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# **Mohokare Local Municipality**

## **SCM Policy**

### **2022/2023**

**This Policy consists of two parts:**

**Part A** is the Supply Chain Management Policy, adopted in terms of section 111 of the Local Government: Municipal Finance Management Act, No. 56 of 2003 and the Municipal Supply Chain Management Regulations, Notice 868 of 30 May 2005;

and

**Part B** is the Preferential Procurement Policy, adopted in terms of section 2 of the Preferential Procurement Policy Framework Act, No. 5 of 2000 and the Preferential Procurement Regulations, 2017.

Council resolves in terms of section 111 of the Local Government Municipal Finance Management Act (No. 56 of 2003), to adopt the following as the Supply Chain Management Policy of the Mohokare Local Municipality.

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## Definitions

1. In this Policy, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, and –

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

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

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

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

**“In the service of the state”** means to be –

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

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

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

**“Other applicable legislation”** means any other legislation applicable to municipal supply chain management, including –

- (A) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- (b) The Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
- (c) The Construction Industry Development Board Act, 2000 (Act No.38 of 2000);

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

“**The Act**” means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

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

“**Written or verbal quotations**” means quotations referred to in paragraph 12(1) (b) of this Policy.

“**Sole Supplier**” means the only supplier who provides the services/goods

## CHAPTER 1

### ESTABLISHMENT AND IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

#### Supply chain management policy

2. (1) The Mohokare Local Municipality resolves in terms of section 111 of the Act to have and implement a Supply Chain Management Policy in a way that –
  - (a) Gives effect to –
    - (i) section 217 of the Constitution; and
    - (ii) part 1 of Chapter 11 and other applicable provisions of the Act;
  - (b) is fair, equitable, transparent, competitive and cost effective;
  - (c) Complies with –
    - (i) the Regulatory framework
    - (ii) any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
  - (d) is consistent with other applicable legislation;
  - (e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
  - (f) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.
- (2) The municipality may not act otherwise than in accordance this Supply Chain Management Policy when –
  - (a) procures goods or services;
  - (b) disposes goods no longer needed;
  - (c) selects contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
  - (d) selects external mechanisms referred to in section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.

- (3) This Policy, except where provided otherwise, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –
- (a) Water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
  - (b) Electricity from Eskom or another public entity, another municipality or a municipal entity.

### **Adoption and Amendment of the supply chain management policy**

3. (1) The accounting officer must –
- (a) at least annually review the implementation of this Policy; and
  - (b) When the accounting officer considers it necessary, submit proposals for the amendment of this Policy to the council.
- (2) If the accounting officer submits proposed amendments to the council that differs from the model policy issued by the National Treasury, the accounting officer must –
- (a) ensure that such proposed amendments comply with the Regulations; and
  - (b) report any deviation from the model policy to the National Treasury and the relevant Provincial Treasury.
- (3) When amending this supply chain management policy the need for uniformity in supply chain practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.
- (4) The accounting officer of a municipality must in terms of section 62(1)(f)(iv) of the Act take all reasonable steps to ensure that the municipality has and implements this supply chain management policy.

### **Delegation of supply chain management powers and duties**

4. (1) The council hereby delegates all powers and duties to the accounting officer to enable the accounting officer –
- (a) To discharge the supply chain management responsibilities conferred on accounting officers in terms of –
    - (i) Chapter 8 or 10 of the Act; and
    - (ii) The Supply Chain Management Policy;
  - (b) to maximize administrative and operational efficiency in the implementation of the supply chain management Policy;
  - (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favoritism and unfair and irregular practices in the implementation of this Policy; and

- (d) To comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- (2) Sections 79 and 106 of the Act apply to the sub delegation of powers and duties delegated to an accounting officer in terms of subparagraph (1) of this policy.
- (3) The council or accounting officer may not delegate or sub delegate any supply chain management powers or duties to a person who is not an official of the municipality or to a committee which is not exclusively composed of officials of the municipality;
- (4) This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.

### Sub delegations

- 5.(1) The accounting officer may in terms of section 79 or 106 of the Act sub delegate any supply chain management powers and duties, including those delegated to the accounting officer in terms of this Policy, but any such sub delegation must be consistent with subparagraph (2) and paragraph 4 of this Policy.
- (2) The power to make a final award –
- (a) Above R10 million (VAT included) may not be sub delegated by the accounting officer;
  - (b) Above R2 million (VAT included), but not exceeding R10 million (VAT included), may be sub delegated but only to –
    - (i) the Chief Financial Officer;
    - (ii) Senior Manager; or
    - (iii) A bid adjudication committee of which the chief financial officer or a senior manager is a member; or
  - (c) Not exceeding R2 million (VAT included) may be sub delegated but only to –
    - (i) the chief financial officer;
    - (ii) A Senior Manager;
    - (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 which the power to make final awards has been sub delegated in accordance with subparagraph (2) of this policy must within five days of the end of each month submit to the official referred to in subparagraph (4) of this policy a written report containing particulars of each final award made by such official or committee during that month, including–
- (a) The amount of the award;
  - (b) The name of the person to whom the award was made; and (c) The reason why the award was made to that person.

