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</tbody>
</table>
### TABLE OF CONTENTS

**CHAPTER 1: IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY** ................................................. 10
2. Supply Chain Management Policy ........................................................................................................... 10
3. Amendment and adoption of Supply Chain Management Policy ......................................................... 11
4. Delegation of Supply Chain Management powers and duties ............................................................. 12
5. Sub-delegations ..................................................................................................................................... 12
6. Oversight role of the Council ................................................................................................................ 14
7. Supply Chain Management Unit .......................................................................................................... 15
8. Training of Supply Chain Management officials .................................................................................. 15

**CHAPTER 2: SUPPLY CHAIN MANAGEMENT SYSTEM** ............................................................................. 15
9. Format of Supply Chain Management System ..................................................................................... 15

**Part 1: Demand management** ................................................................................................................ 16
10. System of demand management ........................................................................................................... 16

**Part 2: Acquisition management** .......................................................................................................... 18
11. System of acquisition management ...................................................................................................... 18
12. Range of procurement processes ......................................................................................................... 19
13. General preconditions for consideration of written quotations or bids ............................................ 20
14. Lists of accredited prospective providers ........................................................................................... 21
15. Petty cash purchases ............................................................................................................................. 24
16. Written price quotations ....................................................................................................................... 24
17. Formal written price quotations ............................................................................................................ 25
18. Procedures for procuring goods or services through written quotations and formal written price quotations .................................................................................................................... 25
19. Competitive bidding process ................................................................................................................ 28
20. Process for competitive bidding ........................................................................................................... 31
21. Bid documentation for competitive bids ............................................................................................... 32
22. Public invitation for competitive bids .................................................................................................. 33
23. Procedure for handling, opening and recording of bids ..................................................................... 35
24. Negotiations with preferred bidders ....................................................................................................... 36
25. Two-stage bidding process .................................................................................................................... 37
26. Committee system for competitive bids ............................................................................................... 37
27. Bid Specification Committees .............................................................................................................. 38
28. Bid Evaluation Committees .................................................................................................................. 51
29. Bid Adjudication Committees ............................................................................................................. 56
30. Procurement of banking services ......................................................................................................... 59
31. Procurement of Information and Communication Technology (ICT) related goods or services .................................................. 60
32. Procurement of goods and services under contracts secured by other organs of state ...................... 60
33. Procurement of goods necessitating special safety arrangements ..................................................... 61
(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 .................................................. 61
34. Proudly South African Campaign ...................................................................................................... 61
35. Appointment of consultants ............................................................................................................... 63
36. Deviation from and ratification of minor breaches of procurement processes .................................. 65
37. Unsolicited bids ..................................................................................................................................... 66
38. Combating of abuse of Supply Chain Management system ............................................................... 68

**Part 3: Logistics, Disposal, Risk and Performance Management** ............................................................ 69
39. Logistics management .......................................................................................................................... 69

SCM Policy Version 5
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 said Act, and -

“**Accounting Officer**” means the manager of the municipal administration of the NMBM 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 NMBM who has been duly authorised to act in his/her stead and, in the event of the NMBM 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;

“**accredited prospective provider**” is a person or entity listed on the Central Suppliers Database who/which has met and continues to meet the listing of criteria specified by the Accounting Officer;

“**all applicable taxes**” includes Value-Added Tax, Pay as You Earn, Income Tax, skills development levies and Unemployment Insurance Fund contributions;

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

“**B-BBEE status level of contributor**” means the B-BBEE status of an entity in terms of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

“**bid**” has a corresponding meaning to “Tender”;

“**black designated groups**” has the meaning assigned to it in the Codes of Good Practice issued in terms of Section 9(1) of the Broad-Based Black Economic Empowerment Act;
“black people” is a generic term that refers to Africans, Coloureds and Indians who are citizens of the Republic of South Africa by birth or descent; or who became citizens of the Republic of South Africa by naturalisation before 27 April 1994 or on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date;

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

“Central Suppliers Database” means the national standardised and centralised electronic supplier database administered by the National Treasury, which provides information on suppliers to an organ of state;

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

“CIB 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 utilised, have been taken into consideration;

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

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

“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;

"contract" means the agreement that results from the acceptance of a tender by the NMBM in accordance with this Policy;

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

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

“Councillor” means a member of the Council of the Nelson Mandela Bay Municipality, and a person that in terms of Section 117 of the Municipal Finance Management Act is barred from serving on municipal tender committees.

“creditor” means a person or a company to whom money is owed by the NMBM;

“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 group” means, as defined in the Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2017 -
(a) Black designated groups;
(b) Black people;
(c) Women;
(d) People with disabilities; or
(e) Small enterprises, as defined in Section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);
"designated sector" means a sector, sub-sector or industry 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;

“EME” means, as defined in the Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2017, an exempted micro enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.

“emergency” includes the existence of one or more of the following:
   a) the possibility of human injury, death or suffering and the 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 critical to the effective functioning of the NMBM;
   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 the necessary action may result in the NMBM 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 formal procurement processes;

“Emerging Enterprise Development Support Programme and Policy (EEDSP)” is a policy of the NMBM that seeks to accelerate the development, growth and sustainability of the designated group;

“e-tender portal” is a mechanism through which municipalities and municipal entities are required to advertise all their bids and publish notices of all awarded bids, cancellations and deviations, variations and extensions of existing contracts;

"Executive Mayor" means the Councillor elected by the Council as Mayor in terms of
Section 48 of the Local Government: Municipal Structures Act No. 117 of 1998, read together 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 regarding which 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” mean quotations referred to in paragraph 12 (1) (d) of this Policy;

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

“functionality” means the measurement according to predetermined norms, as set out in the tender specifications, 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;

“Head of Department” means a senior manager, as defined in the Municipal Finance Management Act, 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 that 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 the NMBM or its municipal entity; 
(d) An employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Municipal Finance Management Act and the Public Finance Management Act No. 1 of 1999; 
(e) A member of the accounting authority of any national or provincial public entity; or 
(f) An employee of Parliament or a provincial legislature; 

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

“list of accredited prospective providers” means the list of accredited prospective providers that the NMBM must keep in terms of paragraph 15 of this Policy; 

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

long-term contract” means a contract with a duration period exceeding one year; 

“Municipal Finance Management Act” means the Local Government: Municipal Finance Management Act 56 of 2003 and, unless otherwise stated in this Policy; 

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

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

“NMBM” means the Nelson Mandela Bay Metropolitan Municipality, a metropolitan municipality established in terms of Section 12 of the Local Government: Municipal
Structures Act No. 117 of 1998 and includes any employee entitled to or duly authorised to perform any function or duty in terms of this Policy and/or responsible for the implementation of this Policy or any part thereof;

“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 specifications;

“official” means-
(a) an employee of the NMBM or its municipal entity;
(b) a person seconded to the NMBM or its municipal entity to work as a member of the staff of the NMBM or municipal entity; or
(c) a person contracted by the NMBM or its municipal entity to work as a member of the staff of the NMBM or municipal entity otherwise than as an employee;

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

(a) The Preferential Procurement Policy Framework Act No. 5 of 2000;
(b) The Broad-Based Black Economic Empowerment Act No. 53 of 2003;
(c) The Construction Industry Development Board Act No. 38 of 2000;
(d) The Local Government: Municipal Systems Act No. 32 of 2000 (Municipal Systems Act);

“people with disabilities” mean people who have a long-term or recurring physical or mental impairment that substantially limits their prospects of entry into, or advancement in, employment;

“person” includes a juristic person;

“the Policy” means the NMBM Supply Chain Management Policy V.5;

“Preferential Procurement Regulations” means the Preferential Procurement
Regulations contained in Government Notice 10684 of 20 January 2017, promulgated in Government Gazette No. 40553 of this date;

“price” includes *All applicable taxes*, less all unconditional discounts;

“proof of B-BBEE status level of contributor” means –
(a) the B-BBEE status level certificate issued by an authorised body or person;
(b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
(c) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act;

“Qualifying Small Enterprise” (QSE) means a qualifying small business enterprise in terms of a Code of Good Practice on black economic empowerment, issued in terms of Section 9(1) of the Broad-Based Black Economic Empowerment Act;

“rand value” means the total estimated value of a *contract* in 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;

“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 NMBM for the provision of services, works or goods, through price quotations, advertised competitive tendering processes or proposals; and “bid” has a
corresponding meaning;

“tender validity period” The period within which a tenderer’s offer remain fixed. However, NMBM has a right to approach a tenderer within this fixed period to extend the term or duration of the offer, especially in instances where the tender will not be awarded within the original validity period;

“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;

"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;

“urgency” means 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” mean quotations referred to in paragraph 12 (1) (c) of this Policy.
CHAPTER 1: IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

It should be noted that the numbering in the Policy follows the numbering of the Regulations.

2. Supply Chain Management Policy

(1) All officials and other role-players in the Supply Chain Management system of the NMBM must implement the 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) The Policy applies when the NMBM -

(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) The Policy, except where provided otherwise, does not apply in respect of the procurement of goods and services contemplated in Section 110(2) of the Municipal Finance Management Act, including, but not limited to -
(a) water from the Department of Water Affairs or a public entity, another NMBM or a municipal entity; and

(b) electricity from Eskom or another public entity, another NMBM or a municipal entity.

(4) Notwithstanding anything to the contrary in the Policy, the NMBM 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 the Policy, unless such contractor is registered with the Construction Industry Development Board established by Section 2 of the Construction Industry Development Board (CIDB), Act No. 32 of 2000.

3. Amendment and adoption of 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 NMBM 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 / she must ensure that same comply with the Regulations and Treasury guideline standards determining standards for municipal Supply Chain Management policies and any other policies governing supply chain management in local government.

(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 *Municipal Finance Management Act*; and
(ii) this Policy; and

(b) to maximise 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 *Municipal Finance Management Act*.

(2) Sections 79 and 106 of the *Municipal Finance Management 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 *NMBM* or to a committee that is not exclusively composed of *NMBM* officials.

(4) This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a *competitive bidding process* otherwise than through the committee system provided for in paragraph 26 of the *Policy*.

5. **Sub-delegations**

(1) The *Accounting Officer* may, in terms of Section 79 of the *Municipal Finance Management 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 the *Policy* or by resolution of the *Council*, but any such sub-
delegation must be consistent with subparagraph (2) and paragraph 4 of the 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 –

(a) the amount of the award;
(b) the name of the person to whom the award was made; and
(c) the reason why the award was made to that person.

(4) A written report referred to in subparagraph (3) must be submitted –

(a) to the Accounting Officer, in the case of an award by -
(i) the Chief Financial Officer;
(ii) a senior manager; or
(iii) a Bid Adjudication Committee of which the *Chief Financial Officer* or a senior manager is a member;

(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 26 of this Policy.

(7) No supply chain management decision-making powers may be delegated to an advisor, consultant or a *person* who is not an official of the *NMBM*.

6. **Oversight role of the Council**

(1) A *Councillor* cannot in terms of Section 117 of the *Municipal Finance Management Act* be a member of a bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer.

(2) The *Council* must maintain oversight over the implementation of *the 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) within 20 days of the end of each financial year the municipal entity is required to submit a report on the implementation of the Supply Chain Management policy to the Board of Directors, who must then submit it to the *Accounting*
(c) whenever there are serious and material problems in the implementation of the 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 was established to implement the 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 Municipal Finance Management Act.

8. **Training of Supply Chain Management officials**

(1) 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**

The 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 NMBM support its operational commitments and strategic goals, as outlined in the NMBM’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 NMBM 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) be coordinated by NMBM SCM officials in consultation with end-users;
   (c) ensure that Procurement Planning takes place during the beginning of the financial year when the Integrated Development Plan (IDP) and budget has been approved;
   (d) take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature and ensure that market-related prices are considered;
   (e) ensure that the SCM designated official:
      (i) analyses the goods, works or services required;
      (ii) conducts an analysis of the past expenditure;
      (iii) compiles a list of the goods, works or services required;
      (iv) advises on an appropriate procurement strategy.
   (f) provide for the compilation of the required specifications to ensure that municipal needs are met;
   (g) allow for the undertaking of appropriate industry analysis and research to ensure that innovations and technological benefits are maximised;
   (h) compile a Procurement Register that will manage the procurement for each
requirement;

(3) The SCM Unit is responsible for monitoring and assessing the validity and accuracy of and compliance with the Procurement Plan.

(4) 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 utilised 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 34(2) of this policy.

(5) The Accounting Officer must indicate in the invitation to submit a tender and in the tender specification –
   (a) whether –
      (i) pre-qualification criteria are applicable to the tender;
      (ii) the goods or services for which a tender is to be invited, are in a designated sector for local production and content;
      (iii) subcontracting as a condition of tender (compulsory subcontracting) is applicable to the tender; and
      (iv) objective criteria are applicable to the tender;
   (b) whether such tender will be evaluated on the basis of functionality criterion. The following must be clearly stated:
      (i) the objective evaluation criteria for measuring functionality;
      (ii) The point allocated to each criterion should not be generic but should be determined for each tender on a case by case basis.;
      (iii) the applicable points that will be utilised when scoring each sub-criterion should 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, with the
aforesaid qualifying score to meet the following criteria:

(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 jeopardise the quality of the service required, nor so high that it may be restrictive to the extent that it jeopardises the fairness of the Supply Chain Management system;

(c) 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

(d) 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 paragraph 27(9) and 27(10) of the Policy.

(6) Any system designed in terms of this paragraph shall take cognizance of the provisions of the 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 NMBM in accordance with authorised processes only;

(b) that goods and services up to and including R200 000 are procured by the NMBM from service providers listed on the Central Suppliers Database;

(c) that bids that exceed R200 000, bidders who are not registered on the Central Supplier 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 *Municipal Finance Management 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;  
(g) that any National *Treasury guidelines* on acquisition management are properly taken into account; and  
(h) that the *NMBM* 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 *Municipal Finance Management Act* have been fully complied with.

