# SUPPLY CHAIN MANAGEMENT POLICY

**WATERBERG**
**DISTRICT MUNICIPALITY**

**Supply Chain Management Policy**

**31 May 2023**

## TABLE OF CONTENTS

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| Clauses | Page No |
|---|---|
| Abbreviations | 7 |
| List of definitions | 8-14 |
| Preamble | 15 |
| - Introduction | 15 |
| - Mandate | 15 |
| - Purpose of the SCM Policy | 15-16 |
| Scope & Application of the SCM Policy | 16-17 |
| Legislative Framework | 17 |
| - Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) | 17-18 |
| - Preferential Procurement Policy Framework Act, 2000 (Act No.5 of 2000) (PPPFA) | 18 |
| - Municipal Finance Management Act (Act 56 of 2003) | 18 |
| **CHAPTER 1** | 19 |
| **ESTABLISHMENT AND IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICIES** | 19 |
| - Supply chain management policies | 19 |
| - Adoption and amendment of supply chain management policies | 19-20 |
| - Delegation of Supply Chain Management powers and duties | 20 |
| - Sub -delegation | 20-22 |
| - Oversight role of council of municipality | 23 |
| - Supply Chain Management Unit | 23 |
| - Training of the Supply Chain Management Officials | 23 |
| **CHAPTER 2** | 24 |
| **FRAMEWORK FOR SUPPLY CHAIN MANAGEMENT POLICIES** | 24 |
| - Format of supply chain management policy | 24 |
| **Part 1** | |
| - Demand Management | 24 |
| - System of demand management | 24 |
| - The demand management process | 24-25 |
| - Benefits of Demand Management | 25 |

| | |
|---|---|
| **PART 2:** | |
| Acquisition (Procurement) Management | 26 |
| - System of acquisition management | 26-27 |
| - Procurement process | 27 |
| - Range of procurement processes | 27 |
| - General preconditions for consideration of written quotation or bids | 27-28 |
| - List of accredited prospective provider | 28 |
| - Petty Cash Purchases | 28-29 |
| - Written or Verbal Quotations | 29-30 |
| - Formal Written Price Quotations | 30 |
| - Procedure for procuring goods or services through written and verbal quotations and formal written price quotation | 30-36 |
| - Competitive Bidding (Above R 200 000) | 36 |
| - Process for Competitive Bidding | 37-42 |
| - Bid documentation for competitive bids | 42 |
| - Public invitation of bids | 42-44 |
| - Procedure for handling, opening and recording of bids | 44 |
| - Negotiation with preferred bidder | 45 |
| - Two – stage bidding process | 45 |
| - Committee system for competitive bids | 45 |
| - Bid specification committee | 46-47 |
| - Bid evaluation committee | 47-48 |
| - Bid adjudication committee | 48-49 |
| - Procurement of banking services | 49 |
| - Procurement of IT related goods or services | 50 |
| - Procurement of goods and services under contracts secured by other organs of state | 50-54 |
| - Procurement of goods necessitating special safety arrangement | 54 |
| - Proudly SA Campaign | 54 |
| - Appointment of consultants | 54-56 |
| - Deviation from and ratification of minor breaches from procurement processes | 56-57 |
| - Unsolicited bids | 57-58 |
| - Combating of abuse of supply chain management system | 58-59 |
| **Part 3:** | |
| - Logistics Management | 59 |
| - The Logistics Management Process | 59 |
| - Inventory Management | 59 |
| - Disposal Management | 59-60 |
| - Risk Management | 60 |
| - Performance Management | 60-61 |

