* and minimum threshold for local production and content and the second stage price and *B-BBEE* with the possibility of

price negotiations only with the short listed tenderers with a view to effecting cost savings in circumstances where the tendered prices are obviously inflated or to ensure the award of the *tender* concerned within budgetary constraints provided that, where such negotiations take place, the principles contained in paragraph 25.1 of this policy shall be applied.

- (e) Any tender specification issued in terms of this subparagraph must be capable of being measured and audited.

(6) B-BBEE status level certificates and scorecards

- (a) Bid specifications must state that:

- (i) Those tenderers who qualify as Exempted Micro Enterprises (EME's) in terms of the *Broad-Based Black Economic Empowerment Act*, must submit, together with their *tender*, a certificate to this effect issued by a registered auditor, *Accounting Officer* (as contemplated in section 60(4) of the Close Corporations Act, 1984 (Act No. 69 of 1984)) or an accredited verification agency provided that a certificate issued by an *Accounting Officer* of a closed corporation must be on his letterhead which should also contain his practice number and contact number clearly specified on the face of such certificate.
- (ii) Tenderers other than Exempted Micro-Enterprises (EME's) must submit, with their *tender*, their original and valid *B-BBEE* Status Level Verification Certificate complying at least with the provisions subparagraphs (v) and (vi), or a certified copy thereof, in support of their *B-BBEE* rating.
- (ii) A *trust, consortium or joint venture* will qualify for points for its *B-BBEE* status level as a legal entity, provided it submits its *B-BBEE* Status Level Verification Certificate with its *tender*.
- (iv) A *trust, consortium or joint venture* will qualify for points for its *B-BBEE* status level as an unincorporated entity, provided that it submits its consolidated *B-BBEE* scorecard as if were a group structure and, provided further, that such a consolidated *B-BBEE* scorecard is prepared for every separate *tender*.
- (v) As a minimum requirement, all valid *B-BBEE* Status Level Verification Certificates should have the following information detailed on the face of the certificate:
- The name and physical location of the measured entity;
 - The registration number and, where applicable, the VAT number of the measured entity;
 - The date of issue and date of expiry;
 - The certificate number for identification and reference;
 - The scorecard that was used (for example EME, QSE or Generic);
 - The name and / or logo of the Verification Agency;
 - The SANAS logo;
 - The signature of the authorized *person* from the Verification Agency concerned; and

- The *B-BBEE* Status Level of Contribution obtained by the measured entity.
- (vi) The format and content of *B-BBEE* Status Level Verification Certificates issued by registered auditors approved by the Independent Regulatory Board of Auditors (IRBA) must -
 - Clearly identify the *B-BBEE* approved registered auditor by the auditor's individual registration number with IRBA and the auditor's logo;
 - Clearly record an approved *B-BBEE* Verification Certificate identification reference in the format required by the SANAS;
 - Reflect relevant information regarding the identity and location of the measured entity;
 - Identify the *Codes of Good Practice* or relevant Sector Codes applied in the determination of the scores;
 - Record the weighting points (scores) attained by the measured entity for each scorecard element, where applicable, and the measured entity's overall *B-BBEE* Status Level of Contribution;
 - Reflect that the *B-BBEE* Verification Certificate and accompanying assurance report issued to the measured entity is valid for 12 months from the date of issuance;
 - Reflect both the issuance and expiry date of the *Verification Certificate*.

(7) Additional Conditions

- (a) A bid specification must include a reference to the following additional conditions, where applicable:

(7.1) Sub-contracting

- (a) A *person* will not be awarded points for *B-BBEE* status level if it is indicated in the *tender* documents that such a tenderer intends *sub-contracting* more than 25% of the value of the *contract* to any other enterprise that does not qualify for at least the points that such a tenderer qualifies for, unless the intended sub-contractor is an exempted micro enterprise that has the capability and ability to execute the *sub-contract*.
- (b) A *person* awarded a *contract* may not *sub-contract* 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 than the *person* concerned, unless the *contract* is sub-contracted to an exempted micro enterprise that has the capability and ability to execute the *sub-contract*.
- (c) A *person* awarded a *contract* in relation to a *Designated Sector*, may not *sub-contract* 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*.

(7.2) Specific goals

- (a) In terms of section 7 of the *Preferential Procurement Regulations*, a *contract* may be awarded to a tenderer that did not score the highest total number of points, only in accordance with section 2 (1) (f) of the Preferential Procurement Policy Framework Act No. 5 of 2000.
- (b) In the application of section 2 (1)(f) of the aforesaid Act, the *Accounting Officer*

may explicitly determine in any bid specification that a tenderer shall be required to attain a specific goal or goals *other* than and excluding the goals of contracting with historically disadvantaged *persons* and implementing Reconstruction and Development Programmes in order to qualify for the award of a *contract*.