- (4) A written report referred to in subparagraph (3) must be submitted –
  - (a) To the accounting officer, in the case of an award by –
    - (i) The chief financial officer;
    - (ii) A Senior Manager; or
    - (iii) A bid adjudication committee of which the chief financial officer or a Senior Manager is a member; or
  - (b) To the chief financial officer or Senior Manager responsible for the relevant bid, in the case of an award by –
    - (i) A manager referred to in subparagraph (2) (c) (iii) of this policy; 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) of this policy do not apply to procurements out of petty cash.
- (6) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.
- (7) No supply chain management decision-making powers may be delegated to an advisor or consultant.

#### **Oversight role of council**

6. (1) The Council must maintain oversight over the implementation of this supply chain management Policy.
- (2) For the purposes of such oversight the accounting officer must –
  - (a) (i) within 30 days of the end of each financial year, submit a report on the implementation of supply chain management policy of the municipal and of any municipal entity under the sole or shared control of the municipality, to the council of the municipality; and
  - (ii) Whenever there are serious and material problems in the implementation of the supply chain management Policy, immediately submit a report to the council.
- (3) The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the mayor.
- (4) The reports must be made public in accordance with section 21A of the Municipal Systems Act.

### **Supply Chain Management Unit**

7. (1) The accounting officer must establish a supply chain management unit to implement this supply chain management 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 has been delegated in terms of section 82 of the Act.

### **Training of supply chain management officials**

8. The training of officials involved in implementing supply chain management Policy should be in accordance with any Treasury guidelines on supply chain management training.

## CHAPTER 2 SUPPLY CHAIN MANAGEMENT SYSTEM

### FRAME WORK FOR SUPPLY CHAIN MANAGEMENT

#### Format of supply chain management system

9. This supply chain management 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**

##### **System of demand management**

10. (1) The accounting officer must establish, through operational procedures, an effective system of demand management in order to ensure that the resources required to support the strategic and operational commitments are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy the needs.

(2) The demand management system must –

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

#### **Part 2: Acquisition management**

##### **System of acquisition management**

11. (1) the accounting officer must implement the system of acquisition management set out in this part in order to ensure –

- (a) That goods and services are procured by the municipality in accordance with authorised processes only;
- (b) That expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
- (c) That the threshold values for the different procurement processes are complied with;

- (d) That bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation;  
and
  - (e) That any Treasury guidelines on acquisition management are properly taken into account.
- (2) paragraph 11(2) This supply chain management policy, except where provided otherwise in the policy, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –
- (a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
  - (b) electricity from Eskom or another public entity, another municipality or a municipal entity.
- (3) When procuring goods or services contemplated in section 110(2) of the Act, the accounting officer must make public the fact that such goods or services are procured otherwise than through the municipality's supply chain management system, including –
- (a) The kind of goods or services; and (b) The name of the supplier.

#### **Range of procurement processes**

#### **12. (1) The procurement of goods and services through this policy is provided by way of –**

- (a) petty cash purchases, up to a transaction value of R2 000 (VAT included);
- (b) Written or Verbal quotation for procurements of a transaction value over R2 000 up to R10 000 (VAT included);
- (c) formal written price quotations for procurements of a transaction value over R10 000 up to R30 000 (VAT included);
- (d) Procurement in terms of the PPP Framework Act of a transaction value over R 30 000 up to R 200 000 (VAT included): and
- (e) a competitive bidding process for–
  - (i) procurements above a transaction value of R200 000 (VAT included); and (ii) the procurement of long term contracts.

#### **(2) The accounting officer may, in writing-**

- (a) lower, but not increase, the different threshold values specified in subparagraph (1); or
- (b) Direct that –
  - (i) Written or verbal quotations be obtained for any specific procurement of a transaction value more than R2 000;
  - (ii) Three verbal or 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) Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the policy. When determining transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.

### **13. General preconditions for consideration of written quotations or bids**

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

- (a) Has furnished that provider's –
  - (i) Full name;
  - (ii) Identification number or company or other registration number; and
  - (iii) Tax reference number and VAT registration number, if any;
- (b) Has authorized the municipality to obtain a tax clearance from the South African Revenue Services that the provider's tax matters are in order; and
- (c) Has indicated –
  - (i) Whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
  - (ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
  - (iii) Whether a spouse, child or parent of the provider or of 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.

### **14. Lists of accredited prospective providers**

- (1) The accounting officer must –
  - (a) keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements through written or verbal quotations and formal written price quotations; and
  - (b) at least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
  - (c) Specify the listing criteria for accredited prospective providers as per paragraph (13); and
  - (d) Disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.

- (e) Evaluate the performance of all service providers on monthly basis and those who do not perform must be reported to national treasury.
- (2) The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.
- (3) The list must be compiled per commodity and per type of service.
- (4) Quotations may be solicited from suppliers who are registered on the government Central Supplier Database as required by MFMA Circular No. 81 issued by National Treasury.