| | |
|---|---|
| **PART 4:** | 61 |
| **OTHER MATTERS** | |
| - Prohibition on awards to persons whose tax matters are not in order | 61-63 |
| - Prohibition on award to persons in the service of the state | 63-66 |
| - Award to close family members of person in the service of the state | 66 |
| - Ethical standards | 66-67 |
| - Inducements, rewards, gifts and favours to municipalities, municipal entities and other role players | 67-68 |
| - Sponsorship | 68 |
| - Objections and complaints | 68 |
| - Resolution of disputes, objections, complaints and queries | 68-69 |
| - Contracts providing for compensation based on turnover | 69 |
| **PART 5** | 69 |
| **PREFERENTIAL PROCUREMENT REGULATIONS, 2022** | |
| - Identification of preference point system | 69 |
| - 80/20 preference point system for the acquisition of goods or services for the Rand value equal to or below R50 million | 69-70 |
| - 90/10 preference point system for acquisition of goods or services with Rand value above R50 million | 70-71 |
| - 80/20 preference points system for tenders for income-generating contracts with Rand value equal to or below R50 million | 71 |
| - 90/10 preference point system for tenders for income-generating contracts with Rand value above R50 million | 71-72 |
| - Specific goals | 72 |
| - Criteria for breaking deadlock in scoring | 73 |
| - Cancellation of tender | 73 |
| - Remedies | 73 |
| - Circulars and guidelines | 73 |
| - Annexures | 74 |
| **PART 6** | |
| Adoption and Commencement | 74 |

**TABLE OF CONTENTS**

1. Definitions

**CHAPTER 1**
**ESTABLISHMENT AND IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICIES**

2. Supply chain management policies
3. Adoption and amendment of supply chain management policies
4. Delegation of supply chain management powers and duties
5. Sub-delegations
6. Oversight role of the council of municipality or municipal entities
7. Supply chain management units
8. Training of supply chain management officials

**CHAPTER 2**

**FRAMEWORK FOR SUPPLY CHAIN MANAGEMENT POLICIES**

9. Format of supply chain management policy

***Part 1: Demand management***

10. System of demand management

***Part 2 Acquisition management***

11. System of acquisition management
12. Range of procurement processes
13. General preconditions for consideration of written quotations or bids
14. Lists of accredited prospective providers
15. Petty cash purchases
16. Written or verbal quotations
17. Formal written price quotation
18. Procedures for procuring goods or services through written or verbal quotations and formal written price quotations
19. Competitive bids
20. Process for competitive bidding
21. Bid documentation for competitive bidding
22. Public invitation for competitive bids
23. Procedure for handling, opening and recording of bids
24. Negotiations with preferred bidders
25. Two-stage bidding process
26. Committee system for competitive bids

27. Bid specification committees
28. Bid evaluation committees
29. Bid adjudication committees
30. Procurement of banking services
31. Procurement of IT related goods or services
32. Procurement for goods or services under contracts secured by other organs of state
33. Procurement of goods necessitating special safety arrangements
34. Proudly SA Campaign
35. Appointment of consultants
36. Deviation from and ratification of minor breaches of procurement processes
37. Unsolicited bids
38. Combating of abuse of supply chain management system

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

39. Logistics management
40. Disposal management
41. Risk management
42. Performance management

***Part 4: Other matters***

43. Prohibition on awards to persons whose tax matters are not in order
44. Prohibition on awards to persons in service of the state
45. Awards to close family members of persons in the service of the state
46. Ethical standards
47. Inducements, rewards, gifts and favours to municipalities, municipal entities, officials and other role players
48. Sponsorships
49. Objections and complaints
50. Resolution of disputes, objections, complaints and queries
51. Contracts providing for compensation based on turnover
52. Preferential procurement paragraph; 2022
53 Criteria for breaking dead log in scoring
54 Cancellation of tender
55. Remedies
56. Circulars and guidelines
57. Attachments
58. Short title and Commencement