(8) Miscellaneous Special Conditions of Contract

- (a) A bid specification must, inter alia, include the following conditions as Special Conditions of Contract:

(8.1) General

- (a) Only a tenderer who has completed and signed the declaration part of the *tender* documentation may be considered;
- (b) When *comparative prices* must be calculated, any discounts which have been offered unconditionally will be taken into account;
- (c) A discount which has been offered conditionally will, despite not being taken into account for evaluation purposes, be implemented when payment to a tenderer in respect of an accepted *tender* is effected;
- (d) Points scored will be rounded off to the nearest 2 decimal places.
- (e) In the event that two or more *tenders* score equal total points, the successful *tender* will be the one scoring the highest number of preference points for *B-BBEE*;
- (f) However, when *functionality* is part of the evaluation process and two or more tenders have scored equal points including equal preference points for *B-BBEE*, the successful *tender* will be the one scoring the highest score for *functionality*.
- (g) Should two or more *tenders* be equal in all respects, the award shall be decided by the drawing of lots.

(8.2) Cancelling of tender

- (a) The *Accounting Officer* may, prior to the award of a *tender*, by notice in the media in which the original *tender* was advertised, cancel such *tender* if
- (i) due to changed circumstances, there is no longer a need for the services, works or goods requested; or
- (ii) funds are no longer available to cover the total envisaged expenditure; or
- (iii) no acceptable bids are received, or
- (iv) in the application of 80/20 preference point system as stipulated in the bid documents, all bids received exceed the estimated *Rand value* of R1 000 000;
- (v) in the application on the 90/10 preference point system as stipulated in the bid documents, all bids received are equal to, or below R1 000 000;

(vi) the process is deemed to be flawed.

(8.3) Declarations

(a) A tenderer must -

- (i) declare that the information provided in a *tender* document is true and correct;
- (ii) declare that the signatory to a *tender* document is duly authorised; and
- (iii) undertake to submit documentary proof regarding any tendering issue when required to the satisfaction of the *Municipality*.

(8.4) Remedies

(a) In addition to the action contemplated in paragraph 41 of this policy which shall be read in conjunction with this subparagraph:

(i) The *Municipality* will, upon detecting that the *B-BBEE* status level of contribution has been claimed or obtained by a tenderer on a fraudulent basis or any of the conditions of a *contract* awarded to such tenderer or *contractor* have not been fulfilled, act against such tenderer or *person* awarded the ensuing *contract*.

(ii) The *Municipality* may, in addition to any other remedy it may have against the *person* contemplated in subparagraph (i) above-

(a) disqualify the *person* concerned from; the bidding process

(b) recover all costs, losses or damages it has incurred or suffered as a result of that *person's* conduct;

(c) cancel the relevant *contract* and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;

(iii) The *Municipality* may restrict a tenderer or *contractor*, its shareholders and directors, or only the shareholders and directors, as the case may be, who acted on a fraudulent basis in connection with a *tender*, from obtaining business from the *Municipality* for a period not exceeding 10 years, provided that, before exercising this right, the *Municipality* shall give the *persons* or parties concerned an opportunity to make representations and be heard in defence of such contemplated action; and

(iv) The *Municipality* may refer any fraudulent action on the part of a tenderer or *contractor* or any party aforesaid to the South African Police Services with a view to criminal prosecution.

(b) Where a tenderer or *contractor* is restricted in terms of subparagraph (h)(iii) above, the *Accounting Officer* shall forward the relevant details to National Treasury for inclusion in the Central Database of Restricted Suppliers.

30. Procurement from tertiary institutions

- (1) Where the *Municipality* is in need of a service provided by only tertiary institutions, such services must be procured through a tendering process with the identified tertiary institutions.
- (2) Tertiary institutions referred to in subparagraph (a) will be required to submit their *B-BBEE* status in terms of the specialized scorecard contained in the *B-BBEE* Codes of Good Practice.
- (3) Should the *Municipality* require a service that can be provided by one or more tertiary institutions or public entities and enterprises from the private sector, the appointment of a *contractor* will be done by means of a tendering process.
- (4) Public entities must be required to submit their *B-BBEE* status in terms of the specialized scorecard contained in the *B-BBEE* Codes of Good Practice.
- (5) For purposes of this paragraph, a tendering process includes a written offer in a prescribed or stipulated form in response to an invitation by the *Municipality* for the provision of services, works or goods, through price quotations, advertised competitive tendering processes or proposals.

31. Re-invitation of tenders

- (1) The *Accounting Officer* must re-invite *tenders* cancelled in terms of paragraphs 29(3.3) and 29(4.3) and must, in the new *tender* documents, stipulate the correct preference point system to be applied.