(2) When procuring goods or services from an organ of state, as contemplated in Section 110 (2) of the *Municipal Finance Management Act*, the *Accounting Officer* must make public the fact that such goods or services are procured otherwise than through the *NMBM*’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 be procured only by way of -  
(a) petty cash purchases up to a transaction value of R2,000 (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 R10,000 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 one 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 the 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. **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 -

   (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 authorised the *NMBM* to obtain a tax clearance certificate from the South African Revenue Services so that the *NMBM* may confirm that the bidder's tax matters are in order.

(c) has provided the *NMBM* 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 *NMBM* or to any other *NMBM* or municipal entity for rates, taxes and/or municipal service that have been in arrear for a period of more than three months and that no dispute exists between such bidder and the relevant *NMBM* 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 not 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 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.

(f) 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 NMBM;

(iii) for the joint and several liability of the parties thereto to the NMBM for the due fulfilment of any contract concluded with the NMBM as a result of the bid;

(iv) registration on the Central Suppliers Database.

(2) This paragraph must be read in conjunction with paragraph 21 of the Policy.

14. Lists of accredited prospective providers

(1) The Accounting Officer must keep a list of accredited prospective providers of goods and services. The National Treasury’s standardised and centralised electronic suppliers database (CSD) must be used for the procurement requirements for written quotations and formal written price quotations;

(a) Accredited providers must –

(i) regularly update their Central Supplier Database profiles and ensure that their information is up to date at all times;

(ii) advise the NMBM when there is a change in status of the following documents by completing the NMBM Verification Form:
(a) Broad-based Black Economic Empowerment Certificate (BBBEE) / EME Letter / Sworn Affidavit;
(b) National Housing Board Registration Council (NHBRC) Certificate;
(c) Construction Industry Development Board (CIDB) grade (CSR number is required).

(b) NMBM Prospective suppliers must register on the Central Suppliers Database and thereafter submit the following documents as may be required:
   (i) BBBEE Certificate
   (ii) NHBRC Certificate
   (iii) CIDB CSR number (National Treasury Circular 81)
   (iv) Certified copy of ID of signatory
   (v) Messenger’s ID is required on submission

(c) NMBM prospective suppliers must submit the following to the Supply Chain Management Office, as the case may be;
   (i) BBBEE Certificate:
      (a) The name and physical location of the measured entity;
      (b) The registration number and, where applicable, the VAT number of the measured entity;
      (c) The date of issue and date of expiry;
      (d) The certificate number for identification and reference;
      (e) The scorecard that was used (for example EME, QSE or Generic);
      (f) The name and / or logo of the Verification Agency;
      (g) The SANAS logo;
      (h) The signature of the authorised person from the Verification Agency concerned; and
      (i) The B-BBEE Status Level of Contribution obtained by the measured entity.
   (ii) EME Letter:
      (a) The Auditor/Accounting Officer’s letterhead with full contact details;
      (b) The Auditor/Accounting Officer’s practice
numbers;

(c) The name and the physical location of the measured entity;

(d) The registration number and, where applicable, the VAT number of the measured entity;

(e) The date of issue and date of expiry;

(f) The BBBEE Status Level of Contribution obtained by the measured entity; and

(g) The total black shareholding and the total black female shareholding

(iii) Sworn Affidavit

(a) Signatory (Full name and Surname)

(b) Identity number

(c) Enterprise name

(d) Trading name

(e) Registration number

(f) Enterprise name

(g) BBBEE Status Level of contribution obtained by the measured entity

(h) The total black shareholding and the total black female shareholding

(i) Current financial year

(j) Deponent signature

(k) Date

(l) Commissioner of Oaths signature and date stamp

(2) 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 must be disallowed.

(3) 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.

(4) The aforesaid list must also be compiled per commodity and per type of service.
15. **Petty cash purchases**

(1) The conditions for the procurement of goods by means of petty cash purchases referred to in paragraph 12(1) (a) of the Policy, are that minor items are purchased for up to R2 000, 00 (Vat included) where it is impractical, impossible or not cost effective to follow the official procurement process and is strictly of a reimbursing nature.

(2) A monthly reconciliation report from each senior manager must be provided to the Chief Financial Officer, including (a) the total amount of petty cash purchases for that month; and (b) receipts and appropriate documents for each purchase.

(3) The Chief Financial Officer shall develop a Petty Cash Policy within which the terms and conditions of managing Petty Cash transactions will be detailed, including delegations of responsibilities.

(4) The Accounting Officer may delegate responsibility for the management of petty cash to an official directly or indirectly reporting to the Chief Financial Officer.

(5) The Accounting Officer, guided by the applicable Policy and applicable Regulations, may, from time to time, determine the maximum amount of the permissible petty cash expenditure per month.

16. **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 NMBM, provided that if quotations are obtained from providers who are not so listed, such providers must meet the listing criteria for registration on the NMBM’s Supplier Database, subject to authorization by the Accounting Officer or any other official delegated 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 therefore must be recorded and reported quarterly to the Accounting Officer or Delegated Official;

(d) The Accounting Officer or Delegated Official must record the names of the potential providers requested to provide quotations with their quoted prices;

(e) No verbal quotations will be accepted.

17. 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 Central Supplier Database;

(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 NMBM, 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) 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 or delegated official.

(c) If it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the Chief Financial Officer.

(2) A delegated official must within three days of the end of each month, report to the Chief Financial Officer on any approvals given during that month.

18. 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 *NMBM*;

(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:

\[
Ps = \left( 1 - \frac{Pt - P_{\text{min}}}{P_{\text{min}}} \right)
\]

Where:

\[
Ps = \text{Points scored for comparative price of tender or offer under consideration;}
\]

\[
Pt = \text{Comparative price of tender or offer under consideration; and}
\]

\[
P_{\text{min}} = \text{Comparative price of lowest acceptable tender or offer.}
\]
Prior to the award of a contract with a price in excess of R10 000, the Delegated 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;

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;

The Delegated Official must, in writing, notify the Chief Financial Officer within 10 days after the end of each month of all written quotations and formal written price quotations accepted or approvals given in terms of the afore-going subparagraphs;

The Chief Financial Officer must ensure that adequate systems are in place to meet the requirements for proper record keeping;

Acceptable offers must be awarded to the bidder who scored the highest points in accordance with the stipulated preference points system.

Single source selection may be appropriate only if it presents a clear advantage over competition:

for services that represent a natural continuation of previous work carried out by the consultant, and continuity of downstream work is considered essential;

where rapid selection is essential;

for very small appointments;

when only one consultant is qualified, or has experience of exceptional worth for the project.

The reasons for single-source selection must be fully motivated in a report and approved by the Chief Financial Officer or an official delegated 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.

19. 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.

(4) Where feasible to subcontract for a contract above R30 million, the Bid Specification Committee must compel the main contractor to subcontract a minimum of 30% of the value of the contract to -

(a) an EME or QSE;
(b) an EME or QSE which is at least 51% owned by Black people;
(c) an EME or QSE which is at least 51% owned by Black people who are youth;
(d) an EME or QSE which is at least 51% owned by Black people who are women;
(e) an EME or QSE which is at least 51% owned by Black people with disabilities;
(f) an EME or QSE which is 51% owned by Black people living in rural or underdeveloped areas or townships;
(g) a cooperative which is at least 51% owned by Black people;
(h) an EME or QSE which is at least 51% owned by Black people who are Military Veterans;
(i) more than one of the categories referred to in paragraphs (a) to (h).

In order to promote the Social and Economic development by means of the following:

(a) Labour-intensive construction;
(b) Local Economic Development;
(c) Business opportunities for targeted sectors;
(d) Enterprise support and development programmes;
(e) Skills development opportunities to targeted labour; and
(f) Primary health care programmes for construction workers.

(5) Special Categories of bidders and suppliers

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

(1) Exempted Micro Enterprise (EME):

(a) An EME is any enterprise with an annual total revenue of R10 million or less.
(b) An EME is deemed to have a B-BBEE Status of “Level Four Contributor” and having a B-BBEE recognition level of 100%.
(c) The enhanced B-BBEE recognition level for an EME will be assigned as follow:
   (i) An EME that is 100% Black owned qualifies for elevation to “Level One Contributor”, having a B-BBEE recognition level of 135%.
   (ii) An EME that is at least 51% Black owned qualifies for elevation to “Level Two Contributor”, having a B-BBEE recognition level of 125%.
   (iii) An EME is allowed to be measured in terms of the QSE scorecard should it wish to maximize its points and move to a higher B-BBEE recognition level.
   (iv) An EME is only required to obtain a sworn affidavit, or a Companies and Intellectual Property Commission (CIPC) issued certificate, on an annual basis, confirming the following:
(a) annual total Revenue of R10 million or less; and
(b) Level of Black ownership.

(d) Any misrepresentation in terms of this paragraph will constitute a criminal offence.

(2) **Qualifying Small Enterprise (QSE)**

(a) A QSE is an entity with an annual total revenue of between R10 million and R50 million.

(b) A QSE must comply with all the elements of B-BBEE for the purposes of measurement.

(c) Enhanced B-BBEE recognition level for QSE:

(i) A qualifying small enterprise that is 100% Black owned qualifies for a Level One B-BBEE recognition.

(ii) A QSE that is at least 51% Black owned qualifies for Level Two B-BBEE recognition level.

(d) A QSE is required only to obtain a sworn affidavit or Companies, or Intellectual Property Commission (CIPC) issued certificate, on an annual basis, confirming the following:

(i) Annual total revenue of R50 million or less; and

(ii) Level of Black ownership.

(e) Enterprises claiming qualifying *small enterprise* status must include in any bid submitted to the NMBM, 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.

(f) Any misrepresentation in terms of this paragraph will constitute a criminal offence.

(3) **Start-up enterprises:**

(a) 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) A Start-up Enterprises is deemed to have a “*B-BBEE* Status of Level as per EME in sub-paragraph (1).
(c) In order to qualify as a Start-up Enterprise, the enterprise must provide an independent confirmation of its status as per sub-paragraph (1)(c)(iv).

(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 R10 million but less than R50 million.

(e) For contracts of R50 million or more, they must submit the generic scorecard. The preparation of such scorecards must use annualised data.

(f) 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.

(g) Any misrepresentation in terms of this paragraph will constitute a criminal offence.

(4) Sub-Contracting

(a) A person awarded a contract may enter into a subcontracting arrangement only with the approval of the NMBM.

(b) A person awarded a contract in relation to a Designated Sector may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

(c) A person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE Status Level of Contributor that the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

20. 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 21;
   (b) Public invitation of bids as detailed in paragraph 22;
   (c) NMBM tenders must be advertised on e-Tender portal;
(d) Site meetings or briefing sessions, as detailed in paragraph 23;
(e) Handling of bids submitted in response to public invitation, as detailed in paragraph 23;
(f) Evaluation of bids, as detailed in paragraph 23;
(g) Award of contracts, as detailed in paragraph 29;
(h) Administration of contracts - after the award of a bid, the Accounting Officer and the bidder must enter into a written agreement;
(i) Proper record keeping;
(j) Original/legal copies of written contracts agreements should be kept in a secure place for reference and audit purposes.

21. **Bid documentation for competitive bids**

Bid documentation for a competitive bidding process must, in addition to the requirements of paragraph 14 –

(1) Take into account the following -
   (a) the general conditions of contract and any special conditions of contract, if specified;
   (b) any Treasury guidelines on bid documentation;
   (c) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction works;
   (d) relevant B-BBEE verification and certification requirements;
   (e) relevant local content or production requirements.

(2) Include the preference points system to be used in adjudicating bids, namely 80/20 or 90/10 as prescribed in the Preferential Procurement Regulations;

(3) Indicate the period for which bids are to remain valid and binding;

(4) 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;

(5) 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.

(6) Bidders who fail to respond to such a request before the validity of their bids expire, or who decline such a request shall not be considered further in the evaluation process.

(7) Compel bidders to submit a “Certificate of Independent Bid Determination” on form MBD 9 or similar document;

(8) 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 NMBM 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 NMBM 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 NMBM is expected to be transferred out of the Republic; and
(a) Stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law;

22. Public invitation for competitive bids

(1) 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 NMBM, the National Treasury E-Tender Publication Portal and in any other appropriate manner (which may include an advertisement in the Government Tender Bulletin);

(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 be submitted only on the original stamped bid documentation provided by the NMBM; and

(iii) the date, time and venue of any compulsory site meeting 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) a statement that tenders are valid for a period of 90 days;

(vi) 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 that is less than the 30 or 14 days’ requirement, but only if such shorter period can be justified on the grounds of urgency and 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.
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.

Where the NMBM invites bids for construction works with a value in excess of R30 000, it must publish such invitations on the website of the Construction Industry Development Board.

The NMBM 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.

23. Procedure for handling, opening and recording of bids

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

(1) Bids –
   (a) must be opened only in public;
   (b) 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
   (c) received after the published closing time or period should not be considered and be immediately returned to the bidder, unopened.

(2) 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 bidder's name will be read out.

(3) 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

(4) A minimum of four Delegated Officials opening received bids must -
(a) date stamp and initial the returnable schedules, and pricing schedule, as well as the bill of quantities;
(b) record in a register to be provided for these purposes, all bids received before the closing time or period for the submission of same;
(c) make the aforesaid register available for public inspection during the normal office hours of the NMBM; and
(d) publish the entries in the aforesaid register and the bid results on the website of the NMBM.

24. Negotiations with preferred bidders

(1) The Accounting Officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation -
   (a) does not allow any preferred bidder a second or unfair opportunity;
   (b) is not to the detriment of any other bidder; 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) The Accounting Officer or Delegated Official may:
   (a) negotiate a market-related price with the tenderer scoring the highest points, or cancel the tender;
      (i) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points, or cancel the tender;
      (ii) if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points, or cancel the tender.
   (iii) If a market-related price is not agreed as envisaged in section (2)(a), the NMBM must cancel the tender.