**Abbreviation**

| | |
|---|---|
| AO | Accounting Officer (Municipal Manager) |
| BAC | Bid Adjudication Committee |
| BEC | Bid evaluation committee |
| BSC | Bid Specification Committee |
| CCA | Closed Corporations Act, Act No 69 of 1984 |
| CIDB | Construction Industry Development Board |
| CFO | Chief Financial Officer |
| HDI | Historically Disadvantaged Individual |
| HOD | Head of Department (S57 manager) |
| IFMS | Integrated Financial Management System |
| MFMA | Municipal Finance Management Act, 2003 (Act 56 of 2003) (“the Act”) |
| NT | National Treasury |
| PPPFA | Preferential Procurement Policy Framework Act (Act 5 of 2000) |
| PPR | Preferential Procurement Paragraphs, 2011 |
| PSP | Professional Service Provider |
| PT | Provincial Treasury |
| RFI | Request for Information |
| RFQ | Request for Quotation |
| SARB | South African Reserve Bank |
| SARS | South African Revenue Services |
| SASAE | South African Standard on Assurance Engagements |
| SCM | Supply Chain Management |
| SCP | Supply Chain Procedures |
| SITA | State Information Technology Agency |
| SARS | South African Revenue Services |
| SABS | South African Bureau of Standards |
| SMME | Small Medium and Micro Enterprise |
| TOR | Terms of Reference |
| WDM | Waterberg District Municipality |

**List of Definitions**

In this policy, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the MFMA and/or the procurement paragraphs has the same meaning as in the MFMA and/or the procurement paragraphs, and: -

**"Acceptable Tender"-** means any tender or quotation which, in all respects, complies with the specification and conditions as set out in the procurement document, upon which a final award will be made;

"**Accounting Officer**" - means a municipal official referred to in Section 60 of MFMA;

**"Bidder"** – (or tenderer) refers to an eligible contractor, manufacturer, supplier, distributor and/or consultant competing for an award of a contract in the WDM. A contractor, manufacturer, supplier, distributor and/or consultant is said to be eligible if it meets all the eligibility requirements issued by the WDM;

**"Bid Committees"** – refers to the Specification Committee, Evaluation Committee and Adjudication Committee. The Adjudication Committee is responsible for adjudicating the award of bids on the basis of the recommendation (evaluation report) submitted by the Evaluation Committee based on bids developed by the Specification Committee. For the purpose of and throughout this policy, the term "Bid Committees" shall be equivalent to and be used interchangeably with "the "Committee System", particularly when referring to the competitive bidding process;

**"CIDB Register of Projects" -** In terms of Act 38 of 2000, the Construction Industry Development Board (CIDB) must establish a Register of Projects that gathers information on the nature, value and distribution of projects and provides the basis for a best practice project assessment scheme to promote the performance of public and private sector clients in the development for the construction industry.

**"Competitive bid" -** means a written offer on the prescribed forms in response to a published invitation by the Municipality and in compliance with paragraph 12(1) (d) of MFMA for the submission of offers in respect of the provisioning of goods or services;

**"Consultant"** - means a natural or juristic person or partnership who or which, as an independent contractor, provides any of the following services on an **ad hoc** basis to the WDM against remuneration:

a) Expert advice;
b) Drafting of proposals for the execution of specific tasks; and/or
c) Execution of specific tasks, which are of a technical or intellectual nature;

**"Contract" -** means the agreement that results from the acceptance of a quotation or bid by the Municipality;

**"Cost Effectiveness"** – means cost effectiveness as envisaged by the Framework for SCM Paragraphs;

"**Construction Works**"- a construction works contract means a contract for 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.

**"Control" -** the possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous expertise of appropriate managerial authority and power in determining the policies and directing the operations of the business.

**"Councillor" -** means a member of a municipal council.

**"Equitable"** – means equitable as envisaged by the Framework for SCM Paragraphs;

**"Fair"** – means fair as envisaged by the Framework for SCM Paragraphs;

**"Final award" -** means the final decision on which bid or quote to accept and conclude a contract**;**

**"Formal written price quotation"** - means a written offer made on the prescribed forms by a supplier or service provider in response to a request from the Municipality and in compliance with the prescribed thresholds in this policy, the price should be fixed, considering price fluctuations where applicable**;**

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

**" Goods & Services**" – refers to all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of the WDM's business or in the pursuit of any municipal undertaking, project or activity;

**"Head of Department" -** means manager referred to in section 78 of MFMA;

**"Highest acceptable tender"** means a tender that complies with all specifications and conditions of tender and that has the highest price compared to other tenders;

**"HDI" – "Historically Disadvantaged Individual (HDI)"** – means a South African Citizen (1) who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act No 110 of 1983) or the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993) ("the Interim Constitution"); and/or (2) Who is a female; and /or (3) Who has a disability; Provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not to be an HDI;