32. Bid evaluation committees

- (1) A bid evaluation committee must as far as possible be composed of at least three members including at least:
 - (a) a Chairperson appointed by the *Accounting Officer*;
 - (b) a supply chain management practitioner of the *Municipality*;
 - (c) official/s from departments requiring the goods or services;
 - (d) where appropriate, a representative from Legal Services; and
 - (e) external specialists/experts may attend meetings of the Bid Evaluation Committee to advise it, when required.
- (2) A bid evaluation committee must -
 - (a) evaluate bids in accordance with the relevant bid specification, inclusive of unconditional discounts, sub-contracting and this policy; and
 - (b) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, and
 - (c) in the event that it is determined that none of the bidders responding to a particular invitation to *tender* have submitted acceptable *tenders*, the matter must

be referred to the Bid Specification Committee to commence the *tender* process afresh.

- (d) evaluate each bidder's ability to execute the *contract* provided that, where bids are invited on the basis of *functionality* as a criterion, they must be evaluated in the following two stages:

(i) **First stage - evaluation of *functionality***

- (a) bids must be evaluated in terms of the evaluation criteria embodied in the bid specification. The amendment of evaluation criteria, weights, applicable values and/or the minimum qualifying score for *functionality* after the closure of bids is not allowed as this may jeopardize the fairness of the process;
- (b) a bid will be considered further if it achieves the prescribed minimum qualifying score for *functionality*;
- (c) bids that fail to achieve the minimum qualifying score for *functionality* must be disqualified;
- (d) score sheets should be prepared and provided to panel members to evaluate the bids;
- (e) a score sheet should contain all the criteria and the weight for each criterion as well as the values to be applied for evaluation as indicated in the bid specification;
- (f) each panel member should, after thorough evaluation, independently award his own value to each individual criterion;
- (g) score sheets should be signed by panel members and if necessary, a written motivation may be requested from panel members where vast discrepancies in the values awarded for each criterion exist -
provided that if the minimum qualifying score for *functionality* is indicated as a percentage in the bid specification, the percentage scored for *functionality* may be calculated as follows:
- (h) the value awarded for each criterion should be multiplied by the weight for the relevant criterion to obtain the score for the various criteria;
- (i) the scores for each criterion should be added to obtain the total score; and
- (j) the following formula should be used to convert the total score to percentage for *functionality*:

$$P_s = \frac{S_o}{M_s} \times 100$$

Where:

P_s = percentage scored for *functionality* by bid under

consideration

So = total score of bid under consideration

Ms = maximum possible score

- (k) the percentage of each panel member should be added and divided by the number of panel members to establish the average percentage obtained by each bidder for *functionality*.

(ii) Second stage - Evaluation in terms of the 80/20 or 90/10 preference point systems

- (a) Only bids that achieve the minimum qualifying score / percentage for *functionality* must be evaluated further in accordance with the bid specification.
- (e) evaluate bids based on a *stipulated minimum threshold* for local production and content as required in the relevant bid specification in the following two stages:

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

- (a) bids must be evaluated in terms of the evaluation criteria stipulated in the bid specification. The amendment of the *stipulated minimum threshold* for local production and content after the closure of bids is not allowed as this may jeopardize the fairness of the process;
- (b) a bid must be disqualified if:
- the bidder fails to achieve the stipulated minimum threshold for local production and content; and
 - the Declaration Certificate for Local content (Form MBD 6.2) is not submitted as part of the bid;
- (c) calculate the *local content* (LC) as a percentage of the bid price in accordance with the SABS approved technical specification number SATS 1286: 201x;
- (d) verify the accuracy of the rates of exchange quoted by the bidder in paragraph 4.1 of the Declaration Certificate for Local content (Form MBD 6.2)

(ii) Second stage - Evaluation in terms of the 80/20 or 90/10 preference point systems

- (a) only bids that achieve the minimum stipulated threshold for local production and content must be evaluated further in accordance with the relevant preference point system referred to in the bid specification.
- (b) where appropriate, prices may be negotiated only with short listed or preferred bidders. Such negotiations must, however, not prejudice any other bidders.
- (f) check in respect of the recommended bidder whether or not such bidder's municipal rates and taxes and municipal service charges are not in arrears;