(3) Minutes of such negotiations must be kept for record and audit purposes.
25. **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.

26. **Committee system for competitive bids**

(1) A committee system for competitive bids must 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 must,
   (a) in writing, appoint the members of each committee, taking into account the provisions of Section 117 of the Municipal Finance Management Act in terms of which no Councillor may be a member of any such Committee or attend any of its meetings as an observer.
   (b) ensure that appointed Bid Committee Members sign the Code of Conduct for Supply Chain Management Practitioners and Other Role Players. Refer Annexure “A”.
   (c) ensure that the Bid Committee/s Chairperson compiles and submit Monthly Reports to him/her.

(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 27, 28 and 29 of this policy; and
(b) any other applicable legislation.

(5) The Accounting Officer must establish a committee system for formal written price quotations.

(6) A majority of the members a Bid Committee must be present before the committee concerned may consider any matters and the quorum must be (50+1)

27. Bid Specification Committees

(1) The Bid Specification Committee must consist of at least three members, of which one must be an SCM official.

(2) A Bid Specification Committee must be composed of an appointed Chairperson, Supply Chain Management Practitioner, one or more officials of the NMBM, preferably the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.

(3) A Bid Specification Committee must compile specifications for procurement of goods or services by the NMBM where it is possible, ensure that large projects are unbundled and that 30% of the contract value is subcontracted to the designated group.

(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 is prohibited from bidding for the resulting contracts in circumstances where such person, advisor or corporate entity may obtain an unfair advantage or where a
(6) A person that assisted in the drafting of a bid specification is 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.

(7) A specification referred to in this paragraph must be approved by the Accounting Officer or Delegated Official in writing prior to the publication of the invitation for bids.

(8) General Requirements

(a) Specifications -

(i) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services to the NMBM;

(ii) must take account of any accepted standards such as those issued by the South Africa Bureau of Standards, 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;

(iii) must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;

(iv) 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;

(v) 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”;

(vi) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Policy including:

(a) Evaluation criteria for measuring functionality;
(b) Weight of each criterion;
(c) Applicable value;
(d) Minimum qualifying score for functionality.

(b) NMBM may decide to apply pre-qualifying criteria to advance certain designated groups by advertising the tender with a specific tendering condition that only one or more of the following tenderers may respond –

(i) a tenderer having a stipulated minimum B-BBEE status level of contributor;

(ii) an EME or QSE;

(iii) a tenderer subcontracting a minimum of 30% to -

(a) an EME or QSE which is at least 51% owned by Black people;

(b) an EME or QSE which is at least 51% owned by Black people who are youth;

(c) an EME or QSE which is at least 51% owned by Black people who are women;

(iv) an EME or QSE which is at least 51% owned by Black people with disabilities;

(v) an EME or QSE which is 51% owned by Black people living in rural or underdeveloped areas or townships;

(vi) a cooperative which is at least 51% owned by Black people;

(vii) an EME or QSE which is at least 51% owned by Black people who are Military Veterans;

(c) A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is not an acceptable tender.

(d) Specifications must also provide, as a special condition of contract, 

(i) In the application of the 80/20 preference point system,

(a) if all bids received exceed R50 000 000, the bid must be cancelled.

(b) if one or more of the acceptable bid(s) received are within the R50 000 000 threshold, all bids received must be evaluated on the 80/20 preference point system.

(ii) In the application of the 90/10 preference point system,

(a) if all bids received are equal to or below R50 000 000, the bid must be cancelled.
(b) if one or more of the acceptable bid(s) received are above the R50 000 000 threshold, all bids received must be evaluated on the 90/10 preference point system.

(e) Specifications must be approved by the Accounting Officer or Delegated Official/s prior to publication of the invitation for bids outlined in paragraph 22 of this Policy.

(f) **Samples:**
   (i) 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.
   (ii) Bids may not be included in parcels containing samples.
   (iii) 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.
   (iv) Samples shall be supplied by a bidder at his/her own expense and risk. The 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.
   (v) 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.
   (vi) All goods/materials supplied must comply in all respects to that contract sample.

(9) **Functionality**

(a) Where functionality is utilised as an evaluation criterion, the 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.
(ii) The minimum qualifying score for functionality for a tender to be considered further-
   (a) must be determined separately for each tender; and
   (b) may not be so-
      (i) low that it may jeopardise the quality of the required goods or services; or
      (ii) high that it is unreasonably restrictive.

(b) Points scored for functionality must be rounded off to the nearest two decimal places.

(c) 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

(d) that tenders that have achieved the minimum qualification score for functionality will be evaluated further in terms of the preference point systems.

(10) 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 R50 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 R30 000 and up to a Rand value of R50 000 000 (All applicable taxes included):

\[
Ps = \left( 1 - \frac{Pt - Pmin}{Pmin} \right) \frac{Pt}{80}
\]

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.*

(iii) 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:

<table>
<thead>
<tr>
<th>B-BBEE Status Level of Contributor</th>
<th>Number of Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>20</td>
</tr>
<tr>
<td>2</td>
<td>18</td>
</tr>
<tr>
<td>3</td>
<td>14</td>
</tr>
<tr>
<td>4</td>
<td>12</td>
</tr>
<tr>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>Non-compliant contributor</td>
<td>0</td>
</tr>
</tbody>
</table>

OR

In respect of

**EXEMPTED MICRO ENTERPRISES (EMEs) and**

**START-UP ENTERPRISES (S-UEs)**

<table>
<thead>
<tr>
<th>Revenue</th>
<th>Black Ownership of EME</th>
<th>Deemed B-BBEE Status Level of Contributor</th>
<th>Number of Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>R10 million=</td>
<td>100%</td>
<td>1</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>&gt;=51%</td>
<td>2</td>
<td>18</td>
</tr>
</tbody>
</table>

**NB** An EME is allowed to be measured in terms of the QSE scorecard should they wish to maximise points and move to a higher B-BBEE recognition level.
In respect of

QUALIFYING SMALL ENTERPRISES (QSEs)

<table>
<thead>
<tr>
<th>Revenue</th>
<th>Black Ownership of EME</th>
<th>Deemed B-BBEE Status Level of Contributor</th>
<th>Number of Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>R10 million – R50 million</td>
<td>100%</td>
<td>1</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>&gt;= 51%</td>
<td>2</td>
<td>18</td>
</tr>
</tbody>
</table>

(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);

(v) The B-BBEE status level attained by a tenderer must be used to determine the number of points contemplated in subparagraph (ii).

(vi) A tenderer must submit proof of its B-BBEE Status Level of Contributor.

(vii) A tenderer that fails to submit proof of B-BBEE Status Level of Contributor, may not be disqualified, but-

(a) may only score points out of 80 for price; and

(b) score zero (0) points out of 20 for B-BBEE status.

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

(ix) The contract must be awarded to a tenderer scoring the highest points. However, if the price offered by a tenderer scoring the highest points is not market related, the NMBM may not award the contract to that tenderer, in terms of paragraph 24(2).
(11) **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 R50 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 R50 000 000 (*All applicable taxes* included):

\[
Ps = 90 - \frac{Pt}{Pmin} \quad \text{subject to subparagraph (ii)}
\]

Where:

\[
Ps = \text{Points scored for comparative price of tender or offer under consideration;}
\]
\[
Pt = \text{Comparative price of tender or offer under consideration; and}
\]
\[
Pmin = \text{Comparative price of lowest acceptable tender or offer.}
\]

(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:
Or

EXEMPTED MICRO ENTERPRISES (EMEs) and
START-UP ENTERPRISES (S-UEs)

<table>
<thead>
<tr>
<th>B-BBEE Status Level of Contributor</th>
<th>Number of Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>Non-compliant contributor</td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Revenue</th>
<th>Black Ownership of EME</th>
<th>Deemed B-BBEE Status Level of Contributor</th>
<th>Number of Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>R10 million=&lt;=</td>
<td>100%</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>&gt;= 51%</td>
<td></td>
<td>2</td>
<td>9</td>
</tr>
</tbody>
</table>

**NB**
An EME is allowed to be measured in terms of the QSE scorecard should they wish to maximise points and move to a higher B-BBEE recognition level.
In respect of
QUALIFYING SMALL ENTERPRISES (QSEs)

<table>
<thead>
<tr>
<th>Revenue</th>
<th>Black Ownership of EME</th>
<th>Deemed B-BBEE Status Level of Contributor</th>
<th>Number of Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>R10 million -</td>
<td>100%</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>R50 million</td>
<td>&gt;= 51%</td>
<td>2</td>
<td>9</td>
</tr>
</tbody>
</table>

(iii) A maximum of 10 points may be allocated under subparagraph (ii) above.

(iv) The B-BBEE status level attained by a tenderer must be used to determine the number of points contemplated in subparagraph (ii) above.

(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) above.

(v) A tenderer must submit proof of its B-BBEE Status Level of Contributor.

(vi) A tenderer that fails to submit proof of B-BBEE Status Level of Contributor, may not be disqualified, but-
(a) may only score points out of 90 for price; and
(b) score zero (0) points out of 10 for B-BBEE status.

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

(viii) If the price offered by a tenderer scoring the highest points is not market related, the NMBM may not award the contract to that tenderer.

(ix) The contract must be awarded to a tenderer scoring the highest points. However, if the price offered by a tenderer scoring the highest points is not market related, the NMBM may not award the contract to that tenderer in terms of paragraph 24(2).

(12) 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.
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 it were a group structure and, provided further, that such a consolidated B-BBEE scorecard is prepared for every separate tender.

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.

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.

Miscellaneous Special Conditions of Contract

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

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) 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.

(17) **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

(iv) undertake to submit documentary proof regarding any tendering issue when required to the satisfaction of the *NMBM*.

(18) **Remedies**

(1) Upon detecting that a tenderer submitted false information regarding its B-BBEE Status Level of Contributor, local production and content, or any other matter required in terms of the Regulations which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any subcontracting arrangements, the *Accounting Officer* or *delegated official* must -

(a) inform the tenderer accordingly;

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

(i) the tender submitted should not be disqualified, or

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

(iii) if the successful tenderer subcontracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and
(iv) the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state.

(2) In addition to the action contemplated in paragraph 38 of this policy which shall be read in conjunction with this subparagraph:

(a) The NMBM 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.

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

(i) disqualify the person concerned from the bidding process;
(ii) recover all costs, losses or damages it has incurred or suffered as a result of that person’s conduct;
(iii) 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.

(c) The NMBM 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 NMBM for a period not exceeding 10 years, provided that, before exercising this right, the NMBM shall give the persons or parties concerned an opportunity to make representations and be heard in defence of such contemplated action; and

(d) The NMBM 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.

(e) The NMBM may penalise a successful tenderer who subcontracted a portion of the tender to another person, contrary to this policy, up to 10% of the value of the contract.

(f) The NMBM must-

(i) inform the National Treasury, in writing, of any actions taken in terms of subparagraph 1;
(ii) provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and

(iii) submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.

(g) The National Treasury may request the NMBM to submit further information pertaining to subparagraph (1) within a specified period.

(h) The National Treasury must –

(i) after considering the representations of the tenderer and any other relevant information, decide whether to restrict the tenderer from doing business with any organ of state for a period not exceeding 10 years; and maintain and publish on its official website a list of restricted suppliers.

28. 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 NMBM;

(c) officials 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 Adjudication Committee for cancellation.

(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:

(i) the value awarded for each criterion should be multiplied by the weight for the relevant criterion to obtain the score for the various criteria;

(ii) the scores for each criterion should be added to obtain the total score; and

(iii) the following formula should be used to convert the total score to percentage for functionality:
Where:

Ps = percentage scored for functionality by bid under consideration
So = total score of bid under consideration
Ms = maximum possible score

\( Ps = \left( \frac{So}{Ms} \right) \times 100 \)

(h) 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:
(i) the bidder fails to achieve the stipulated minimum threshold for local production and content; and
(ii) 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 that do not include the information or documents prescribed in paragraph 13 and 21 hereof.
   (ii) Tenders that do not include a valid tax clearance certificate as prescribed by clause 13(1)(b) hereof.
   (iii) Tenders that do not include the certificate as prescribed by clause 13(1)(e) hereof, or in regard to which the tenderer or any of its directors are in fact indebted to the NMBM for rates, taxes and/or
municipal services that are in arrears (and where it is contended that arrangements have been made with the NMBM, written proof thereof is not supplied).

(iv) Tenders submitted by a tenderer that failed during the five years preceding the closing date for the submission of tenders to perform satisfactorily on any contract with the NMBM or any other organ of state in respect of 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 No. 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 13(1)(f) 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 Bid 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 clause 27(9)(a)(iii) and 27(10) (a)(iii) as may be applicable; and

(ii) in exceptional circumstances and as provided in clause 27(13) 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 are recorded for audit purposes and be defendable in a court of law.

29. **Bid Adjudication Committees**

(1) A Bid Adjudication Committee must consist of at least four senior managers of the NMBM and 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 delegated by the Chief Financial Officer; and

   (b) at least one senior Supply Chain Management practitioner who is an official of the NMBM; and

   (c) a technical expert in the relevant field who is an official of the NMBM if the institution has such an expert.

(2) The Accounting Officer must appoint the chairperson of the committee who shall preferably be the Chief Financial Officer or a 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 28; 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.

(c) ensure that –

(i) all necessary bid documents have been submitted;

(ii) disqualifications are justified and that valid and accountable reasons/motivations were furnished for passing over of bids;

(iii) Scoring has been fair, consistent and correctly calculated and applied; and

(iv) Bidders declarations of interest have been taken cognizance of.

(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 Bid Adjudication Committee must also consider and rule on all recommendations/reports regarding the amendment, variation, extension, cancellation or transfer of contracts awarded.