"**Informal price quotation" -** means a written offer made by a person, business or enterprise in response to a request from the Municipality;

**"Infrastructure"** - projects include construction, improvement, rehabilitation, demolition, repair, restoration, or maintenance of buildings and engineering works included in the provision of municipal services and other related construction projects of the WDM as envisaged in the Construction Industry Development Board Act 38 0f 2000. For the purpose of, and throughout this policy, the term "infrastructure" shall have the same meaning as and shall be used interchangeably with "with Building or Engineering Works and Construction or Maintenance Projects";

**"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;

**"List of accredited prospective providers" -** means the list of accredited prospective providers which a municipality must keep in terms of section 21, 28,29 &35 of this policy;

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

**"Lowest acceptable tender"** means a tender that complies with all specifications and conditions of tender and that has lowest price compared to other tenders;

**"MFMA or the Act"** – refers to the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003);

"**Multiple Source limited bidding**"- Limited competition hence only a few prospective service providers are allowed to make a proposal but this should be based on a thorough analysis of the market.

"**Municipality**" - means the Waterberg District Municipality (WDM);

"**Municipal Manager**" - Municipal Manager appointed in terms of section 54A of Municipal Systems Act, 2000 *as amended* and who is the head of administration and also the accounting officer for the Municipality;

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

"**Order" -** means an official instruction, processed and printed on the Municipality's official order form, which is issued to a successful tenderer to supply goods or services in accordance with the accepted price quotation or tender;

**"Organ of state" -** means –

(a) any department of state or administration in the national, provincial or local sphere of government; or

(b) any other functionary or institution-

(i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power of performing a public function in terms of any legislation,

but does not include a court or a judicial officer;

"**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)

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

**"Person" -** includes reference to a juristic person;

**"PPPFA"** – refers to the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000);

"**Preferred bidder"-** means any bidder who during the evaluation process scores the highest points and/or is recommendable for appointment.

**"Preferential Procurement Paragraphs"-** means the paragraphs to the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) issued by the Minister of Finance on 20 January 2017.

**"Price"** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;

**"Privileged or confidential information"** means any information:

a) determined by the bid specification, evaluation or adjudication committee to be privileged or confidential;
b) discussed in close sessions by any of the bid committees;
c) disclosure of what would violate a person's right to privacy;
d) declared to be privileged, confidential or secret in terms of any legislative framework.

**"Procurement Delegations"** – refers to the Procurement delegations issued by the Accounting Officer in terms of section 79 and 106 of the MFMA. This includes Sub-delegations system.

**"Procurement Documents"** – refers to the procurement documentation distributed to prospective bidders during the solicitation of bids from bidders. The Procurement Documents contain the information required for bidders to submit their bids to the WDM.

**"Prospective provider or Supplier Register"** refers to the database of accredited prospective provider/suppliers established in terms of paragraph 14 from whom bid offers will be requested.

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

**"Responsive Bid"** one that conforms to all items, conditions, and specification of the bid documents without material deviation or qualification.

**"Requisition"** means the official request for the procurement of supplies or services which is submitted on the prescribed form, accompanied by the specifications or terms of reference according to which price quotations or bids are to be invited.

**"Scope of Work" -** means procurement document that specifies and describes the supplies, services, or engineering and construction works, which are to be provided, and any other requirements and constraints relating to the manner in which the contract work is to be performed.

**"Scoring models"** – refers to the scoring models used to evaluate bids. Scoring models apply the evaluation criteria identified in the Procurement Documents to competitive bids.

**"Service providers"**

a) "Professional Service Provider":
Any person or body corporate that is under contract to the Employer for the provision of Professional Services.

b) "General Service Provider":
Any person or body that is under contract to the Employer for the provision of any type of service.

"**Single source bidding"** – Based on a thorough analysis of the market and use a transparent and equitable pre-selection process, to request only one amongst a few prospective service providers to make a proposal.