- (g) Disqualify and exclude from further evaluation and adjudication, all tenders which are not acceptable as defined, in particular and without derogating from the generality of the foregoing:**
- (i)** *Tenders* which do not include information or documents prescribed in Clauses 14 and 22(c) to (e) hereof
 - (ii)** *Tenders* which do not include an original valid tax clearance certificate as prescribed by clause 14(1)(b) hereof
 - (iii)** *Tenders* which do not include the certificate as prescribed by clause 14(1)(e) hereof, or in regard to which the tenderer or any of its directors are in fact indebted to the *Municipality* for rates, taxes and /or municipal services which are in arrears (and where it is contended that arrangements have been made with the *Municipality*, written proof thereof is not supplied)
 - (iv)** *Tenders* submitted by a tenderer which has failed during the period of last five years to the closing date for the submission of *tenders* to perform satisfactorily on any *contract* with the NMBM or any other organ of state in regard to which the bidder has been given written notice his /its performance was unsatisfactory.
 - (v)** *Tenders* submitted by a tenderer who or which is listed on the National Treasury's Register for Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act, 12 of 2004 or who or which is included on the List of Restricted Suppliers and is accordingly prohibited from doing business with organs of state
 - (vi)** *Tenders* submitted by a partnership / joint venture / consortium which do not include the agreement prescribed in clause 14(1)(g) hereof
 - (vii)** *Tenders* in which information has been inserted by means of pencil or in which deletions have been affected by the use of tippex or similar product or which contain alterations or amendments which have not been signed in full and dated by the tenderer or its authorised signatory
- (h)** verify the status of recommended bidders (including their directors(s), owners(s) or *trustee*(s)) by checking the Data Base of Restricted Suppliers maintained by National Treasury in order to ensure that no recommended bidder or any of its directors/owners/*trustees* are listed as companies or *persons* prohibited from doing business with the public sector
- (i)** submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter provided that:
- (i)** a *contract* must be awarded to the bidder who scored the highest total number of points in terms of the preference points systems referred to in paragraphs 29(3.3) and 29(4.3) as may be applicable; and
 - (ii)** in exceptional circumstances and as provided in paragraph 29(7.2) of this policy, a *contract* may be awarded to a bidder that did not score the highest number of points provided that the reasons for such a

recommendation must be recorded for audit purposes and be defensible in a court of law.

33. Bid adjudication committees

- (1) A bid adjudication committee must consist of at least four senior managers of the *Municipality* which must include -
 - (a) the *Chief Financial Officer* or, if the *Chief Financial Officer* is not available, another manager in the budget and treasury office reporting directly to the *Chief Financial Officer* and designated by the *Chief Financial Officer*; and
 - (b) at least one senior supply chain management practitioner who is an official of the *Municipality*; and
 - (c) a technical expert in the relevant field who is an official of the *Municipality* if the *Municipality* has such an expert.
- (2) The *Accounting Officer* must appoint the chairperson of the committee who shall preferably be the *Chief Financial Officer* or senior manager. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting and such election must be recorded in the minutes of the meeting concerned.
- (3) Only with the consent of the *Accounting Officer* and upon request by the bid adjudication committee, a member of a bid specification, bid evaluation committee and/or an advisor or *person* assisting these committees may be a member of a bid adjudication committee for the purpose of providing clarity and an explanation of difficult technical aspects relating to the bid being adjudicated.
- (4) A bid adjudication committee must –
 - (a) consider the report and recommendations of the bid evaluation committee submitted in terms of paragraph 32; and
 - (b) either -
 - (i) depending on its delegations, make a *final award* or a recommendation to the *Accounting Officer* to make the *final award*; or
 - (ii) make another recommendation to the *Accounting Officer* on how to proceed with the relevant procurement.
- (5) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid -
 - (a) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears; and
 - (b) notify the *Accounting Officer*.
- (6) The *Accounting Officer* may -
 - (a) after due consideration of the reasons for the deviation, ratify or reject the

decision of the bid adjudication committee referred to in subparagraph 5(a);
and

- (b) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (7) The *Accounting Officer* may, at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (8) If a *tender* other than the one recommended in the normal course of implementing this policy is approved, the *Accounting Officer* must, in writing and within 10 working days, notify the Auditor-General and the National and Provincial Treasuries of the reasons for deviating from such recommendation.
- (9) Subparagraph 8 does not apply if a different *tender* was approved in order to rectify an irregularity.

34. Procurement of banking services

- (1) A *contract* for banking services -
 - (a) must be procured through *competitive bids*;
 - (b) must be consistent with section 7 or 85 of the Act; and
 - (c) may not be for a period of more than five years at a time.
- (2) The process for procuring a *contract* for banking services must commence at least nine months before the end of an existing *contract*.
- (3) The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of paragraph 23 (1).
- (4) Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