(7) The Bid Adjudication Committee may also, if and when required to do so, consider for approval the recommendations of the Bid Specification Committee in order to ensure the following:

(a) A proper and unbiased specification is compiled for the specific requirement.

(b) Proper and clear Terms of Reference are drawn up for the service required.

(c) The scope of the requirement and the ratio between price and functionality are indicated.

(d) The evaluation criteria as well as their weights and values are stated.

(e) Strategic sourcing principles were applied and that the market was properly researched and analysed.

(f) The necessary funds are available.
(g) If and when applicable, in addition to the General Conditions of Contract, appropriate Special Requirements and Conditions of Contract are specified.

(h) The preference point system is prescribed and appropriate goals are identified and the points allocated for these goals are consistent with the requirements of the Preferential Procurement Regulations.

(i) Where appropriate, ranges have been set indicating breakdown of the points/percentages, as provided for in the relevant sliding scales for the selected specified goals.

(8) 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.

(9) 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.

(10) 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.

(11) Subparagraph 8 does not apply if a different tender was approved in order to rectify an irregularity.

(12) The Bid Adjudication Committee may recommend to the Accounting Officer prior to the award of a tender, by notice in the media in which the original tender was advertised, cancel such tender in the following circumstances:

(a) If, due to changed circumstances, there is no longer a need for the services, works or goods requested;
(b) If funds are no longer available to cover the total envisaged expenditure;
(c) If no acceptable bids are received;
(d) In the event that, in the application of the 80/20 preference point system as stipulated in the bid documents, all bids received exceed the estimated Rand value of R50 000 000;
(e) In the event that, in the application on the 90/10 preference point system as stipulated in the bid documents, all bids received are equal to, or below R50 000 000;
(f) If the process is deemed to be flawed;
(g) If there is a material irregularity in the tender process.

(13) The Accounting Officer must re-invite tenders cancelled in terms of paragraphs 27(9) and 27(10) and must, in the new tender documents, stipulate the correct preference point system to be applied.

(14) The decision to cancel a tender invitation must be published in the same manner in which the original tender invitation was advertised.

(15) The NMBM may only with the prior approval of National Treasury cancel a tender invitation for the second time.

30. 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 Municipal Finance Management 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 closing 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
22(1).

(4) Bids must be restricted to banks registered in terms of the Banks Act, No. 94 of 1990.

31. **Procurement of Information and Communication Technology (ICT) related goods or services**

(1) The *Accounting Officer* may request the State Information Technology Agency (SITA) to assist in acquiring 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 the 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 NMBM 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.

32. **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) an entity of the NMBM procures goods or services through a contract secured by the NMBM; or
(b) the NMBM procures goods or services through a contract secured by its municipal entity.

Must be read in conjunction with paragraph 7.8 of Annexure “B” NMBM SCM Policy for Procurement and Delivery Management

33. Procurement of goods necessitating special safety arrangements

(1) The acquisition and storage of goods in bulk (other than water), including gasses and fuel, which necessitate special safety arrangements should be avoided wherever 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.

34. Proudly South African Campaign

(1) In supporting the Proudly South African Campaign, the Accounting Officer may 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 the Department of Trade and Industry in consultation with National Treasury and, in such event, the requirements stipulated in subparagraph 2.2 shall be inserted in the tender.
specification.

(2) **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:

\[
LC = 1 - \frac{x}{y} \times \frac{x}{100}
\]

Where

\[ x \quad \text{imported content} \]
\[ y \quad \text{bid price, excluding Value Added Tax (VAT)} \]

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 completed and signed, must form part of the bid documentation;

(iv) that the *NMBM* reserves the right to verify the accuracy of the rates
of exchange quoted by the bidder in paragraph 4.1 of the aforesaid Certificate.

(3) 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 the Policy shall be applied.

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

(5) A tender that fails to meet the minimum stipulated threshold for local production and content is an unacceptable tender.

35. 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) When appointing consultants, the Accounting Officer must:
   (a) only contract with consultants after a gap analysis report has confirmed that the NMBM does not have the requisite skills or resources in its permanent employment to perform the services required;
(b) ensure that evidence of acute planning of the project is visible to all relevant persons, including the administration and political oversight mechanisms in place in the NMBM;

(c) ensure that consultants, including construction and infrastructure related services, are remunerated at the rates equal to or below those:
   (i) determined in the “Guidelines on fees for audits done on behalf of the Auditor-General South Africa”, issued by the South African Institute of Chartered Accountants (SAICA);
   (ii) set out in the “Guide on Hourly Fee Rates for Consultants”, by the Department of Public Service and Administration (DPSA); or
   (iii) prescribed by the body regulating the profession of the consultant;

(d) ensure that an exacting “specification” of the work to be accomplished accompanies the tender and is used as a monitoring tool, are appropriately recorded and monitored;

(e) ensure that contracts for consultants include retention and penalty clauses for poor performance and in this regard, the Accounting Officers must invoke such clauses, where deemed necessary;

(f) appoint consultants on a time and cost basis with specific start and end dates;

(g) ensure that travel and subsistence costs for the appointment of consultants are in accordance with the travel policy of government and that the contract price specifies all travel and subsistence costs;

(h) ensure that in the event that travel and subsistence costs for appointed consultants are exclusive of the contract, the costs are in accordance with the following provisions:
   (i) Hotel accommodation may not exceed the amount mentioned in this Circular.
   (ii) Only Economy Class air tickets may be purchased for flights.
   (iii) Only Group B vehicles or lower may be hired for engagements.
   (iv) Kilometers claimed for the use of private vehicles may not exceed the rates approved by the National Department of Transport, as updated from time to time.
(4) It is mandatory that Accounting Officers or Delegated Officials conclude on the best “value for money”, i.e. matching fees against quality and benchmarked practices.

(5) All engagements of consultants must be undertaken in accordance with the SCM Regulations and the NMBM’s SCM policy.

(6) 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.

(7) The Accounting Officer may establish a database of pre-qualified consultants in various fields as may be determined in an SCM procedure manual.

(8) The Accounting Officer must ensure that copyright on 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 NMBM.

36. 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 that 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.

37. Unsolicited bids

(1) An unsolicited bid is a bid that is submitted by a prospective supplier to the NMBM 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 NMBM.

(2) In accordance with Section 113 of the Municipal Finance Management Act, there is no obligation on the NMBM to consider unsolicited bids received outside the normal bidding processes.

(3) The Accounting Officer may decide in terms of Section 113(2) of the Municipal Finance Management 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 NMBM 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.
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.

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.

Subject to subparagraphs (7) and (8) below, the Bid Adjudication Committee must consider the unsolicited bid and may, depending on its delegations, award the bid or make a recommendation to the Accounting Officer.

A meeting of the Bid Adjudication Committee to consider an unsolicited bid must be open to the public.

When considering the matter, the Bid Adjudication Committee must take into account:

(a) any comments submitted by the public; and
(b) any written comments and recommendations of the National and Provincial Treasuries.

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.

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 NMBM to the bid
may be entered into or signed within 30 days of the submission.

(11) The processes to be followed by the NMBM with regard to the acceptance or rejection of an unsolicited bid must clearly be made known to the bidder who submits the unsolicited bid concerned.

(12) The Council must exercise caution when interviewing a potential supplier or a person who may wish to offer services to the NMBM in circumstance that may be tantamount to the submission of or negotiation with regard to an unsolicited bid and may not do anything or cause anything to be done that may be contrary to this policy.

38. Combating of abuse of Supply Chain Management system

(1) The Accounting Officer must-
(a) take all reasonable steps to prevent the 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 Services;
(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 NMBM, or to any other NMBM or municipal entity, have been in arrears for more than three months; or
   (ii) who, during the last five years, failed to perform satisfactorily on a previous contract with the NMBM 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.

(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 NMBM or has committed any improper conduct in relation to such system;
   (ii) has been convicted of 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

39. 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, to include 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;
before payment is approved, certification by the responsible officer that the goods and services are received or rendered on time and are 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;

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

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

monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for particular goods or services.

40. Disposal management

(1) In terms of Section 14 of the Act, the NMBM 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 NMBM may transfer ownership or otherwise dispose of a capital asset other than one as 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.
The Accounting Officer must ensure that -

(a) when immovable property is sold by means of a competitive bidding process, the highest price offered, is 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 must 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 must 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 letting of immovable property are annually reviewed;

(g) 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.

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 must be applied.
41. **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.

42. **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 authorised 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*.

**Part 4: Other matters**

43. **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 the purposes of subparagraph (1) be presumed to be in order.

44. **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 the 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 NMBM.

45. **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.

46. **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 NMBM in order to promote –

   (a) mutual trust and respect; and

   (b) an environment in which 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 NMBM;

(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 NMBM;

(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 –

(ii) any alleged fraud, corruption, favouritism or unfair conduct;

(iii) any alleged contravention of this Policy; or

(iv) 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 that the Accounting Officer must keep for this purpose;

(b) must be made by the Accounting Officer to the Executive Mayor of the NMBM, 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 NMBM 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 Municipal Finance Management Act.

47. 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 NMBM 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.

48. 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 NMBM; or
(b) a recipient or prospective recipient of goods disposed of or to be disposed of by the NMBM.

49. **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 of 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 the SCM Procedures Manual.

50. **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 *NMBM* 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 delegated by the *Accounting Officer* is responsible for assisting the appointed *person* in performing 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.

51. **Contracts providing for compensation based on turnover**

(1) If a service provider acts on behalf of the NMBM 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 NMBM must stipulate -

(a) a cap on the compensation payable to the service provider; and

(b) that such compensation must be performance based.

52. **Procurement from tertiary institutions**

(1) Where the NMBM 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 NMBM 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 NMBM for the provision of services, works or goods, through price quotations, advertised competitive tendering processes or proposals.

53. Contracts and Contract Management

(1) A contract or agreement procured through the NMBM Supply Chain Management system or its municipal entity/ies must-

(a) be in writing;

(b) stipulate the terms and conditions of the contract or agreement, which must include provisions providing for-

(i) the termination of the contract or agreement in the case of non- or under- performance;

(ii) dispute resolution mechanisms to settle disputes between the parties;

(iii) a periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years; and

(iv) any other matters that may be prescribed.

(2) The Accounting Officer or Delegated Official must-
(a) take all reasonable steps to ensure that a contract or agreement procured through the Policy or its municipal entity/ies is properly enforced;

(b) monitor on a monthly basis the performance of the contractor under the contract or agreement;

(c) establish capacity in the administration NMBM or its municipal entity/ies-
   (i) to assist the Accounting Officer in carrying out the duties set out in clauses (a) and (b); and
   (ii) to oversee the day-to-day management of the contract or agreement; and

(d) regularly report to the Council or the board of director of the entity, as may be appropriate, on the management of the contract or agreement and the performance of the contractor.

(3) A contract or agreement procured through the Policy, may be amended by the parties, but only after -

   (a) the reasons for the proposed amendment have been tabled in the Council or, in the case of a municipal entity, in the council of its parent municipality; and

   (b) the local community -
      (i) has been given reasonable notice of the intention to amend the contract or agreement; and
      (ii) has been invited to submit representations to the NMBM or its municipal entity/ies.

54. Issue of variation orders

(1) The Accounting Officer or delegated official may, subject to subparagraphs (2) to (4), authorise 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 have led to or will lead to a delay in a contract completion date.

(2) A variation order may be issued only after -
(i) the need for such order has been fully motivated by the responsible project manager and supported by the *Head of Department* concerned; and

(ii) the *Chief Financial Officer* has certified that funds are available to cover the cost of the required additional work.

(3) A request for the issue of a variation order in an amount exceeding R200 000 must 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 circumstances 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, on completion of additional work or the expiry of any extended *contract* period authorised by a variation order, certify that the terms and conditions of such variation order have been complied with.

55. **Application of policy to municipal entities**

(1) The provisions of the *Policy* generally do not apply to municipal entities.

(2) The Supply Chain Management system of a municipal entity must be applied with due regard to the provisions of this policy and the *Regulations* and, in the event of a conflict, the provisions of the *Regulations* shall enjoy preference.
56. Fronting

(1) For the 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 27(17) and, in addition, report such fronting to the Department of Trade and Industry.

57. Commencement

*The Policy* takes effect on the date of its adoption by the Council.
ANNEXURE “A”: NMBM 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 NMBM 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

2.1 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 NMBM;

(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 NMBM to any transaction for the procurement of goods and / or services.

3.4 All transactions conducted by a practitioner should be recorded and accounted for in an appropriate accounting system. Practitioners should not make any false or misleading entries into such a system for any reason whatsoever.

3.5 Practitioners must assist the Accounting Officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management.
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:

(a) any alleged fraud, corruption, favouritism or unfair conduct;
(b) any alleged contravention of the policy on inducements, rewards, gifts and favours to municipalities or municipal entities, officials or other role players; and
(c) any alleged breach of this code of conduct.

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

Any information that is the property of the NMBM 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.

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 NMBM 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 -

(a) interfere with the supply chain management system of the NMBM; or
(b) amend or tamper with any price quotation / bid after its submission.

7. **Combative Practices**

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

(a) suggestions to fictitious lower quotations;
(b) reference to non-existent competition;
(c) exploiting errors in price quotations / bids;
(d) soliciting price quotations / bids from bidders / contractors whose names appear on the Register for Tender Defaulters.
ANNEXURE “B”: NMBM SCM POLICY FOR INFRASTRUCTURE PROCUREMENT AND DELIVERY MANAGEMENT

1. Scope

This policy is aligned with the Supply Chain Management Regulations issued in terms of the Local Government: Municipal Finance Management Act of 2003. This policy establishes the NMBM’s policy for infrastructure procurement and delivery management in accordance with the provisions of the regulatory frameworks for procurement and supply chain management. It includes the procurement of goods and services necessary for a new facility to be occupied and used as a functional entity but excludes:

a) the storage of goods and equipment following their delivery to NMBM which are stored and issued to contractors or to employees;

b) the disposal or letting of land;

c) the conclusion of any form of land availability agreement;

d) the leasing or rental of moveable assets; and

e) public private partnerships.