**"Small, Medium and Micro Enterprise (SMME)"** - means a separate and distinct business entity, including co-operative enterprises and non-governmental organisations, managed by one owner or more which, including its branches or subsidiaries, if any, is predominantly carried on in any sector or sub-sector of the economy mentioned in column 1 of the Schedule of the National Small Business Act, 1996 (Act No. 102 of 1996) and which can be classified as a micro- a very small, a small or a medium enterprise by satisfying the criteria mentioned in columns 3,4 and 5 of the Schedule opposite the smallest relevant size or class as mentioned in column 2 of the Schedule;

"**Sole source bidding**" – There is no competition and only one bidder exists, e.g. sole distribution rights.

**"SCM Unit"** – refers to the WDM's Supply Chain Management Unit that falls under the auspices of the Chief Financial Officer (CFO).

**"SCM Directives"** – refers to the SCM Directives maintained by the SCM Unit in WDM. The SCM Directives constitute instructions to the WDM that address key decision points and contentious issues in procurement and other phases of the SCM system. The Directives are dynamic. The SCM office communicates new and updated Directives via SCM Circulars.

**"SCM Paragraphs**" – refers to the Paragraphs in terms of the Municipal Finance Management Act, 2003: Framework for Supply Chain Management (Government Gazette Number 27636 on 30 May 2005).

**"SCM Standard Operational Procedures"** – means Procedures that translate SCM Delegations and SCM Directives into the day-to-day procedures required to manage demand, acquisition, logistics, disposal; risk and performance in the SCM system;

**"Specific goals"** means specific goals as contemplated in section 2(1)(d) of the Act which may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender and disability including the implementation of programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994.

**"tender"** means a written offer in the form determined by Waterberg District Municipality in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation. For the purpose of, and throughout, this policy the term "Tender" shall be equivalent to and be used interchangeably with "Proposal" and "Bid";

**"tender for income-generating contracts"** means a written offer in the form determined by a municipality in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions;

**"Supplier"** – refers to any supplier of works, goods and services (professional and other) to the WDM.

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

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

"**Written or verbal quotations**" means quotations referred to in paragraph 12(1) (b)

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

## Preamble

### Introduction

The Supply Chain Management (SCM) Policy of the Waterberg District Municipality sets a framework for meaningfully managing, monitoring and reporting of procurement activities and provides the procedures to be followed in procurement. The SCM policy is located within the South African legislative framework. The laws that are currently applicable include: the Constitution of the Republic of South Africa (Act 108 of 1996), the Preferential Procurement Policy Framework Act (Act 5 of 2000) and the Local Government: Municipal Systems Act (Act 32 of 2000), Local Government: Municipal Finance Management Act (Act 56 of 2003)

**The principles of this policy are those set out in the legislative frameworks mentioned above in particular that of realizing value for money and good governance and ensuring cost effectiveness and competitive equitable, transparent and fair access to procurement opportunities to all. The SCM policy forms part of the overall business systems of the WDM and will be supported by specific procurement systems aimed at improving both procurement and overall business performance.**

### Mandate

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Section 111 of the Municipal Finance Management Act, 2003 (Act No 56 of 2003) and SCM Paragraphs mandates the Waterberg District Municipality to develop, implement and maintain a procurement and provisioning system as part of the Supply Chain Management (SCM) system.

The SCM gives effect to Section 217(2) of the Constitution of the Republic of South Africa, (Act No. 108 of 1996) which mandates the Municipality to implement a preferential procurement policy in accordance with a nationally prescribed framework, the Preferential Procurement Policy Framework Act (Act 5 of 2000).

### Purpose of the SCM Policy

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As a municipality, the Waterberg District Municipality has a duty to ensure that all the legislative requirements are satisfied. Accordingly, all procurement policies (including those addressing preferential procurement), procedures and practices must be consistent with these requirements, in particular Part 1 of Chapter 11 and other provisions of the MFMA.

The purpose and objectives of this policy are:

(a) To provide a procurement system according to which the Municipality will procure goods and services; dispose goods; and letting of assets in a manner that is fair, equitable, transparent, competitive and cost effective.

(b) To provide a system for managing demand, acquisition, logistics, disposal, risk and performance.