35. Procurement of ICT related goods or services

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

- (4) If SITA comments on the submission and the *Municipality* does not agree with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the *Council*, the National and Provincial Treasuries and the Auditor-General.
- (5) All ICT related procurements must be approved by the ICT Steering Committee before following the Supply Chain Management process.
- 36. Procurement of goods and services under *contracts* secured by other organs of state**
- (1) The *Accounting Officer* may procure goods or services under a *contract* secured by another organ of state, but only if –
- (a) the *contract* has been secured by that other organ of state by means of a *competitive bidding process* applicable to that organ of state;
 - (b) there is no reason to believe that such *contract* was not validly procured;
 - (c) there are demonstrable discounts or benefits to do so; and
 - (d) that other organ of state and the provider have consented to such procurement in writing.
- (2) Subparagraphs (1) (c) and (d) do not apply if -
- (a) a municipal entity procures goods or services through a *contract* secured by its parent municipality; or
 - (b) a municipality procures goods or services through a *contract* secured by a municipal entity of which it is the parent municipality.
- 37. Procurement of goods necessitating special safety arrangements**
- (1) The acquisition and storage of goods in bulk (other than water), which necessitate special safety arrangements, including gasses and fuel, should be avoided where ever possible.
- (2) Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership, cost advantages and environmental impact and must be approved by the *Accounting Officer*.
- 38. Appointment of consultants**
- (1) The *Accounting Officer* may procure consulting services provided that any *Treasury guidelines* or CIDB guideline where applicable in respect of consulting services are taken into account when such procurements are made.
- (2) Consultancy services must be procured through *competitive bids* if –
- (a) the value of the *contract* exceeds R200 000 (VAT included); or
 - (b) the duration period of the *contract* exceeds one year.
- (3) In addition to any requirements prescribed by this policy for *competitive bids*, bidders

must furnish particulars of -

- (a) all consultancy services provided to an organ of state in the last five years; and
 - (b) any similar consultancy services provided to an organ of state in the last five years.
- (4) The *Accounting Officer* may establish a database of pre-qualified consultants in various fields as detailed in the SCM procedure manual
- (5) The *Accounting Officer* must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised by a consultant in the course of the consultancy service is vested in the *Municipality*.

39. Deviation from, and ratification of minor breaches of, procurement processes

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

40. Unsolicited bids

- (1) An unsolicited bid is a bid that is submitted by a prospective supplier to the *Municipality* without any procurement requirement first having been identified and

advertised. This situation arises when a supplier identifies an opportunity to render services or supply products not ordinarily required by the *Municipality*.

- (2) In accordance with section 113 of the Act, there is no obligation upon the *Municipality* to consider unsolicited bids received outside a normal bidding process.
- (3) The *Accounting Officer* may decide in terms of section 113(2) of the Act to consider an unsolicited bid but only if -
 - (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
 - (b) the product or service will be exceptionally beneficial to the municipality or have exceptional cost advantages;
 - (c) the *person* who made the bid is the sole provider of the product or service concerned; and
 - (d) the reasons for not going through the normal bidding processes are found to be sound by the *Accounting Officer*.
- (4) If the *Accounting Officer* decides to consider an unsolicited bid that complies with sub-paragraph (3), his decision must be made public in accordance with section 21A of the Municipal Systems Act, together with -
 - (a) reasons as to why the bid should not be open to other competitors;
 - (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
 - (c) an invitation to the public or other potential suppliers to submit their comments on the proposal within 30 days of the publication of the relevant notice.
- (5) The *Accounting Officer* must submit all written comments received pursuant to subparagraph (4), including any responses from the unsolicited bidder, to the National and Provincial Treasuries for comment.
- (6) Subject to subparagraphs (7) and (8) below, the adjudication committee must consider the unsolicited bid and may, depending on its delegations, award the bid or make a recommendation to the *Accounting Officer*.
- (7) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (8) 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 and Provincial Treasuries.
- (9) If any recommendations of the National and Provincial Treasuries are rejected or not followed, the *Accounting Officer* must submit to the Auditor-General and the National and Provincial Treasuries the reasons for rejecting or not following those recommendations.

- (10) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no *contract* committing the *Municipality* to the bid may be entered into or signed within 30 days of the submission.
- (11) The processes to be followed by the *Municipality* with regard to the acceptance or rejection of an unsolicited bid shall clearly be made known to the bidder who submits the unsolicited bid concerned.
- (12) The *Council* shall exercise caution when interviewing a potential supplier or a *person* who may wish to offer services to the *Municipality* in circumstance which may be tantamount to the submission of or negotiation with regard to an unsolicited bid and shall not do anything or cause anything to be done which may be contrary to this policy.