2. Terms, Definitions and Abbreviations

2.1 Terms and Definitions

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

agent: person or organization that is not an employee of NMBM that acts on the NMBM’s behalf in the application of this document
authorised person: the Accounting Officer or chief executive or the appropriately delegated authority to award, cancel, amend, extend or transfer a contract or order

conflict of interest: any situation in which:

(a) someone in a position of trust has competing professional or personal interests which make it difficult for him to fulfil his duties impartially,

(b) an individual or organization is in a position to exploit a professional or official capacity in some way for his personal or for corporate benefit, or

(c) incompatibility or contradictory interests exist between an employee and the organization which employs that employee

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

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

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

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

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

gratification: an inducement to perform an improper act
**infrastructure delivery:** the combination of all planning, technical, administrative and managerial actions associated with the construction, supply, renovation, rehabilitation, alteration, maintenance, operation or disposal of infrastructure

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

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

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

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

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

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

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

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

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

For the purposes of this document, the following abbreviations apply

BAC: Bid Adjudication Committee
BEC: Bid Evaluation Committee
BSC: Bid Specification Committee
CFO: Chief Financial Officer
CIDB: Construction Industry Development Board
NMBM: Nelson Mandela Metropolitan Municipality
SARS: South African Revenue Services

3. General Requirements

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

3.1 Delegations

3.1.1 The Council of NMBM hereby delegates all powers and duties to the Accounting Officer which are necessary to enable the Accounting Officer to:

(a) discharge the supply chain management responsibilities conferred on accounting officers in terms of Chapter 8 or 10 of the Local Government Municipal Finance Management Act of 2003 and this document;

(b) maximise administrative and operational efficiency in the implementation of this document;

(c) enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this document; and

(d) comply with his or her responsibilities in terms of section 115 and other

3.1.2 No departure shall be made from the provisions of this policy without the approval of the Accounting Officer of NMBM

(a) **Clause 36 of the** SCM Regulations refers

3.1.3 The Accounting Officer shall for oversight purposes:

(a) within 30 days of the end of each financial year, submit a report on the implementation of the policy and the equivalent policy of any municipal entity under the sole or shared control of the NMBM, to the council of the NMBM within 20 days of the end of each financial year, submit a report on the implementation of this policy to the board of directors, who must then submit the report to the Accounting Officer for submission to the council;

(b) whenever there are serious and material problems in the implementation of this policy, immediately submit a report to the council of the NMBM or in the case of a municipal entity, to the board of directors, who must then submit the report to the Accounting Officer for submission to the council;

(c) within 10 days of the end of each quarter, submit a report on the implementation of the policy to the mayor; and

(d) make the reports public in accordance with section 21A of the Municipal Systems Act of 2000.

3.2 Implementation of the Standard for Infrastructure Procurement and Delivery Management

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

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

3.2.2 Sub-clause 4.1.1.4 (c) of the standard permits NMBM to require that pre-feasibility and feasibility reports be produced during stages 3 and 4 respectively.

3.2.3 (a) Stage 3 to 7 are required.

(b) Sub-clause 4.1.1.1 of the standard permits stages 3 to 9 where the work does not involve the provision of new infrastructure or the rehabilitation, refurbishment, alteration of existing infrastructure.

(c) Stages 5 and 6 may be omitted where sufficient information is contained in the stage 4 deliverable to proceed to stage 7.

(d) certain types of work may be required to (e.g. specific types of maintenance) pass through all the stages.

3.3 Supervision of the Infrastructure Delivery Management Unit

The Infrastructure Delivery Management Unit shall be directly supervised by the Chief financial officer (CFO) or person delegated in terms of section 82 of the MFMA.

3.4 Objections and complaints

3.4.1 Objections and complaints shall be dealt with in line with section 49 of the SCM Regulations.

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

3.5 Resolution of disputes, objections, complaints and queries

3.5.1 SCM Regulations clause 50 shall apply

The Accounting Officer shall appoint an independent and impartial person, not directly involved in the infrastructure delivery management processes to assist in the resolution of disputes between the NMBM and other persons regarding:

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

(b) any matter arising from a contract awarded within the NMBM’s infrastructure delivery management system; or

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

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

3.5.3 The person appointed in terms of 3.5.1 shall:

(a) strive to resolve promptly all disputes, objections, complaints or queries received; and

(b) submit monthly reports to the Accounting Officer on all disputes, objections, complaints or queries received, attended to or resolved.

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

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

3.5.5 If Provincial Treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.

. Control framework for infrastructure delivery management

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

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

(a) The terms “approve” and “accept” have the meanings “officially agree to” and “receive as adequate, valid, or suitable give an affirmative answer to a proposal”, respectively.

(b) Approvals will typically take place at a senior management level whilst acceptances can be made at a lower level. Approvals and acceptances can be granted by individuals or committees.

(c) Where a municipality or municipal entity implements a project on behalf of an organ of state, acceptance / approval of end of stage deliverables may have to be granted in consultation with such an organisation.

(d) Alternatively it may be assigned to a party to an agency agreement developed in accordance with the provisions of clauses 5.2 of the standard. As a result, Table 1 may have to differentiate between own infrastructure and client institution’s infrastructure.

(e) It may also have to differentiate between the value and type of projects.
4.2 Additional gates

4.2.1 NMBM may, if it deems it necessary, add additional gates to the control framework presented in figure 1 of the standard.

4.3 Additional requirements

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

(a) the major capital project is required for:

   (i) a major public enterprise where the total project capital expenditure exceeds R1,5 billion; or
   (ii) an organ of state subject to the Public Finance Management Act other than a major public enterprise where the total project capital expenditure exceeds R1,0 billion including VAT, or where the expenditure per year for a minimum of three years exceeds R250 million per annum including VAT;

(b) the project is not:

   (i) a building project with or without related site works; or
   (ii) a process-based, somewhat repetitive or relatively standardised project where the risk of failing to achieve time, cost and quality objectives is relatively low; or
   (iii) the organ of state’s infrastructure procurement and delivery supply chain management policy requires that prefeasibility and feasibility reports be produced during stages 3 and 4 respectively.

4.4 Gateway reviews

4.4.1 Gateway reviews for major capital projects above a threshold

4.4.1.1 Designated Official shall appoint a gateway review team, comprising not less than three persons:
(a) who are not involved in the project associated with the works covered by the end of the stage 4 deliverable,
(b) who are familiar with various aspects of the subject matter of the deliverable at the end of the stage under review.

4.4.1.2 which team shall be led by a person who has at least six years’ post-graduate experience in the planning of infrastructure projects and is registered either as a professional engineer in terms of the Engineering Profession Act, a professional quantity surveyor in terms of the Quantity Surveying Profession Act or a professional architect in terms of the Architectural Profession Act.

4.4.1.3. which members of the team shall, as relevant, have expertise in key technical areas, cost estimating, scheduling and implementation of similar projects.

4.4.2 Elective Gateway Reviews

(a) Gateway reviews may be undertaken by a gateway review team of the deliverables associated with any of the gates in the control framework.

(b) Such reviews should preferably take place at gates 4, 5 or 8.

(c) They can also be conducted on a random sample basis after the end of stage deliverable has been accepted.

(d) Such reviews can capture lessons learned and in so doing improve the quality of future deliverables.
Table 1: Responsibilities for approving or accepting end of stage deliverables in the control framework for the management of infrastructure delivery

<table>
<thead>
<tr>
<th>Stage No</th>
<th>Name</th>
<th>Person assigned the responsibility for approving or accepting end of stage deliverables</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>Project initiation</td>
<td>Designated Official accepts the initiation report</td>
</tr>
<tr>
<td>1.</td>
<td>Infrastructure planning</td>
<td>Designated Official approves the infrastructure plan</td>
</tr>
<tr>
<td>2.</td>
<td>Strategic resourcing</td>
<td>Designated Official approves the delivery and or procurement strategy</td>
</tr>
<tr>
<td>3.</td>
<td>Pre-feasibility</td>
<td>Designated Official accepts the pre-feasibility report</td>
</tr>
<tr>
<td></td>
<td>Preparation and briefing</td>
<td>Designated Official accepts the strategic brief</td>
</tr>
<tr>
<td>4.</td>
<td>Feasibility</td>
<td>Designated Official accepts the feasibility</td>
</tr>
<tr>
<td></td>
<td>Concept and viability</td>
<td>Designated Official accepts the concept report</td>
</tr>
<tr>
<td>5.</td>
<td>Design development</td>
<td>Designated Official accepts the design development report</td>
</tr>
<tr>
<td>6.</td>
<td>Design documentation</td>
<td>Designated Official accepts the parts of the production information which are identified when the design development report is accepted as requiring acceptance</td>
</tr>
<tr>
<td></td>
<td>6A Production information</td>
<td>The contract manager accepts the manufacture, fabrication and construction information</td>
</tr>
<tr>
<td></td>
<td>6B Manufacture, fabrication</td>
<td></td>
</tr>
<tr>
<td></td>
<td>and construction information</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Works</td>
<td>The contract manager certifies completion of the works or the delivery of goods and associated services</td>
</tr>
<tr>
<td>8.</td>
<td>Handover</td>
<td>The owner or end user accepts liability for the works</td>
</tr>
<tr>
<td>Stage</td>
<td>Person assigned the responsibility for approving or accepting end of stage deliverables</td>
<td></td>
</tr>
<tr>
<td>-------</td>
<td>-------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>Name</td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Package completion</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The contract manager or supervising agent certifies the defects certificate in accordance with the provisions of the contract</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The contract manager certifies final completion in accordance with the provisions of the contract</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Designated Official accepts the close out report</td>
<td></td>
</tr>
</tbody>
</table>

5. **Control framework for infrastructure procurement**

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

(a) Clause 19 and 26 of the NMBM SCM policy must be adhered to

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

(a) Designated Official shall grant approval for the issuing of the procurement documents, based on the contents of a documentation review report developed in accordance with the provisions of the standard;

(b) Bid Adjudication Committee (BAC) may award the contract if satisfied with the recommendations contained in the evaluation report prepared in accordance with the provisions of the standard. Alternatively recommend to the Accounting Officer to award the contract.
Table 2: Procurement activities and gates associated with the formation and conclusion of contracts above the quotation threshold

<table>
<thead>
<tr>
<th>Activity</th>
<th>Sub-Activity (see Table 3 of the standard)</th>
<th>Key action</th>
<th>Person assigned responsibility to</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. * Establish what is to be procured</td>
<td>1.3 Obtain permission to start with the procurement process</td>
<td>Make a decision to proceed / not to proceed with the procurement based on the broad scope of the activity</td>
<td>Designated Official</td>
</tr>
<tr>
<td>2. * Decide on procurement strategy</td>
<td>2.5 Obtain approval for procurement strategies that are to be adopted including specific approvals to approach a confined market or the use of the tender(s)</td>
<td>Confirm selection of strategies so that tender offers can be solicited</td>
<td>Designated Official</td>
</tr>
<tr>
<td>3. Solicit tender offers</td>
<td>3.2 Obtain approval for procurement documents</td>
<td>Grant approval for the issuing of the procurement</td>
<td>Designated Official</td>
</tr>
<tr>
<td></td>
<td>3.3 Confirm that budgets are in place</td>
<td>Confirm that finance is available for the procurement to take place</td>
<td>Designated Official</td>
</tr>
<tr>
<td>Activity</td>
<td>Sub-Activity (see Table 3 of the standard)</td>
<td>Key action</td>
<td>Person assigned responsibility to</td>
</tr>
<tr>
<td>-------------------</td>
<td>-------------------------------------------</td>
<td>---------------------------------------------------------------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>4.</td>
<td>Evaluate tender offers</td>
<td>4.2 PG5 Obtain authorisation to proceed with next phase of tender process in the qualified, proposal or competitive negotiations procedure</td>
<td>Review evaluation report, ratify recommendations and authorise progression to Designated Official</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4.7 PG6 Confirm recommendations contained in the tender evaluation report</td>
<td>Review recommendations of the evaluation committee and refer back to evaluation committee for reconsideration or make Bid Adjudication Committee</td>
</tr>
<tr>
<td>5.</td>
<td>Award contract</td>
<td>5.3 PG7 Award contract</td>
<td>Formally accept the tender offer in writing and issue the contractor with a signed copy of the contract Designated Official</td>
</tr>
<tr>
<td>Activity</td>
<td>Sub-Activity (see Table 3 of the standard)</td>
<td>Key action</td>
<td>Person assigned responsibility to</td>
</tr>
<tr>
<td>----------</td>
<td>------------------------------------------</td>
<td>------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>5.5 GF1</td>
<td>Upload data in financial management and payment system</td>
<td>Verify data and upload contractor’s particulars and data associated with the contract or</td>
<td>Designated Official</td>
</tr>
<tr>
<td>6.</td>
<td>Administer contracts and confirm compliance with requirements</td>
<td>6.4 PG8A Obtain approval to waive penalties or low performance damages.</td>
<td>Approve waiver of penalties or low performance damages</td>
</tr>
<tr>
<td></td>
<td>6.5 PG8B Obtain approval to notify and refer a dispute to an adjudicator</td>
<td>Grant permission for the referral of a dispute to an adjudicator or for final settlement to an arbitrator or court of law</td>
<td>Designated Official</td>
</tr>
<tr>
<td>Activity</td>
<td>Sub-Activity (see Table 3 of the standard)</td>
<td>Key action</td>
<td>Person assigned responsibility to</td>
</tr>
<tr>
<td>----------</td>
<td>-------------------------------------------</td>
<td>------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>6.6 PG8C</td>
<td>Obtain approval to increase the total of prices, excluding contingencies and price adjustment for inflation, or the time for completion at the award of a contract or the issuing of an order up to a specified percentage.</td>
<td>Approve amount of time and cost overruns up to the threshold</td>
<td>Designated Officials</td>
</tr>
</tbody>
</table>