### **15. Petty cash purchases**

Paragraph 15 (a-d)(i)(ii)The accounting officer must establish the conditions for the procurement of goods by means of petty cash purchases referred to in paragraph 12 (1) (a) of this policy, which must include conditions –

- (a) determining the terms on which a manager may delegate responsibility for petty cash to an official reporting to the manager;
- (b) limiting the number of petty cash purchases or the maximum amounts per month for each manager;
- (c) excluding any types of expenditure from petty cash purchases, where this is considered necessary; and
- (d) requiring monthly reconciliation reports from each manager to the chief financial officer, including –
  - (i) the total amount of petty cash purchases for that month; and (ii) receipts and appropriate documents for each purchase.

### **16. Written or Verbal quotation**

The accounting officer must establish the conditions for the procurement of goods or services through verbal quotation as there is only one supplier or provider who supply's or provides goods or services within the municipal jurisdiction , which must include conditions stating- :

- (a) Quotations must be obtained from at least three service providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the municipality, provided that if quotation is obtained from provider who is not listed, such provider must meet the listing criteria set out in paragraph 14(1) (b) and (c) of this Policy;

Quotations may be solicited from suppliers who are registered on the government Central Supplier Database as required by MFMA Circular No. 81 issued by National Treasury.

- (b) To the extent feasible, provider must be requested to submit such quotation in writing;

- (a) that if it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the accounting officer or another official designated by the accounting officer;
- (b) that the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices
- (c) If a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.
- (d) In all cases where verbal quotations had been obtained a motivation letter must be completed and the following minimum information needs to be added in the motivation:
  - (i) Names of suppliers
  - (ii) Contact persons who were spoken to
  - (iii) Contact numbers

#### **17. Formal written price quotations**

- (1) The accounting officer must establish the conditions for the procurement of goods or services through formal written price quotations, which must include conditions stating-
  - (a) quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the municipality;
  - (b) quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria set out in paragraph 14(1) (b) and (c) of this Policy;
  - (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer, and
  - (d) the accounting officer must record the names of the potential providers and their written quotations.
- (2) A designated official referred to in subparagraph (1)(c) must within three days of the end of each month report to the chief financial officer on any approvals given during that month by that official in terms of that subparagraph.

#### **18. Procedures for procuring goods or services through written or verbal Quotations and formal written price quotations**

The procedures for the procurement of goods and services through written or verbal quotations and formal written price quotations are as follows:

- (a) When using the list of accredited prospective providers or central supplier database, the accounting officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;

- (b) all requirements in excess of 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, e-Tender portal and an official notice board of the municipality;
- (c) Offers received must be evaluated on a comparative basis taking into account unconditional discounts;
- (d) the accounting officer or chief financial officer must on a monthly basis be notified in writing of all written or verbal quotations and formal written price quotations accepted by an official acting in terms of a sub delegation;
- (e) offers above R30 000 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;
- (f) acceptable offers, which are subject to the preference points system (PPPFA and associated regulations), must be awarded to the bidder who scored the highest points;
- (g) the 80/20 preference point system is applicable to quotations with a rand value of R 30 000 and up to R50 million, inclusive of all applicable taxes,
- (h) no points will be allocated for HDI, suppliers will submit Broad-Based Black Economic Empowerment (B-BBEE) rating certificates indicating the level of contribution which must be converted to points out of 10 or 20 and local content

### 19. Competitive bids process

- (1) Goods or services above a transaction value of R200 000 (VAT included) and long term contracts may only be procured through a competitive bidding process, subject to paragraph 11(2) of this Policy.
- (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) **Closed tender:** tenders/bids are solicited from a pre-determined number of service providers in case
  - (a) Where there was limited response from bidders to an advertisement and there is a tight time frame within which the services must be provided
  - (b) Where the bidders who submitted their bids were not responsive
  - (c) Where the service involved are specialized in nature and there are relatively fewer providers available

## 20. Process for competitive bidding

The accounting officer must establish procedures for a competitive bidding process for each of the following stages:

- (a) Compilation of bidding documentation as detailed in paragraph 21;
- (b) Public invitation of bids as detailed in paragraph 22;
- (c) Site meetings or briefing sessions as detailed in paragraph 22;
- (d) Handling of bids submitted in response to public invitation as detailed in paragraph 23;
- (e) Evaluation of bids as detailed in paragraph 28;
- (f) Award of contracts as detailed in paragraph 29;
- (g) Administration of contracts
  - (i) After approval of a bid, the accounting officer and the bidder must enter into a written agreement.
  - (i) Proper record keeping
  - (i) Original / legal copies of written contracts agreements should be kept in a secure place for reference purposes.