41. Combating of abuse of supply chain management system

- (1) The *Accounting Officer* must-
 - (a) take all reasonable steps to prevent abuse of the supply chain management system;
 - (b) investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this policy, and when justified -
 - (i) take appropriate steps against such official or other role player; or
 - (ii) report any alleged criminal conduct to the South African Police Service;
 - (c) check the National Treasury's database prior to awarding any *contract* to ensure that no recommended bidder, or any of its directors, is listed as a *person* prohibited from doing business with the public sector;
 - (d) reject any bid from a bidder -
 - (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the *Municipality*, or to any other municipality or municipal entity, are in arrears for more than three months; or
 - (ii) who during the last five years has failed to perform satisfactorily on a previous *contract* with the *Municipality* or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
 - (e) reject a recommendation for the award of a *contract* if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular *contract*;
 - (f) cancel a *contract* awarded to a *person* if –
 - (i) such *person* committed any corrupt or fraudulent act during the bidding process or the execution of the *contract*; or

- (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the *contract* that benefited that *person*; and
- (g) Reject the bid of any bidder if that bidder or any of its directors -
- (i) has abused the supply chain management system of the *Municipality* or has committed any improper conduct in relation to such system;
 - (ii) has been convicted for fraud or corruption during the past five years;
 - (iii) has wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector *contract* during the past five years; or
 - (iv) has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- (2) The *Accounting Officer* must inform the National and Provincial Treasuries in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) above.

Part 3: Logistics, Disposal, Risk and Performance Management

42. Logistics management

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

services.

43. Disposal management

- (1) In terms of section 14 of the Act, the *Municipality* may not transfer ownership as a result of sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.
- (2) The *Municipality* may transfer ownership or otherwise dispose of capital asset other than one contemplated in subsection (1), but only after the *Council*, in a meeting open to the public-
 - (a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and
 - (b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.
- (3) Assets may be disposed of by -
 - (a) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
 - (b) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
 - (c) selling the asset; or
 - (d) destroying the asset.
- (4) The *Accounting Officer* must ensure that -
 - (a) when immovable property is sold by means of a *competitive bidding process*, the highest price offered shall be accepted, provided such price is equal to or higher than the market related price for the relevant immovable property;
 - (b) in other cases, only at a market related price except when the public interest or the plight of the poor demands otherwise in which event the sale price shall be determined in accordance with the applicable land disposal or indigent policy adopted by the *Council*;
 - (c) movable assets are sold either by way of written price quotations, a *competitive bidding process* or by public auction at the highest offered price, provided such price is market related;
 - (d) firearms are not sold or donated to any *person* or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;
 - (e) immovable property is let at market related rentals except when the public interest or the plight of the poor demands otherwise in which event the rental shall be determined in accordance with the applicable land disposal or indigent support policy adopted by the *Council*;
 - (f) all fees, charges, rates, tariffs, scales of fees or other charges relating to the

- (g) letting of immovable property are annually reviewed;
where assets are traded in for other assets, the highest possible trade-in price is negotiated; and
 - (h) in the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate, within 30 days, whether any of the local schools are interested in the equipment.
- (5) This paragraph must be read with and applied in conjunction with the Municipal Asset Transfer Regulations contained in Government Notice R. 878 of 22 August 2008 and the associated policies adopted by the *Council*. In the event of conflict, the provisions of the aforesaid Regulations shall be applied.

44. Risk management

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

45. Performance management

- (1) The *Accounting Officer* must establish and implement an internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorized supply chain management processes were followed and whether the objectives of this policy were achieved.
- (2) Monthly monitoring of service providers and blacklisting thereof will be in line with the *Treasury guidelines* as detailed in the SCM procedure manual.

Part 4: Other matters

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

- (1) No award above R15 000 may be made in terms of this policy to a *person* whose tax matters have not been declared by the South African Revenue Service to be in order.
- (2) Before making an award to a *person*, the *Accounting Officer* must first check with SARS whether that *person's* tax matters are in order.

- (3) If SARS does not respond within 7 days of request for confirmation in terms of subparagraph (2), such *person's* tax matters may for purposes of subparagraph (1) be presumed to be in order.

47. Prohibition on awards to *persons* in the service of the state

- (1) Irrespective of the procurement process followed, no award may be made to a *person* in terms of this policy -
- (a) who is *in the service of the state*;
 - (b) if that *person* is not a natural *person*, of which any director, manager, principal shareholder or stakeholder is a *person in the service of the state*; or
 - (c) who is an advisor or consultant *contracted* with the *Municipality*.

48. Awards to close family members of persons in the service of the state

- (1) The *Accounting Officer* must ensure that the notes to the annual financial statements disclose particulars of any award of more than R2 000 to a *person* who is a spouse, child or parent of a *person in the service of the state*, or has been *in the service of the state* in the previous twelve months, including -
- (a) the name of that *person*;
 - (b) the capacity in which that person is *in the service of the state*; and
 - (c) the amount of the award.