**NB:** Stepped thresholds leading up to the 20% and 30% values given in PG8D may be necessary to manage cost and time overruns, respectively, the principle being that approval to exceed these percentages needs to be granted at a more senior level with each increase. For example, the increases for cost overruns could be as follows: 2%, 5%, 10%, 20%, 30%.
<table>
<thead>
<tr>
<th>Activity</th>
<th>Sub-Activity (see Table 3 of the standard)</th>
<th>Key action</th>
<th>Person assigned responsibility to</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Activity 1 and 2 are applicable only to goods and services not addressed in a procurement strategy developed during stage 2 (strategic resourcing) of the control framework for infrastructure delivery management</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>5.3 The responsibilities for taking the key actions associated with the issuing of an order in terms of a framework agreement shall be as stated in Table 3 below.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Activity</td>
<td>Key action</td>
<td>Person assigned responsibility to perform key action</td>
<td></td>
</tr>
<tr>
<td>----------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>1 FG1</td>
<td>Confirm justifiable reasons for selecting a framework contractor where there is more than one framework agreement covering the same scope of work</td>
<td>Designated Official</td>
<td></td>
</tr>
<tr>
<td>3 FG2</td>
<td>Obtain approval for procurement documents</td>
<td>Designated Official</td>
<td></td>
</tr>
<tr>
<td>4 FG3</td>
<td>Confirm that budgets are in place</td>
<td>Designated Official</td>
<td></td>
</tr>
<tr>
<td>6 FG4</td>
<td>Authorise the issuing of the order</td>
<td>Bid Adjudication Committee</td>
<td></td>
</tr>
<tr>
<td></td>
<td>If applicable, review evaluation report and confirm or reject recommendations. Formally accept the offer in writing and issue the contractor with a signed copy of the order</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
6. **Infrastructure Delivery Management Requirements**

6.1 **Institutional Arrangements**

6.1.1 **Bid Committee System for Procurement**

Bid committee system must be segregated and established in line with the following standard:

1. procurement gate 3: a technical evaluation of procurement documents and an approval of such documentation;

2. procurement gate 5: a technical evaluation of submissions and an authorization to proceed with the next phase of a procurement process; and

3. procurement gate 6: a tender evaluation and a recommendation to award a contract.

6.1.1.1 **General**

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

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

6.1.1.1.3 The persons appointed in writing as technical advisors and subject matter experts may attend any committee meeting.
6.1.1.4 No person who is a political officer bearer, a public office bearer including any councillor of a municipality, a political advisor or a person appointed in terms of section 12A of the Public Service Act of 1994 or who has a conflict of interest shall be appointed to a procurement documentation, evaluation or tender committee.

6.1.1.5 (a) Committee decisions shall as far as possible be based on the consensus principle.

(b) the general agreement characterised by the lack of sustained opposition to substantial issues.

(c) Committees shall record their decisions in writing.

(d) Such decisions shall be kept in a secured environment for a period of not less than five years after the completion or cancellation of the contract unless otherwise determined in terms of the National Archives and Record Services Act of 1996.

6.1.1.6 (a) Committees may make decisions at meetings or, subject to the committee chairperson’s approval, on the basis of responses to documents circulated to committee members provided that not less than sixty percent of the members are present or respond to the request for responses.

(b) Where the committee chairperson is absent from the meeting, the members of the committee who are present shall elect a chairperson from one of them to preside at the meeting.

6.1.2 Procurement Documentation Committee

6.1.2.1. The Accounting Officer shall appoint in writing:

(a) the persons to review the procurement documents and to develop a procurement documentation review report.
(b) the members of the procurement documentation committee.

The approval of procurement documents at Procurement Gate 3 or Framework Agreement Gate 2 shall be based on the contents of a procurement documentation review report.

Where the procurement relates to the provision of new infrastructure or the rehabilitation, refurbishment or alteration of existing infrastructure, such a report shall be prepared by one or more persons who participated in the review and who are registered as:

(i) a professional architect or professional senior architectural technologist in terms of the Architectural Profession Act or a professional landscape architect or a professional landscape technologist in terms of the Landscape Architectural Profession;
(ii) a professional engineer or professional engineering technologist in terms of the Engineering Profession Act; or
(iii) a professional quantity surveyor in terms of the Quantity Surveying Professions Act.

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

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

(a) Clause 5 of the NMBM SCM policy must be adhered to
6.1.1.3 Evaluation Committee

6.1.1.3.1 The Accounting Officer shall appoint in writing:

(a) the members of the evaluation committee.

6.1.1.3.2 (a) The evaluation committee shall comprise not less than three people.

(b) The chairperson shall be an employee of NMBM with requisite skills. Other members shall include a supply chain management practitioner and, where relevant, include an official from the department requiring infrastructure delivery.

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

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

(f) confirm that the tenderer has not, within the last five years, defaulted on a NMBM contract or that the NMBM has terminated a contract with the tenderer.

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

6.1.1.3.5 The chairperson of the evaluation committee shall promptly notify the Accounting Officer of any respondent or tenderer who is disqualified for having engaged in fraudulent or corrupt practices during the tender process.
6.1.1.3.6 Specific requirements relating to the evaluation of submissions:

6.1.1.3.6.1 The authorisation to proceed with the next phase (Procurement Gate 5), the approval of tender evaluation recommendations (Procurement Gate 6) and the authorisation for the issuing of an order (Framework Agreement Gate 4) shall be based on the contents of an evaluation report.

6.1.1.3.6.2 The evaluation report shall be prepared by one or more persons who are conversant with the nature and subject matter of the procurement documents or the framework contract, and who are registered as:

a) a professional architect or professional senior architectural technologist in terms of the Architectural Profession Act;

b) a professional engineer or professional engineering technologist in terms of the Engineering Profession Act;

c) a professional landscape architect or a professional landscape technologist in terms of the Landscape Architectural Profession;

d) a professional project manager or a professional construction manager in terms of the Project and Construction Management Professions Act; or

e) a professional quantity surveyor in terms of the Quantity Surveying Profession Act.

6.1.1.3.6.3 All communications with respondents and tenderers during the procurement process to obtain information and clarifications shall be made in writing through the employer’s agent named in the submission or tender data. Records of all communications in this regard shall be made and retained for auditing purposes.

6.1.1.3.6.4 Submissions shall be evaluated strictly in accordance with the provisions of the procurement documents (see Annex C of SANS 10845-3 and Annex C
of SANS 10845-4, as relevant). Where quality is evaluated, at least three persons who satisfy the requirements of 6.1.1.3.6.2 shall undertake such evaluation. Quality shall be scored in terms of the prompts for judgement, with fixed scores assigned to each prompt, either individually and averaged or collectively, as appropriate.

### 6.1.1.3.6.5
Those involved in the evaluation of submissions shall record their scores for quality against each of the criteria during the process of evaluation, preferably with notes to substantiate the scores. Individuals should record their own markings on a separate sheet. These documents shall be placed on file as an audit trail and may form the basis of any debriefing that takes place.

### 6.1.1.3.6.6
Evaluation reports shall be prepared in accordance with the content headings and relevant guidelines contained in the SCM Standard Operating Procedures, with modifications as necessary where a two-envelope, two-stage process or competitive negotiation procedure is followed. Such reports shall contain extracts from the procurement documents which are linked to the evaluation of submissions, such as eligibility criteria, criteria associated with evaluation methods, preference, quality criteria (including prompts for judgement), and the method by which tenders are reduced to a common base and lists of returnable documents. Such references shall enable those who are tasked with making decisions based on these documents to do so without having to refer back to submissions in order to understand the content of the report.

### 6.1.1.3.6.7
An evaluation report which recommends the award of a contract shall contain in annexures the reports, if any, of prior processes, e.g. a call for an expression of interest, a round in a competitive negotiation procedure or a stage in a competitive selection procedure.

### 6.1.1.3.6.8
An evaluation report covering the application of the negotiated procedure for the award of a contract or the issuing of an order, shall confirm that the negotiated amounts are market-related and represent value for money. Where the total of the prices associated with a target cost contract is
negotiated, the total of prices shall be certified as being fair and reasonable by a professional quantity surveyor registered in terms of the Quantity Surveying Profession Act or a professional engineer registered in terms of the Engineering Profession Act.

6.1.1.4 Tender Committee

6.1.1.4.1 The Bid Adjudication Committee shall comprise the following persons or their mandated delegate:

(a) Chief Financial Officer/Senior Manager: Budget and Treasury who shall be the chairperson:

(b) Executive Director/Senior Manager: Infrastructure and Engineering

(c) Executive Director/Senior Manager: Electricity and Energy

(d) Director/Senior Manager: Supply Chain Management

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

6.1.1.4.3 The Bid Adjudication Committee shall:

(a) consider the report and recommendations of the evaluation committee and:

1) verify that the procurement process which was followed complies with the provisions of this document;

2) confirm that the report is complete and addresses all considerations necessary to make a recommendation;
3) confirm the validity and reasonableness of reasons provided for the elimination of tenderers; and

4) consider commercial risks and identify any risks that have been overlooked or fall outside of the scope of the report which warrant investigation prior to taking a final decision; and

b) refer the report back to the Bid Evaluation Committee for their reconsideration or make a recommendation to the authorised person on the award of a tender, with or without conditions, together with reasons for such recommendation.

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

6.1.1.4.5 The Bid Adjudication Committee shall consider the merits of an unsolicited offer and make a recommendation to the Accounting Officer.

6.1.1.4.6 The Bid Adjudication Committee shall report to the Accounting Officer any recommendation made to award a contract to a tenderer other than the tenderer recommended by the evaluation committee, giving reasons for making such a recommendation.

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

(a) made a misrepresentation or submitted false documents in competing for the contract or order; or

(b) been convicted of a corrupt or fraudulent act in competing for any contract during the past five years.
6.1.1.4.8 The Bid Adjudication Committee may on justifiable grounds and after following due process, disregard the submission of any tenderer if that tenderer or any of its directors, members or trustees or partners has abused the delivery management system or has committed fraud, corruption or any other improper conduct in relation to such system. The National Treasury and relevant treasury shall be informed where such tenderers are disregarded.

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

6.1.2.1 Award of a contract

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

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

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

6.1.2.2 The authorised person shall immediately notify the Designated Official if a tender other than the recommended tender is awarded, save where the recommendation is changed to rectify an irregularity. Such person shall, within 10 working days, notify in writing the Auditor-General, the National Treasury and the relevant treasury of the reasons for deviating from such recommendation.

6.1.2.3 Issuing of an order

The authorised person shall, if the value of an order issued in terms of a framework contract, is within his or her delegation, consider the recommendation of the evaluation committee or the Designated Official, as relevant, and either:
(a) authorise the issuing of an order.

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

6.1.2.3.1 Authorisation for issuing of an order

The person responsible for authorising an order shall, prior to authorising the issuing of an order:

a) confirm that the required goods or services, or any combination thereof, are within the scope of work associated with the relevant framework contract; and

b) consider the recommendations of the evaluation report where competition amongst framework contracts takes place or a significant proportion of the total of the prices is negotiated, based on the financial parameter contained in the framework contract, and either confirm the reasonableness of such recommendations and sign the acceptance of the order, or refer the evaluation report and recommendation back to those who prepared it

6.1.3 Conduct of those engaged in infrastructure delivery

(a) SCM Regulations Clauses 46 to 48 inclusive shall apply -

6.1.3.1 General requirements

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

(a) behave equitably, honestly and transparently;

(b) discharge duties and obligations timeously and with integrity;
(c) comply with all applicable legislation and associated regulations;

(d) satisfy all relevant requirements established in procurement documents;

(e) avoid conflicts of interest; and

(f) not maliciously or recklessly injure or attempt to injure the reputation of another party.

6.1.3.1.2 All personnel and agents engaged in NMBM ‘s infrastructure delivery management system shall:

(a) not perform any duties to unlawfully gain any form of compensation, payment or gratification from any person for themselves or a family member or an associate;

(b) perform their duties efficiently, effectively and with integrity and may not use their position for private gain or to improperly benefit another person;

(c) strive to be familiar with and abide by all statutory and other instructions applicable to their duties;

(d) furnish information in the course of their duties that is complete, true and fair and not intended to mislead;

(e) ensure that resources are administered responsibly;

(f) be fair and impartial in the performance of their functions;

(g) at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual;

(h) not abuse the power vested in them;
(i) not place themselves under any financial or other obligation to external individuals or firms that might seek to influence them in the performance of their duties;

(j) assist NMBM in combating corruption and fraud within the infrastructure procurement and delivery management system;

(k) not disclose information obtained in connection with a project except when necessary to carry out assigned duties;

(l) not make false or misleading entries in reports or accounting systems; and

(m) keep matters of a confidential nature in their possession confidential unless legislation, the performance of duty or the provision of the law require otherwise.

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

6.1.3.2 Conflicts of interest

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

a) disclose in writing to the employee of the NMBM to whom they report, or to the person responsible for managing their contract, if they have, or a family member or associate has, any conflicts of interest; and

b) not participate in any activities that might lead to the disclosure of NMBM proprietary information.

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

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

(a) NMBM states in the tender data that such an agent is a potential tenderer;

(b) all the information which was made available to, and the advice provided by that agent which is relevant to the tender, is equally made available to all potential tenderers upon request, if not already included in the scope of work; and

(c) the procurement documentation committee is satisfied that the procurement document is objective and unbiased having regard to the role and recommendations of that agent.

6.1.3.3 Evaluation of submissions received from respondents and tenderers

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

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

(b) may not be influenced by a gift or consideration (including acceptance of hospitality) to show favour or disfavour to any person;

(c) deal with respondents and tenderers in an equitable and even-handed manner at all times; and
(d) not use any confidential information obtained for personal gain and may not discuss with, or

(e) not disclose to outsiders, prices which have been quoted or charged to the NMBM

6.1.3.3.2 (a) The evaluation process shall be free of conflicts of interest and any perception of bias.