## 21. Bid documentation for competitive bids

The criteria to which bid documentation for a competitive bidding process must comply, which in addition to paragraph 13 of this policy, the bid documentation must –

- (a) Take into account –
  - (i) The general conditions of contract and any special conditions of contract, if specified;
  - (ii) Any Treasury guidelines on bid documentation; and
  - (iii) The requirements of the Construction Industry Development Board, the policy on infrastructure procurement and delivery management in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
- (b) include the preference points system to be used, goals as contemplated in the Preferential Procurement Regulations and evaluation and adjudication criteria, including any criteria required by other applicable legislation;

- (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish–
  - (i) If the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
    - (aa) for the past three years; or
    - (bb) since their establishment if established during the past three years;
  - (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
  - (iii) Particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material noncompliance or dispute concerning the execution of such contract;
  - (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
- (e) Stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

## **22. Public invitation for competitive bids**

- (1) The procedure for the invitation of competitive bids is as follows:
  - (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the municipality, the e-tender portal, the CIDB i-Tender in the case of construction procurement or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and
  - (b) The information contained in a public advertisement, must include –
    - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2) of this policy;
    - (ii) A statement that bids may only be submitted on the bid documentation provided by the municipality; and

- (iii) Date, time and venue of any proposed site meetings or briefing sessions.
  - (iv) The required CIDB contractor category and grading for construction procurement
- (2) The accounting officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.
- (3) Bids submitted must be sealed and clearly marked the relevant bid reference.
- (4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

### **23. Procedure for handling, opening and recording of bids**

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

- (a) Bids–
  - (i) Must be opened only in public;
  - (ii) Must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
  - (iii) Received after the closing time should not be considered and returned unopened immediately.
- (b) Only during the time of opening the bids 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;
- (c) No information, except the provisions in subparagraph (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
- (d) The accounting officer must –
  - (i) record in a register all bids received in time;
  - (ii) make the register available for public inspection; and
  - (iv) publish the entries in the register and the bid results on the website.

### **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.
- (2) Minutes of such negotiations must be kept for record purposes.

**25. Two-stage bidding process**

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

**26. Committee system for competitive bids**

- (1) The accounting officer is required to establish a committee system for competitive bids consisting of at least –
- (a) A bid specification committee;
  - (b) A bid evaluation committee; and
  - (c) A bid adjudication committee;
- (2) The accounting officer appoints the members of each committee, taking into account section 117 of the Act; and
- (3) A neutral or independent observer, appointed by the accounting officer 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) Paragraph 27, 28 and 29 of this Policy; and (b) Any other applicable legislation.
- (5) The accounting officer may apply the committee system to formal written price quotations.

## 27. Bid specification committees

- (1) A bid specification committee must compile the specifications for each procurement of goods or services by the municipality.
- (2) Specifications –
  - (a) Must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
  - (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organization, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;
  - (c) Must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
  - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labeling of conformity certification;
  - (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word “equivalent”;
  - (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2017; and
  - (g) Must be approved by the accounting officer prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.
- (3) A bid specification committee must be composed of one or more officials of the municipality, preferably the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.
- (4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.

## Bid evaluation committees

28. (1) A bid evaluation committee must –
- (a) Evaluate bids in accordance with –
    - (i) the specifications for a specific procurement; and
    - (ii) The points system set out in terms of paragraph 27(2) (f).
  - (b) Evaluate each bidder’s ability to execute the contract;

- (c) Check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, a lease agreement may be accepted and;
  - (d) To ensure in respect of the recommended bidder, that their tax clearance certificate or SARS electronic tax clearance certificate, CIDB certificate and BBBEE certificates are in order.
  - (e) Submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
- (2) A bid evaluation committee must as far as possible be composed of-
- (a) Officials from departments requiring the goods or services; and
  - (b) At least one supply chain management official of the municipality.
  - (c) At least one manager to be appointed to serve in the committee.
- (3) Subject to subsection (2):
- (a) The composition of the bid evaluation committee may change to accommodate different scenarios;
  - (b) Members from the bid specification committee may also form part of the bid evaluation committee; and
  - (c) A member from the bid evaluation committee may be invited to present bid evaluation reports to the bid adjudication committee, but only for that purpose.

### **29. Bid adjudication committees**

- (1) A bid adjudication committee must –
- (a) Consider the report and recommendations of the bid evaluation committee; and (b) Either –
    - (i) Depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or
    - (ii) Make another recommendation to the accounting officer how to proceed with the relevant procurement.
- (2) A bid adjudication committee must consist of at least four senior Managers of the municipality which must include –
- (a) The chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer; and

- (b) At least one senior supply chain management official who is an official of the municipality; and
  - (c) A technical expert in the relevant field who is an official, if such an expert exists.
- (3) The accounting officer must appoint the chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.
- (4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.
- (5) (a) if the bid adjudication committee decides to recommend a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to recommending the bid –
- (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;
  - (ii) Notify the accounting officer.
- (b) The accounting officer may –
- (i) After due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
  - (ii) If the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (6) The accounting officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (7) The accounting officer must comply with section 114 of the Act within 10 working days.
- (8) The bid adjudication committee must at all times adhere to the requirements of MFMA circular 34 from National Treasury.
- (9) The municipality shall consider the holding period of the validity of BBBEE certificate and Tax clearance certificate to be at the close of tender.
- i. The SCM practitioners of the municipality is expected to make all means possible to notify the bidder as soon as the award is made to furnish the municipality with required documents within the suspensive period of fourteen (14) days.
  - ii. If a bidder is in arrears with utilities and has an arrangement with the municipality to offset the arrears this arrangement is acceptable and the bidder may not be disqualified. The bidder must furnish the proof of agreement. This agreement must have been in place at the time of submission and cannot be *ex post facto*.