49. Ethical standards

- (1) A code of ethical standards as set out in subparagraph (2) below is hereby established for officials and other role players in the supply chain management system of the *Municipality* in order to promote –
- (a) mutual trust and respect; and
 - (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
- (2) An official or other role player involved in the implementation of this Policy –
- (a) must treat all providers and potential providers equitably;
 - (b) may not use his or her position for private gain or to improperly benefit another *person*;
 - (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that *person*, of a value more than R350;
 - (d) notwithstanding subparagraph (2) (c) above 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, favouritism and unfair and irregular practices in the supply chain management system; and
 - (i) must report to the *Accounting Officer* any alleged irregular conduct in the supply chain management system which that *person* may become aware of, including –
 - (a) any alleged fraud, corruption, favouritism or unfair conduct;
 - (b) any alleged contravention of this Policy; or
 - (c) any alleged breach of this code of ethical standards.
- (3) Declarations in terms of subparagraphs (2)(d) and (e) above –
- (a) must be recorded in a register which the *Accounting Officer* must keep for this purpose;
 - (b) must be made by the *Accounting Officer* to the *Executive Mayor* of the *Municipality* who must ensure that such declarations are recorded in the applicable register.
- (4) The National Treasury's code of conduct must also be taken into account by supply chain management practitioners and other role players involved in supply chain management.
- (5) A breach of the code of ethics must be dealt with as follows –
- (a) in the case of an employee, in terms of the disciplinary procedures of the *Municipality* envisaged in section 67(1)(h) of the Municipal Systems Act;
 - (b) in the case a role player who is not an employee, through other appropriate means in recognition of the severity of the breach.
 - (c) in all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act.
- 50. Inducements, rewards, gifts and favours to municipalities, officials and other role players**
- (1) No *person* who is a provider or prospective provider of goods or services or a recipient or prospective recipient of goods disposed of or to be disposed of may either

directly or through a representative or intermediary promise, offer or grant -

- (a) any inducement or reward to the *Municipality* for or in connection with the award of a *contract*; or
 - (b) any reward, gift, favour or hospitality to -
 - (i) any official; or
 - (ii) any other role player involved in the implementation of this policy.
- (2) The *Accounting Officer* must promptly report any alleged contravention of subparagraph 1 to the National Treasury for considering whether the offending *person*, and any representative or intermediary through which such *person* is alleged to have acted, should be listed in the National Treasury's database of *persons* prohibited from doing business with the public sector.
- (3) Subparagraph (1) does not apply to gifts less than R350 in value.

51. Sponsorships

- (1) The *Accounting Officer* must promptly disclose to the National and Eastern Cape 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 to the *Municipality*; or
 - (b) a recipient or prospective recipient of goods disposed of or to be disposed of by the *Municipality*.

52. Objections and complaints

- (1) *Persons* aggrieved by decisions or actions taken in the implementation of the supply chain management system, may lodge with the *Accounting Officer*, within 14 days of the decision or action, a written objection or complaint against the decision or action concerned.
- (2) The successful bidder may not commence any work until the expiry of the 14 day appeal period, or confirmation in writing before the expiry to the 14 day appeal period that none of the affected parties intend to appeal, or confirmation of the satisfactory resolution of any appeals as detailed in SCM procedure manual.

53. Resolution of disputes, objections, complaints and queries

- (1) The *Accounting Officer* must appoint an independent and impartial *person*, not directly involved in the supply chain management processes -
- (a) to assist in the resolution of disputes between the *Municipality* and other *persons* regarding –
 - (i) any decisions or actions taken in the implementation of the supply chain management system; or
 - (ii) any matter arising from a *contract* awarded in the course of the supply

chain management system; or

- (b) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such *contract*.
- (2) The *Accounting Officer* or another official designated by the *Accounting Officer* is responsible for assisting the appointed *person* to perform his or her functions effectively.
- (3) The *person* appointed must -
 - (a) strive to resolve promptly all disputes, objections, complaints or queries received; and
 - (b) submit monthly reports to the *Accounting Officer* on all disputes, objections, complaints or queries received, attended to or resolved.
- (4) A dispute, objection, complaint or query may be referred to the Eastern Cape Provincial Treasury if –
 - (a) the dispute, objection, complaint or query is not resolved within 60 days of being lodged; or
 - (b) no response is forthcoming within 60 days of the lodgement of the dispute, objection, complaint or query.
- (5) If the Eastern Cape Provincial Treasury does not or cannot resolve the matter, the dispute, objection, complaint or query concerned may be referred to the National Treasury for resolution.
- (6) This paragraph must not be read as affecting a *person's* rights to approach a competent court for such order as may be just and necessary in the circumstances at any time.

54. Contracts providing for compensation based on turnover

- (1) If a service provider acts on behalf of the *Municipality* to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for the service or the amount collected, the *contract* between the service provider and the *Municipality* must stipulate -
 - (a) a cap on the compensation payable to the service provider; and
 - (b) that such compensation must be performance based.

55. Contract Management – issue of variation orders

- (1) The *Accounting Officer* or nominee may, subject to subparagraphs (2) to (4) authorize the issue of variation orders in respect of *contract* specifications or conditions of *contract* in order to accommodate costs for additional work either unforeseen when *contracts* were awarded for infrastructure projects, essential or necessary additional work or in instances where factors beyond the control of an appointed *contractor* has led to or will lead to a delay in a *contract* completion date.