(b) Any connections between the employees and agents of NMBM and a tenderer or respondent shall be disclosed and recorded in the tender evaluation report.

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

6.1.3.4 Non-disclosure agreements

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

6.1.3.5 Gratifications, hospitality and gifts

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

6.1.3.5.2 The employees and agents of NMBM as well as their family members of associates shall not receive any of the following from any tenderer, respondent or contractor or any potential contractor:
(a) money, loans, equity, personal favours, benefits or services;

(b) overseas and local trips; or

(c) any gifts or hospitality irrespective of value from tenderers or respondents prior to the conclusion of the processes associated with a call for an expression of interest or a tender.

6.1.3.5.3 The employees and agents of NMBM shall not purchase any items at artificially low prices from any tenderer, respondent or contractor or potential contractor.

6.1.3.5.4 All employees and agents of NMBM may for the purpose of fostering inter-personal business relations accept the following:

(a) meals and entertainment, but excluding the cost of transport and accommodation;

(b) promotional material of small intrinsic value such as pens, paper-knives, diaries, calendars, etc;

(c) incidental business hospitality such as business lunches or dinners, which the employee is prepared to reciprocate;

(d) complimentary tickets to sports meetings and other public events, but excluding the cost of transport and accommodation, provided that such tickets are not of a recurrent nature; and

(e) gifts in kind other than those listed in a) to d) which have an intrinsic value greater than R350.

(f) NMBM SCM Policy permits the receipt of gifts and hospitality provided that they are declared to the Accounting Officer or the chief executive.
6.1.3.5.5 Under no circumstances shall gifts be accepted from prospective contractors during the evaluation of calls for expressions of interest, quotations or tenders that could be perceived as undue and improper influence of such processes.

6.1.3.5.6 Employees and agents of NMBM shall without delay report to the Accounting Officer any incidences of a respondent, tenderer or contractor who directly or indirectly offers a gratification to them or any other person to improperly influence in any way a procurement process, procedure or decision.

6.1.3.6 Reporting of breaches

Employees and agents of NMBM shall promptly report to the Accounting Officer any alleged improper conduct which they may become aware of, including any alleged fraud or corruption.

6.1.4 Measures to prevent abuse of the infrastructure delivery system

(a) SCM Regulations Clause 38 shall apply -

6.1.4.1 The Accounting Officer shall investigate all allegations of corruption, improper conduct or failure to comply with the requirements of this policy against an employee or an agent, a contractor or other role player and, where justified:

(a) take steps against an employee or role player and inform the National Treasury of those steps;

(b) report to the South African Police Service any conduct that may constitute a criminal offence;

(c) lodge complaints with the Construction Industry Development Board or any other relevant statutory council where a breach of such council’s code of conduct or rules of conduct are considered to have been breached;

(d) cancel a contract if:
1) it comes to light that the contractor has made a misrepresentation, submitted falsified documents or has been convicted of a corrupt or fraudulent act in competing for a particular contract or during the execution of that contract; or

2) an employee or other role player committed any corrupt or fraudulent act during the tender process or during the execution of that contract.

### 6.1.5 Awards to persons in the service of the state

(a) SCM Regulations Clause 44 shall apply -

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

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

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

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

(d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);

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

(f) an employee of Parliament or a provincial legislature.

#### 6.1.5.2 The notes to the annual financial statements of the NMBM shall disclose particulars of an award of more than R 2000 to a person who is a family member of a person identified in 6.1.5.1

#### 6.1.5.3 or who has been in the previous 12 months. Such notes shall include the name of the person, the capacity in which such person served and the amount of the
award.

6.1.6 Collusive tendering

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

(a) is not associated, linked or involved with any other tendering entity submitting tender offers; or

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

6.1.7 Placing of contractors under restrictions

(a) SCM Regulations Clause 38 shall apply -

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

(a) withdrawn such tender or quotation after the advertised closing date and time for the receipt of submissions;

(b) after having been notified of the acceptance of his tender, failed or refused to commence the contract;

(c) had their contract terminated for reasons within their control without reasonable cause;
(d) offered, promised or given a bribe in relation to the obtaining or the execution of such contract;

(e) acted in a fraudulent, collusive or anti-competitive or improper manner or in bad faith towards NMBM; or

(f) made any incorrect statement in any affidavit or declaration with regard to a preference claimed and is unable to prove to the satisfaction of NMBM that the statement was made in good faith or reasonable steps were taken to confirm the correctness of the statements,

Designated Official shall prepare a report on the matter and make a recommendation to the Accounting Officer for placing the contractor or any of its principals under restrictions from doing business with the NMBM.

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

6.1.7.3 The designated Official shall:

(a) record the names of those placed under restrictions in an internal register which shall be accessible to employees and agents of NMBM who are engaged in procurement processes; and

(b) notify the National Treasury and Provincial Treasury and, if relevant, the Construction Industry Development Board, of such decision and provide them with the details associated therewith.

6.1.8 Complaints

6.1.8.1 All complaints regarding the NMBM's infrastructure delivery management system shall be addressed to the SCM Compliance Office in writing.
6.1.8.2 The Designated Official shall investigate all complaints regarding the infrastructure procurement and delivery management system and report on actions taken to the Chief Financial Officer who will decide on what action to take.

6.2 Acquisition Management

6.2.1 Unsolicited proposal

(a) SCM Regulations Clause 37 shall apply -

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

(a) the goods, services or any combination thereof that is offered is a demonstrably or proven unique innovative concept;

(b) proof of ownership of design, manufacturing, intellectual property, copyright or any other proprietary right of ownership or entitlement is vested in the person who made the offer;

(c) the offer presents a value proposition which demonstrates a clear, measurable and foreseeable benefit for NMBM;

(d) the offer is in writing and clearly sets out the proposed cost;

(e) the person who made the offer is the sole provider of the goods or service; and

(f) the Accounting Officer finds the reasons for not going through a normal tender processes to be sound.

6.2.1.2 The Accounting Officer may only accept an unsolicited offer and enter into a contract after considering the recommendations of the Bid Adjudication Committee if:
(a) the intention to consider an unsolicited proposal has been made known in accordance with Section 21A of the Municipal Systems Act of 2000 together with the reasons why such a proposal should not be open to other competitors, an explanation of the potential benefits for the NMBM and an invitation to the public or other potential suppliers and providers to submit their comments within 30 days after the notice;

(b) the NMBM has obtained comments and recommendations on the offer from the National Treasury and Provincial Treasury

(c) the Bid Adjudication Committee meeting which makes recommendations to accept an unsolicited proposal was open to the public and took into account any public comments that were received and any comments and recommendations received from the National Treasury and Provincial Treasury; and

(d) the provisions of 6.2.1.3 are complied with.

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

6.2.2 Tax and Rates Compliance

(a) SCM Regulations Clause 43 shall apply –

6.2.2.1 SARS Tax Clearance

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

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

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

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

(a) a contract may be awarded to a non-compliant tenderer if such a tenderer is able to remedy its tax compliance status within a period not exceeding 10 working days after being duly notified of its non-compliant status;

(b) an order may be awarded to a non-compliant contractor if such a contractor is able to remedy its tax compliance status within a period not exceeding 10 working days after being duly notified of its non-compliant status;

(c) a non-compliant contractor shall be issued with a first warning that payments in future amounts due in terms of the contract may be withheld, before the authorising of any payment due to such contractor;

(d) before authorising a further payment due to a non-compliant contractor who has failed to remedy its tax compliance status after receiving a first warning, a second and final warning shall be issued to such contractor;

(e) no payments may be released for any amounts due in terms of the contract due to a non-compliant contractor if, after a period of 30
calendar days have lapsed since the second warning was issued, the non-compliant contractor has failed to remedy its tax compliance status.

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

6.2.2.2 Municipal Rates and Taxes

(a) SCM Regulations Clause 38 (1)(d)(i) shall apply - No contract may be awarded to a tenderer who, if the principals of that tenderer, owes municipal rates and taxes or municipal service charges to any municipality or a municipal entity and are in arrears for more than 3 months.

6.2.3 Declarations of Interest

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

(a) are an employee of the NMBM or in the employ of the state; or
(b) have a family member or a business relation with a person who is in the employ of the state.

6.2.4 Invitations to submit expressions of interest or tender offers

6.2.4.1 (a) All invitations to submit tenders where the estimated value of the contract exceeds R200 000 including VAT, except where a confined tender process is followed, and expressions of interest shall be advertised on the NMBM’s website and on the National Treasury eTender Publication Portal.

(b) Advertisements shall be placed by the Designated Official.

6.2.4.2 (a) Advertisements relating to construction works which are subject to the
Construction Industry Development Regulations issued in terms of the Construction Industry Development Act of 2000 shall in addition to the requirements of 6.2.4.1 be advertised on the CIDB website.

(b) Advertisements shall be placed by Designated Official.

6.2.4.3 (a) Where deemed appropriate by Designated Official an invitation to tender and a call for an expression of interest shall be advertised in suitable local and national newspapers and the Government Tender Bulletin as directed by such person.

(b) Advertisements shall be placed by Designated Official.

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

6.2.4.5 (a) Invitations to submit expressions of interest or tender offers shall be issued not less than 10 working days before the closing date for tenders and at least 5 working days before any compulsory clarification meeting.

(b) Procurement documents shall be made available not less than 7 days before the closing time for submissions.

6.2.4.6 The following information must be submitted to the Treasury’s E-Tender Publication Portal Administrator in support of the NMBM’s advertisement:

(a) Description
(b) Bid Number
(c) Name of the Municipality (Nelson Mandela Bay Municipality)
(d) The place where the bid is required
(e) The closing date and time of the bid
(f) The NMBM’s contact details
(g) The place where bids can be collected;
(h) The place where bids should be submitted;
(i) The bid document (SBDs, Terms of Reference, GCC and other relevant documents)

6.2.5 Publication of submissions received and the award of contracts

(a) invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the NMBM, the CIDB website, the National Treasury E-Tender Publication Portal and in any other appropriate manner.

6.2.5.1 (a) The Designated Official shall publish within 10 working days of the closure of any advertised call for an expression of interest or an invitation to tender where the estimated value of the contract exceeds R200 000 including VAT on the NMBM website and the E-Tender Publication Portal, the names of all tenderers that made submissions to that advertisement, and if practical or applicable, the total of the prices and the preferences claimed.

(b) Such information shall remain on the website for at least 30 days.

6.2.5.2.1 The Designated Official shall publish within 7 working days of the award of a contract the following on the NMBM’s website

(a) the contract number;

(b) contract title;

(c) brief description of the goods, services or works;

(d) the total of the prices, if practical;

(e) the names of successful tenderers and their B-BBEE status level of contribution;

(f) duration of the contract; and
(g) brand names, if applicable.

6.2.5.3 (a) The Designated Official shall submit within 7 working days of the award of a contract the information required by National Treasury on the National Treasury E-Tender Publication Portal regarding the successful and unsuccessful tenders.

(b) Submissions shall be made by Designated Official.

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

6.2.6 Disposal Committee

6.2.6.1 The Accounting Officer shall appoint on a disposal by disposal basis in writing the members of the disposal committee to decide on how best to undertake disposals in accordance with the following:

(a) A disposal committee shall decide how best to undertake disposals relating to the demolition or dismantling of infrastructure or parts thereof, and the disposal of unwanted, redundant or surplus materials, plant and equipment.

(b) Disposals shall proceed only after the feasibility and desirability of using one or more of the following alternative disposal strategies have been considered:

(i) transfer to another organ of state, business unit or a charitable organisation at market-related value or free of charge;

(ii) recycling or re-use of component materials; or

(iii) disposal by means of dumping at an authorised dump site, burning or
demolition.

(c) The reasons for adopting a disposal strategy shall be recorded prior to proceeding with such disposal.

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

6.2.6.3 The disposal committee shall make recommendations to Designated Official who shall approve the recommendations, refer the disposal strategy back to the disposal committee for their reconsideration, decide not to proceed or to start afresh with the process.

6.3 Reporting of Infrastructure Delivery Management Information

6.3.1 Designated Official shall submit any reports required in terms of the standard to the National Treasury or Provincial Treasury.

6.3.2 The NMBM shall report to the relevant treasury within one month of the award of a contract or the issuing of an order, all engineering and construction, supply, service and professional service contracts that are awarded, or orders that are issued, should the total of prices, including VAT, exceed the thresholds contained in the Table 4 below.

Table 4: Thresholds, including VAT, for reporting the award of a contract or an order to the relevant treasury

<table>
<thead>
<tr>
<th>Organ of State</th>
<th>Value of Contract or order including VAT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Services Contract</td>
</tr>
<tr>
<td>NMBM</td>
<td>R50 Million</td>
</tr>
</tbody>
</table>

6.3.3 Such a report shall indicate the following:
(a) the title and number of the contract or order;
(b) a brief outline of the scope;
(c) the total of the prices at the time that a contract is concluded or an order issued;
(d) the time for completion or delivery; and
(e) the procurement procedure that was used to put the contract in place, or in the case of a framework agreement, whether or not competition amongst framework contractors was reopened.

6.3.4 The NMBM shall report to the relevant treasury where a contract was awarded to a tenderer other than the tenderer recommended by a committee, giving reasons for such award.