### **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 Act; and
  - (c) May not be for a period of more than five years at a time.
- (2) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.
- (3) The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of paragraph 22(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

### **31. Procurement of IT related goods or services**

- (1) the accounting officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.
- (2) Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.
- (3) The accounting officer may notify SITA together with a motivation of the IT needs if –
  - (A) the transaction value of IT related goods or services required in any financial year will exceed R50 million (VAT included); or
  - (b) The transaction value of a contract to be procured whether for one or more years exceeds R50 million (VAT included).
- (3) If SITA comments on the submission and the municipality disagree with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the relevant provincial treasury and the Auditor General.

### **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) a municipal entity procures goods or services through a contract secured by its parent municipality; or

(b) A municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.

### **33. Procurement of goods necessitating special safety arrangements**

- (1) The acquisition and storage of goods in bulk (other than water), which necessitate special safety arrangements, including gasses and fuel, should be avoided where ever possible.
- (2) Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership, cost advantages and environmental impact and must be approved by the accounting officer.

### **34. Proudly SA Campaign**

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

- Firstly – suppliers and businesses within the municipality or district;
- Secondly – suppliers and businesses within the relevant province;
- Thirdly – suppliers and businesses within the Republic.

### **35. Appointment of consultants**

- (1) the accounting officer may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.
- (2) Consultancy services must be procured through competitive bids if
  - (a) The value of the contract exceeds R200 000 (VAT included); or
  - (b) The duration period of the contract exceeds one year.
- (3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of –

- (a) all consultancy services provided to an organ of state in the last five years; and
  - (b) Any similar consultancy services provided to an organ of state in the last five years.
- (4) The accounting officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the municipality.

### **35.1 Appointment of panel of service providers/suppliers**

- (a) An appointment of a service providers/suppliers who has been appointed within a panel will be based on a rotational basis; and
- (b) Should the service provider fail to deliver required goods and/services the Municipality reserves the right to cancel the order and appoint the next service provider within the panel

### **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 to procure any required goods or services through any convenient process, which may include direct negotiations, but only –
    - (i) In an emergency;
    - (ii) If such goods or services are produced or available from a single provider only;
    - (iii) For the acquisition of special works of art or historical objects where specifications are difficult to compile;
    - (iv) Acquisition of animals for zoos and/or nature and game reserves; or
    - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
  - (b) Ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of 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 include as a note to the annual financial statements.
- (3) Subparagraph (2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this policy.

**37. Unsolicited bids**

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

- (8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the accounting officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.
- (9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality to the bid may be entered into or signed within 30 days of the submission.

### **38. Combating of abuse of supply chain management system**

The accounting officer must establish measures for the combating of abuse of the supply chain management system, which must stipulate the following:

- (1) The accounting officer must–
  - (a) Take all reasonable steps to prevent abuse of the supply chain management system;
  - (c) Investigate any allegations against an official or other role player of fraud, corruption, favoritism, unfair or irregular practices or failure to comply with this supply chain management Policy, and when justified –
    - (i) Take appropriate steps against such official or other role player; or
    - (iii) Report any alleged criminal conduct to the South African Police Service;
  - (d) 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;
  - (e) Reject any bid from a bidder–
    - (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality, or to any other municipality or municipal entity, are in arrears for more than three months; or
    - (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
  - (f) 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;
- (e) Cancel a contract awarded to a person if –
  - (i) The person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or

- (ii) An official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
- (g) Reject the bid of any bidder if that bidder or any of its directors –
- (i) Has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;
  - (ii) Has been convicted for fraud or corruption during the past five years;
  - (iv) has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - (iv) Has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- (2) The accounting officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) of this policy.
- (3) All bidders must complete the MBD8 – Declaration of Bidder's Past Supply Chain Management Practices – form as included in the Municipal Bidding Document.

### **Part 3: Logistics, Disposal, Risk and Performance Management**

#### **39. Logistics management**

This aspect addresses the setting of inventory levels, placing of orders, receiving and distribution of material and goods, stores, warehouse and transport management, expediting orders, the review of vendor performance, maintenance and contract administration.