- (2) A variation order may only be issued after –
 - (a) the need for such order has been fully motivated by the responsible project manager and supported by the *Head of Department* concerned; and
 - (b) the *Chief Financial Officer* has certified that funds are available to cover the cost the required additional work
- (3) A request for the issue of a variation order in an amount exceeding R200 000 shall first be referred to the Bid Adjudication Committee which considered the initial bid for approval provided that the *Accounting Officer* may constitute a new Bid Adjudication Committee for this purpose and such Bid Adjudication Committee may not approve the variation of *contracts* by more than 20% for construction related *contracts* and 15% for goods and services of the original value of the *contract*. Anything beyond the above mentioned threshold must be reported to the *Council*.
- (4) No request for a variation order may be approved in circumstance where new bids may be invited for the additional work concerned.
- (5) The *line manager* responsible for the implementation of a project undertaken either departmentally or through an appointed *contractor* must keep a proper record of all variation orders issued in respect of a project.
- (6) The original copy of an issued variation order must be filed with the original bid and *contract* documents;
- (7) The responsible *line manager* must, upon completion of additional work or the expiry of any extended *contract* period authorized by a variation order, certify that the terms and conditions of such variation order have been complied with.

56. Application of policy to municipal entities

- (1) The provisions of this policy generally do not apply to municipal entities.
- (2) The supply chain management system of a municipal entity shall be applied with due regard to the provisions of this policy and *the Regulations* and, in the event of conflict, the provisions of *the Regulations* shall enjoy preference.

57. Fronting

- (1) For purposes of this paragraph, “*fronting*” shall include the under-mentioned acts on the part of a tenderer or any *person* or party associated with a tenderer:
 - (a) **Window-dressing:** This includes cases in which *black people* are appointed or introduced to an enterprise on the basis of tokenism and may subsequently be discouraged or inhibited from substantially participating in the core activities of the enterprise concerned and/or be discouraged or inhibited from substantially participating in the declared areas and/or levels of their participation;
 - (b) **Benefit Diversion:** This includes initiatives where the economic benefits received by an organization for having *B-BBEE* Status do not flow to *black people* in the ratio specified by law;

- (c) **Opportunistic Intermediaries:** This includes enterprises that have concluded agreements with other enterprises in order to leverage the opportunistic intermediary's favourable *B-BBEE* status in circumstances where the agreement involves:
 - (i) Significant limitations or restrictions on the identity of the opportunistic intermediary's suppliers, service providers, clients or customers;
 - (ii) The maintenance of their business operations in a context reasonably considered improbable having regard to resources; and
 - (iii) Terms and conditions that are not negotiated at arms-length on a fair and reasonable basis.
- (2) Where the *Accounting Officer* detects *fronting*, he must act against a tenderer concerned in terms of paragraph 29(8.4) and, in addition, report such *fronting* to the Department of Trade and Industry.

58. Commencement

This policy takes effect on the date of its adoption by the Council.

NELSON MANDELA BAY METROPOLITAN MUNICIPALITY

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

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

1. General Principles

The *Municipality* commits itself to a policy of fair dealing and integrity in the conducting of its business. Officials and other role players involved in supply chain management (SCM) are in a position of trust which implies 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 gratuity from any *person*, or provider / *contractor* either for themselves, their family, their friends and business associates.

Officials and other role players involved in SCM should ensure that they perform their duties efficiently, effectively and with integrity, in accordance with the relevant legislation, policies and guidelines. They should ensure that public resources are administered responsibly.

Officials and other role players involved in SCM should be fair and impartial in the performance of their functions. They should, at no time, afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual, they should also not abuse the power and authority vested in them.

2. Conflict of interest

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

- (a) must treat all providers and potential providers equitably and fairly;
- (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, favoritism 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 but not limited to -
 - (i) any alleged fraud, corruption, favoritism or unfair conduct;
 - (ii) any alleged contravention of the policy on inducements, rewards, gifts and favours to municipalities or municipal entities, officials or other role players; and
 - (iii) any alleged breach of this code of conduct.
- 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 mayor who must ensure that such declaration is recorded in the register.

4. Openness

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

5. Confidentiality

- 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 accountable 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.

6.4 No *person* should-

6.4.1 interfere with the supply chain management system of the *Municipality*; or

6.4.2 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:

- (i)** suggestions to fictitious lower quotations;
- (ii)** reference to non-existent competition;
- (iii)** exploiting errors in price quotations / bids;
- (iv)** soliciting price quotations / bids from bidders / *contractors* whose names appear on the Register for Tender Defaulters.