6.3.5 The NMBM shall prepare an annual report which contains the following in respect of a financial year and submit such report to the relevant treasury within two months after the financial year end:

(a) the information contained in the performance report prepared in accordance with Section 12 of the standard;

(b) a brief progress report which reflects progress in terms of time and cost in relation to the time for completion or delivery and the total of prices at the award of the contract or the issuing of an order, and, if relevant, stages completed, on all contracts and orders above the threshold stated in Table 4;

(c) an outline of the scope, value and duration of all contracts which were awarded as a result of unsolicited proposals, together with a brief motivation for such award;

(d) particulars relating to:

(i) the cancellation or termination of contracts, together with the reasons therefore;
(ii) the use of a negotiated or confined market procurement procedure to
enter into a supply, services, professional services or engineering and construction contract in excess of R10,0 million, including VAT, together with a brief motivation for doing so;

(iii) the evoking of the emergency procurement procedures where the value of the ensuing transaction exceeded R10,0 million, including VAT, together with a brief overview of the emergency and the outcomes of the procurement;

(iv) disputes arising from contracts which have been referred to arbitration or a court of law for settlement; and

(v) contracts where the approval has been granted to increase the total of the prices or the time for completion at Procurement Gate 8D (see Figure 2 and Table 3)

6.4 Performance Management

6.4.1 Project Managers must submit project performance reports to the SCM contract administrator within 5 working days after the end of each month

6.4.2 The Designated Official shall prepare an annual performance report for each portfolio of projects involving infrastructure delivery within two months of the financial year end which reflects performance in relation to at least the following:

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

(b) the average variance between planned and achieved completion of stages of all packages and projects;

(c) an overview of all packages where stage 7 was completed within the financial year and the total of the prices and the time for completion at the start of the contract or when the order was issued exceed 20%, together with a brief explanation as to why such increases occurred;
(d) the average time taken to award a contract, measured from the closing date for tender submission or the final submission made in terms of a proposal or competitive negotiations procedure to a decision being taken to award the contract;

(e) the average time taken, in respect of all packages covered in the report, to complete stage 8 measured from the time that stage 7 is completed;

(f) the average difference between the total of the prices in the payment certificate that was issued following the completion of stage 7, and the total of the prices at the end of stage 9;

(g) the average time taken to award a contract above the threshold for quotations, measured from the closing date for tender submission or the final submission made in terms of a proposal or competitive negotiations procedure, to the acceptance of the tender evaluation report; and

(h) the average number of days that payment is later than that required under the terms of a contract.

. Infrastructure Procurement

7.1 Usage of Procurement Procedures

The application of this policy shall be in line with the Standard for Infrastructure Procurement and Delivery Management

7.2 Procurement Documents

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

Table 5: Approved forms of contract related to the delivery and maintenance of infrastructure

<table>
<thead>
<tr>
<th>Form of contract</th>
<th>Code</th>
<th>Intended usage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Industry Development Board (CIDB)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CIDB Standard Professional Service Contract</td>
<td>SPSC</td>
<td>Professional services</td>
</tr>
<tr>
<td>CIDB General Conditions of Purchase</td>
<td></td>
<td>An order form type of</td>
</tr>
<tr>
<td>Form of contract</td>
<td>Code</td>
<td>Intended usage</td>
</tr>
<tr>
<td>------------------------------------------</td>
<td>------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>CIDB Contract for the Supply and Delivery of Goods</td>
<td></td>
<td>An order form type of contract for low-value goods without any incidental work or services on or before a specified date being required.</td>
</tr>
<tr>
<td>CIDB Contract for the Supply and Delivery of Goods</td>
<td></td>
<td>Simple, regional purchase of readily available materials or commodities which require almost no management of the buying and delivery process, minimal testing, installation and commissioning on delivery.</td>
</tr>
<tr>
<td>CIDB General Conditions of Service</td>
<td></td>
<td>An order form type of contract where low-value services on or before a specified date are required.</td>
</tr>
</tbody>
</table>

**International Federation of Consulting Engineers (FIDIC)**

<table>
<thead>
<tr>
<th>Form of contract</th>
<th>Code</th>
<th>Intended usage</th>
</tr>
</thead>
<tbody>
<tr>
<td>FIDIC Short Form of Contract</td>
<td>Green Book</td>
<td>Building or engineering works of relatively small capital value, or for relatively simple or repetitive work, or for work of short duration. Use for design by employer- or contractor-designed works.</td>
</tr>
<tr>
<td>FIDIC Conditions of Contract for Construction for Building and Engineering Works designed by the Employer</td>
<td>Red Book</td>
<td>Building or engineering works designed by the employer. (The works may include some elements of contractor-designed</td>
</tr>
<tr>
<td>Conditions of Contract</td>
<td>Book</td>
<td>Description</td>
</tr>
<tr>
<td>------------------------------------------------------------</td>
<td>------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>FIDIC Conditions of Contract for Construction for Building and Engineering Works designed by the Employer</strong></td>
<td>Red</td>
<td>Building or engineering works designed by the employer. (The works may include some elements of contractor-designed works.)</td>
</tr>
<tr>
<td><strong>FIDIC Conditions of Contract for plant and design-build for electrical and mechanical plant, and for building and engineering works, designed by the contractor</strong></td>
<td>Yellow</td>
<td>The provision of electrical or mechanical plant and the design and construction of building or engineering works.</td>
</tr>
<tr>
<td><strong>FIDIC Conditions of Contract for EPC Turnkey Projects</strong></td>
<td>Silver</td>
<td>The provision on a design and construct (turnkey) basis of a process or power plant, of a factory or similar facility, or an infrastructure project or other type of development.</td>
</tr>
<tr>
<td><strong>FIDIC Conditions of Contract for Design, Build and Operate Projects</strong></td>
<td>Gold</td>
<td>“Green field” building or engineering works which are delivered in terms of a traditional design, build and operate sequence with a 20-year operation period. (The contractor has no responsibility for the financing of the project/package or its ultimate commercial success.)</td>
</tr>
</tbody>
</table>

**South African Institution of Civil Engineering (SAICE)**

<table>
<thead>
<tr>
<th>Conditions of Contract</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SAICE General Conditions of Contract for Construction Works</strong></td>
<td>GCC</td>
</tr>
</tbody>
</table>

**Joint Building Contracts Committee (JBCC)**

<table>
<thead>
<tr>
<th>Conditions of Contract</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>JBCC Principal Building Agreement</strong></td>
<td>PBA</td>
</tr>
<tr>
<td><strong>JBCC Minor Works Agreement</strong></td>
<td>MWA</td>
</tr>
</tbody>
</table>

**Institution of Civil Engineers (ICE)**

<table>
<thead>
<tr>
<th>Conditions of Contract</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NEC3 Engineering and Construction Contract</strong></td>
<td>ECC</td>
</tr>
<tr>
<td><strong>NEC3 Engineering and Construction Short Contract</strong></td>
<td>ECSC</td>
</tr>
</tbody>
</table>
### NEC3 Contract Types

<table>
<thead>
<tr>
<th>Contract Type</th>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>NEC3 Professional Services Contract</td>
<td>PSC</td>
<td>Professional services, such as engineering, design or consultancy advice.</td>
</tr>
<tr>
<td>NEC3 Professional Services Short Contract</td>
<td>PSCC</td>
<td>Professional services which do not require sophisticated management techniques, comprise straightforward work and impose only low risks on both the employer and contractor.</td>
</tr>
<tr>
<td>NEC3 Term Service Contract</td>
<td>TSC</td>
<td>Manage and provide a service over a period of time.</td>
</tr>
<tr>
<td>NEC3 Term Service Short Contract</td>
<td>TSSC</td>
<td>Manage and provide a service over a period of time, or provide a service which does not require sophisticated management techniques, comprises straightforward work and imposes only low risks on both the employer and contractor.</td>
</tr>
<tr>
<td>NEC3 Supply Contract</td>
<td>SC</td>
<td>Local and international procurement of high-value goods and related services, including design.</td>
</tr>
<tr>
<td>NEC3 Supply Short Contract</td>
<td>SSC</td>
<td>Local and international procurement of goods under a single order or on a batch order basis and is suitable for use with contracts which do not require sophisticated management techniques, and impose only low risks on both the purchaser and the supplier.</td>
</tr>
</tbody>
</table>

### 7.2.2 Disputes

Disputes must be settled by means of mutual consultation, mediation with or without legal representation.
7.2.3.1 Disputes shall be finally settled in a South African court of law.

7.2.4 The NMBM standard specifications for civil engineering works, the NMBM standard Health and Safety specification, and the NMBM Standard Details shall be used with all relevant contract documents.

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

(a) consultancy services; and

(b) goods and services or any combination thereof where the total of the prices is expected to exceed R10 million including VAT.

7.3 Developmental procurement policy

7.3.1 The Nelson Mandela Bay Municipality Developmental Procurement Policy shall comply with Section 217 of the Constitution which requires that a procurement system must be fair, equitable, transparent, cost-effective and competitive.

7.3.2 The Emerging Enterprise Development Support Programme and Policy seeks to:-

a) promote increased participation by and opportunities for emerging enterprises in the Municipality’s Procurement processes;

b) promote broad-based black economic empowerment in emerging enterprises;

c) identify and assess minor contract opportunities within the Municipality for the development and support of emerging enterprises;

d) identify opportunities where minor contracts may be awarded to emerging enterprises;

e) identify and align minor contracts with the development and support programmes for emerging enterprises in the Municipality;

f) promote partnerships between the Municipality and the private sector in respect of the development and support of emerging enterprises;
g) promote skills transfer, training and accessibility to the processes of procurement through the implementation of the Emerging Enterprises Development and Support Programme of the Municipality; and

h) promote monitoring and evaluation of the identification and development of emerging enterprises.

7.4 Payment of contractors
The NMBM shall settle all accounts within 30 days of invoice or statement as provided for in the contract.

7.5 Approval to utilise specific procurement procedures

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

(a) The relevant Bid Committee shall authorise the use of the negotiated procedure above the thresholds provided in the standard.

(b) The relevant Bid Committee shall authorise the approaching of a confined market except where a rapid response is required in the presence of, or the imminent risk of, an extreme or emergency situation arising from the conditions set out in the standard and which can be dealt with or the risks relating thereto arrested within 48 hours; and

(c) the proposal procedure using the two-envelope system, the proposal procedure using the two-stage system or the competitive negotiations procedure

7.5.2 The person authorised to pursue a negotiated procedure in an emergency is Designated Official.

7.6 Receipt and safeguarding of submissions

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

7.6.2 The tender box shall be fitted with two locks and the keys kept separately by two designated Officials:

7.6.2.1 NMBM personnel shall be present when the box is opened on the stipulated closing date for submissions.

7.7 Opening of submissions

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

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

(a) sort through the submissions and return those submissions to the box that are not yet due to be opened including those whose closing date has been extended;

(b) return submissions unopened and suitably annotated where:

1) submissions are received late, unless otherwise permitted in terms of the submission data;

2) submissions were submitted by a method other than the stated method,

3) submissions were withdrawn in accordance with the procedures contained in SANS 10845-3; and.

4) only one tender submission is received and it is decided not to open it and to call for fresh tender submissions;

(c) record in the register submissions that were returned unopened;
(d) open submissions if received in sealed envelopes and annotated with the required particulars and read out the name of and record in the register the name of the tenderer or respondent and, if relevant, the total of prices including VAT where this is possible;

(e) record in the register the name of any submissions that is returned with the reasons for doing so;

(f) record the names of the tenderer’s representatives that attend the public opening;

(g) sign the entries into the register; and

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

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

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

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

7.8 Use of another Organ of State’s Framework Agreement

The NMBM may make use of another organ of state’s framework contract which has been put in place by means of a competitive tender process and there are demonstrable benefits for doing so.

7.8.1 The Accounting Officer shall make the necessary application to that organ of state, such application must be in line with Regulation 32 of the SCM regulations.

7.8.2 The end user directorate shall:
a) Outline the scope and anticipated quantum of work associated with the work that is required;
b) Provide a motivation for the use of the framework agreement;
c) Detail the benefit for NMBM to be derived from making use of the framework agreement.

7.8.3 The accounting officer must authorise the use of another organ of state’s framework contract on condition that:

(a) The scope of work procured is the same as that required by NMBM.

(b) The terms and conditions of the contract including the contract price are the same and are not capable of being deleted, amended or compromised to undermine constitutional principles of fairness, equity, transparency, competitiveness and cost-effectiveness.

(c) the framework agreement was put in place following a competitive tender process;

(d) the term of the framework agreement does not expire before the issuing of the required orders.

(e) that NMBM will pay the contractor in accordance with the terms and conditions of the agreement; and

7.8.4 The following documents must be obtained from the organ of state:

a) Bid Committees Attendance Register
b) Bid Committees Minutes
c) Tender Advert
d) Tender closing Report
e) Bidders Declaration
f) Evaluation Report
g) BEC Approval
h) BAC Recommendation
h) Award  

i) Contract Agreement  

j) Consent letter signed by the accounting officer of the organ of state  

k) Written agreement signed by the contractor agreeing to accept an order from NMBM;  

7.9 Insurances  

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

7.9.2 The insurance cover in engineering and construction contracts for loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with a contract shall in general not be less than the value stated in Table 6, unless otherwise directed by Designated Official.  

7.9.3 Lateral earth support insurance in addition to such insurance shall be taken out on a case by case basis.
Table 6: Minimum Insurance over

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

7.9.4 The insurance cover in professional services and service contracts for damage to property or death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with a contract shall not be less than the value stated in Table 6 for any one event unless otherwise directed by Designated Official.

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

7.9.6 Professional service appointments shall as a general rule be subject to proof of current professional indemnity insurance being submitted by the contractor in an
amount not less than the value stated in Table 6 in respect of each claim, without limit to the number of claims, unless otherwise directed by the Designated Official in relation to the nature of the service that they provide.

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

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

7.10 Written reasons for actions taken

7.10.1 Written reasons for actions taken shall be provided by a Designated Official.

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

a) SANS 10845-3, Construction procurement - Part 3: Standard conditions of tender, and, giving rise to the reason why a respondent was not short listed, pre-qualified or admitted to a data base; or

b) SANS 10845-4, Construction procurement - Part 4: Standard conditions for the calling for expressions of interest; as to why a tenderer was not considered for the award of a contract or not awarded a contract.

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

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

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