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

- (a) the monitoring of spending patterns on types or classes of goods and services incorporating, where practical, the coding of items to ensure that each item has a unique number;
- (b) the setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;
- (c) the placing of manual or electronic orders for all acquisitions other than those from petty cash;

- (d) before payment is approved, certification by the responsible officer that the goods and services are received or rendered on time and is in accordance with the order, the general conditions of contract and specifications where applicable and that the price charged is as quoted in terms of a contract;
- (e) appropriate standards of internal control and warehouse management to ensure that goods placed in stores are secure and only used for the purpose for which they were purchased;
- (f) regular checking to ensure that all assets including official vehicles are properly managed, appropriately maintained and only used for official purposes; and
- (g) Monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for particular goods or services.

#### 40. Disposal management

- (1) The accounting officer must establish an effective system of disposal management for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act, which must stipulate the following:
  - that the Accounting Officer appoints a specific committee that could for practical purposes known as the Disposal committee ( with Chairperson and minimum of two members) to deal with disposals and to make recommendations with regard to the disposal assets
  - that a Chairperson be a senior official, the chairperson may at any time during the process of evaluation of specialized assets, co-opt additional members who possess specialized knowledge in the relevant field
- (2) The disposal of Assets must be by one of the following methods–
  - (i) Transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
  - (ii) Transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
  - (iii) Selling the asset; or
  - (iv) Destroying the asset.
- (4) The accounting officer must ensure that –
  - (a) immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;

- (b) movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
- (c) in the case of the disposal of firearms, the National Conventional Arms Control Committee must approve any sale or donation of firearms to any person or institution within or outside the Republic;
- (d) Immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;
- (e) All fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;
- (f) Where assets are traded in for other assets, the highest possible trade-in price is negotiated; and
- (g) In the case of the free disposal of computer equipment, the provincial department of education must first be approached to indicate within 30 days whether any of the local schools are interested in the equipment.

#### **41. Risk management**

- (1) The accounting officer must establish an effective system of risk management for the identification, consideration and avoidance of potential risks in the supply chain management system.
- (2) Risk management must include –
  - (a) The identification of risks on a case-by-case basis;
  - (b) The allocation of risks to the party 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**

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

### ***Part 4: Other matters***

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

- (1) the accounting officer must ensure that, irrespective of the procurement process followed, no award above R 30 000 in terms of this Policy is given 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, or that suitable arrangements has been made with SARS to meet bidders tax obligation
- (3) If SARS does not respond within 7 days such person's tax matters may for purposes of subparagraph (1) be presumed to be in order.
- (4) Alternatively, the central supplier database will be checked to verify the tax matters of the recommended bidders.

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

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

- (a) Who is in the service of the State?
- (b) If that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
- (c) A person who is an advisor or consultant contracted with the municipality.

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

The accounting officer must ensure that the notes to the annual financial statements disclose particulars of any award of more than R2000 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) is hereby established for officials and other role players in the supply chain management system of the municipality in order to promote –

- (a) mutual trust and respect; and
  - (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
- (2) A municipal code of ethical standards must stipulate that an official or other role player involved in the implementation of the supply chain management policy of the municipality or municipal entity –
- (a) must treat all providers and potential providers equitably;
  - (b) may not use his or her position for private gain or to improperly benefit another person;
  - (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350.00;
  - (d) notwithstanding sub-regulation (2)(c), must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
  - (e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the municipality or municipal entity;
  - (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
  - (g) must be scrupulous in his or her use of property belonging to the municipality or municipal entity;
  - (h) must assist the accounting officer in combating fraud, corruption, favoritism and unfair and irregular practices in the supply chain management system; and
  - (i) must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including – (i) any alleged fraud, corruption, favoritism or unfair conduct; (ii) any alleged contravention of regulation 47(1); or
    - (iii) any alleged breach of the code of ethical standards.
- (3) A supply chain management policy must –
- (a) determine that all declarations in terms of sub regulation (2)(d) and (e) must be recorded in a register which the accounting officer must keep for this purpose;
  - (b) determine that all declarations by the accounting officer must be made to the mayor of the municipality or the board of directors of the municipal entity who must ensure that such declarations are recorded in the register; and
  - (c) contain measures to ensure that appropriate action is taken against any official or other role player who commits a breach of the code of ethical standards.
- (4) A supply chain management policy must take into account the National Treasury's code of conduct for supply chain management practitioners and other role players involved in supply chain management.
- (5) A municipality or municipal entity may adopt the National Treasury's code of conduct for supply chain management practitioners and other role players involved in supply chain management. When adopted, such code of conduct becomes binding on all officials and

other role players involved in the implementation of the supply chain management policy of the municipality or municipal entity.

**47. Inducements, rewards, gifts and favours to municipalities, municipal entities, officials and other role players**

- (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
  - (a) any inducement or reward to the municipality for or in connection with the award of a contract; or
  - (b) Any reward, gift, favour or hospitality to –
    - (i) Any official; or
    - (ii) Any other role player involved in the implementation of the supply chain management 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**

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

- (a) a provider or prospective provider of goods or services; or
- (b) A recipient or prospective recipient of goods disposed or to be disposed.

**49. Objections and complaints**

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

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

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

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

- (a) A cap on the compensation payable to the service provider; and (b) That such compensation must be performance based.

#### **52. Commencement**

This Policy takes effect on 01 July 2022 and will be reviewed annually by way of a Council resolution.

DRAFT

## **PART B**

**PREFERENTIAL PROCUREMENT POLICY** adopted in terms of section 2 of the Preferential Procurement Policy Framework Act, No. 5 of 2000 and the Preferential Procurement Regulations, 2017

**PREAMBLE**

**WHEREAS** the Mohokare Local Municipality aims to improve the quality of life of the local community and to free the potential of each person within a framework of facilitating service delivery, through effective governance and the Council takes into account the need for transparent procedures that give the effect to the principle of preferential procurement;

**AND WHEREAS** local economic development plays a crucial role in creating a prosperous, equitable, stable and democratic society and the overall national vision of economic development is one of decent work and living standards for all in the context of qualitative improved equality in ownership, skills and access to opportunities;

**NOW THEREFORE** the Council of the Mohokare Local Municipality resolves in terms of section 2 of the Preferential Procurement Policy Framework Act, No. 5 of 2000 that the principles embodied in the Preferential Procurement Regulations, 2017 are herewith integrated into the Mohokare Local Municipality's Supply Chain Management Policy to form the basis of the evaluation criteria for quotations and competitive bids.

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## Definitions

1. In these Policy, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act must bear the meaning so assigned-

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

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

“**black designated groups**” has the meaning assigned to it in the codes of good practice issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

“**black people**” has the meaning assigned to it in section 1 of the Broad-Based Black Economic Empowerment Act;

“**Broad-Based Black Economic Empowerment Act**” means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

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

“**designated group**” means-

- (a) black designated groups;
- (b) black people;
- (c) women;
- (d) people with disabilities; or
- (e) small enterprises, as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);

“**designated sector**” means a sector, sub-sector or industry or product designated in terms of paragraph 8(1)(a);

“**EME**” means an exempted micro enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

“**functionality**” means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents;

**“military veteran”** has the meaning assigned to it in section 1 of the Military Veterans Act, 2011 (Act No. 18 of 2011);

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

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

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

**“proof of B-BBEE status level of contributor”** means-

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

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

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

**“rural area”** means-

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

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

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

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

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

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

## **Application**

2. These Policy apply to Mohokare Local Municipality as envisaged in the definition of Local Municipality in section 1 of the Act.

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

3. The Municipality must-

(a) determine and stipulate in the tender documents-

(i) the preference point system applicable to the tender as envisaged in paragraph 6 or 7; or

(ii) if it is unclear which preference point system will be applicable, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system;

(b) determine whether pre-qualification criteria are applicable to the tender as envisaged in paragraph 4;

(c) determine whether the goods or services for which a tender is to be invited, are in a designated sector for local production and content as envisaged in paragraph 8;

(d) determine whether compulsory subcontracting is applicable to the tender as envisaged in paragraph 9; and

(e) determine whether objective criteria are applicable to the tender as envisaged in paragraph 11.

## **Pre-qualification criteria for preferential procurement**

4.(1) If the municipality decides to apply pre-qualifying criteria to advance certain designated groups, that municipality must advertise the tender with a specific tendering condition that only one or more of the following tenderers may respond-

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

(b) an EME or QSE;

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

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

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

- (iii) an EME or QSE which is at least 51% owned by black people who are women;
- (iv) an EME or QSE which is at least 51% owned by black people with disabilities;
- (v) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
- (vi) a cooperative which is at least 51% owned by black people;
- (vii) an EME or QSE which is at least 51% owned by black people who are military veterans; (viii) an EME or QSE.

(2) A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender.

**Tenders to be evaluated on functionality**

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

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

6.(1) The following formula must be used to calculate the points out of 80 for price in respect of a tender with a Rand value equal to or above R30 000 and up to a Rand value of R50 million, inclusive of all applicable taxes:

Where-

Ps = Points scored for price of tender under consideration;  
 Pt = Price of tender under consideration; and Pmin = Price of lowest acceptable tender.

(2) The following table must be used to calculate the score out of 20 for BBEE:

B-BBEE Status Level of Contributor	Number of Points
1	20

2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

- (3) A tenderer must submit proof of its B-BBEE status level of contributor.
- (4) A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but-
- (a) may only score point out of 80 for price; and (b) scores 0 points out of 20 for B-BBEE.
- (5) A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.
- (6) The points scored by a tenderer for B-BBEE in terms of sub paragraph (2) must be added to the points scored for price under sub paragraph (1).
- (7) The points scored must be rounded off to the nearest two decimal places.
- (8) Subject to sub paragraph (9) and paragraph 11, the contract must be awarded to the tenderer scoring the highest points.
- (9) (a) If the price offered by a tenderer scoring the highest points is not market related, the organ of state may not award the contract to that tenderer.
- (b) The Municipality may-
- (i) negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
- (ii) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
- (iii) if the tenderer scoring the second highest points does not agree to a market related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.
- (c) If a market-related price is not agreed as envisaged in paragraph (b)(iii), the municipality must cancel the tender.

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

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

Where

Ps = Points scored for price of tender under consideration;  
Pt = Price of tender under consideration; and Pmin = Price of lowest acceptable tender.

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

<b>B-BBEE Status Level of Contributor</b>	<b>Number of points</b>
1	10
2	9
3	6
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

- (3) A tenderer must submit proof of its B-BBEE status level of contributor.
- (4) A tenderer failing to submit proof of B-BBEE status level of contribution or is a noncompliant contributor to B-BBEE may not be disqualified, but-
- (a) may only score points out of 90 for price; and (b) scores 0 points out of 10 for B-BBEE.
- (5) A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.
- (6) The points scored by a tenderer for B-BBEE contribution in terms of sub paragraph (2) must be added to the points scored for price under sub paragraph (1).
- (7) The points scored must be rounded off to the nearest two decimal places.
- (8) Subject to sub paragraph (9) and paragraph 11, the contract must be awarded to the tenderer scoring the highest points.
- (9) (a) If the price offered by a tenderer scoring the highest points is not market related, the municipality may not award the contract to that tenderer.
- (b) The municipality may-

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

### **Local production and content**

8.(1) The Department of Trade and Industry may, in consultation with the National Treasury-

- (a) designate a sector, sub-sector or industry or product in accordance with national development and industrial policies for local production and content, where only locally produced services or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content, taking into account economic and other relevant factors; and
- (b) stipulate a minimum threshold for local production and content.

(2) The municipality must, in the case of a designated sector, advertise the invitation to tender with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered.

(3) The National Treasury must inform the municipality of any designation made in terms of paragraph 8(1) through a circular.

(4) (a) If there is no designated sector, the municipality may include, as a specific condition of the tender, that only locally produced services or goods or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered.

(b) The threshold referred to in paragraph (a) must be in accordance with the standards determined by the Department of Trade and Industry in consultation with the National Treasury.

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

### **Subcontracting as condition of tender**

9.(1) If feasible to subcontract for a contract above R30 million, the municipality must apply subcontracting to advance designated groups.

(2) If the municipality applies subcontracting as contemplated in sub paragraph (1), the municipality must advertise the tender with a specific tendering condition that the successful tenderer must subcontract a minimum of 30% of the value of the contract to-

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

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

#### **Criteria for breaking deadlock in scoring**

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

#### **Award of contracts to tenderers not scoring highest points**

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

#### **Subcontracting after award of tender**

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

### Cancellation of tender

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

### Remedies

14. (1) Upon detecting that a tenderer submitted false information regarding its BBBEE status level of contributor, local production and content, or any other matter required in terms of these Policy which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any subcontracting arrangements, the municipality must-
- (a) inform the tenderer accordingly;
  - (b) give the tenderer an opportunity to make representations within 14 days as to why- (i) the tender submitted should not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part;
    - (ii) if the successful tenderer subcontracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and
    - (iii) the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state; and
  - (c) if it concludes, after considering the representations referred to in sub paragraph (1)(b), that-
    - (i) such false information was submitted by the tenderer-
      - (aa) disqualify the tenderer or terminate the contract in whole or in part; and
      - (bb) if applicable, claim damages from the tenderer; or
      - (ii) the successful tenderer subcontracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.
- (2) (a) The municipality must-
- (i) inform the National Treasury, in writing, of any actions taken in terms of sub paragraph (1);
  - (ii) provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and
  - (iii) submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.

(b) The National Treasury may request an organ of state to submit further information pertaining to sub paragraph (1) within a specified period.

(3) The National Treasury must-

(a) after considering the representations of the tenderer and any other relevant information, decide whether to restrict the tenderer from doing business with any organ of state for a period not exceeding 10 years; and

(b) maintain and publish on its official website a list of restricted suppliers.

### **Circulars and guidelines**

15. The National Treasury may issue-

(a) a circular to inform organs of state of any matter pertaining to the Regulations; or (b) a guideline to assist organs of state with the implementation of any provision of the Regulations.

### **Repeal of Regulations and saving**

16. (1) Subject to this regulation, the Preferential Procurement Regulations, 2011, published in Government Notice No R. 502 of 8 June 2011 (herein called “the 2011 Regulations), are hereby repealed with effect from the date referred to in regulation 17.

(2) Any sector designated and minimum threshold determined for local production and content for purposes of regulation 9 of the 2011 Regulations and in force immediately before the repeal of the 2011 Regulations, are regarded as having been done under regulation 8(1) of these Regulations.

(3) Any tender advertised before the date referred to in regulation 17 must be dealt with in terms of the 2011 Regulations.

### **Short title and commencement**

17. These Policy is called the Preferential Procurement Policy, in terms of Preferential Procurement Regulation of 2017 and take effect on 1 July 2018.