(c) To promote local public administration system in terms of Chapter 7 of Municipal Systems Act and Municipal Finance Management Act, Promotions of Access to Information Act, (Act 2 of 2000, and Promotion of Administrative Justice Act (Act 3 of 2000).

(d) To comply with the Paragraphs, norms and standards that may be prescribed in terms of section 168 of MFMA and other applicable legislation.

(e) To promote economic policies concerning investments and doing business with the public sector.

(f) To give effect to the Preferential Procurement Regulations of 2022

**Scope and Application of the Policy**

1. This policy is applicable to the entire Waterberg District Municipality employees and must be strictly adhered to. The policy provides a uniform procurement approach applicable to:
   (a) General goods and services (provisioning);
   (b) Consulting services (from built environment and other consultants)
   (c) Construction in line with the Construction Industry Development Board prescripts and National Treasury;
   (d) Property (leasing);
   (e) Disposal of redundant assets as per asset management policy;
   (f) Selection of contractors to provide assistance in the provision of municipal services other than in circumstances where Chapter 8 of the Municipal Systems Act applies;
   (g) Selection of external mechanisms for the provision of municipal services as 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 the MSA.

2. Within the context of the Supply Chain Management the policy covers the whole process from needs identification to contract closure.

3. The application of the policy is further supported by specific legislation, including but not limited to the following:

   (a) The procurement of information technology and related services. Such procurement must be performed according to the provision of State Information Technology Agency Act (Act 88 of 1998). As per Section 7(g) of the Act, the State Information Technology Agency is empowered to act as a procurement agency in respect of information technology requirements in accordance with state procurement policy regarding the provision of data processing services, training, application software development and maintenance services, technical, functional and business advice and support, and related management services.
   (b) Public Private Partnership, which must be procured in accordance with Municipal Investment and PPP paragraphs - Gazette number 27431, 1 April 2005 Paragraph issued in terms of MFMA.
   (c) Procurement and disposal of firearms.

4. This policy, except where provided otherwise, does not apply in respect of procurement of goods and services as contemplated in section 110(2) of the MFMA, where the WDM procures from another organ of state including water and electricity from Department of Water Affairs or Eskom respectively, or other public entity, municipality or municipal entity.

**Legislative Framework**

**Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)**

Section 217(1) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) provides the basis for procurement and determines that:

“When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective”.

This section of the Constitution establishes the overarching procurement framework, namely that procurement must be:

- Fair;
- Equitable;
- Transparent
- Competitive; and
- Cost effective.

Section 217(2) of the Constitution establishes South Africa's preferential procurement policy, namely that:

Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for:

a. Categories of preference in the allocation of contracts; and

b. The protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

Section 217(3) of the Constitution (as amended) confers an obligation for national legislation to prescribe a framework providing for preferential procurement to address the social and economic imbalances of the past, viz;

National legislation *must* prescribe a framework within which the policy referred to in subsection (2) *must* be implemented.

**Preferential Procurement Policy Framework Act, 2000 (Act No.5 of 2000) (PPPFA).**

Effect was given to section 217(3) of the Constitution in the form of the Preferential Procurement Policy Framework Act, 2000 (Act No.5 of 2000) (PPPFA). The PPPFA provides a framework within which procurement policies referred to in section 217 (3) must be implemented.

The PPPFA requires a municipality to determine their preferential procurement policies and implement it within a framework prescribed in the Act.

**Municipal Finance Management Act (Act 56 of 2003)(MFMA)**

A Policy Strategy to Guide Uniformity in Procurement Reform Processes in Government was approved by Cabinet in September 2004 as a strategy to point out the direction that Government is moving towards in the implementation of Supply Chain Management within Government. This strategy is intended to guide the uniform implementation of Government's procurement reform initiatives as well as the issuing of Paragraphs in terms of the Municipal Finance Management Act (Act 56 of 2003) in respect of the Framework for Supply Chain Management.

The MFMA requires the Municipality to have and implement a Supply Chain Management Policy. The Supply Chain Management Policy must be in accordance with Section 217 of Act 108 of 1996. The Act further requires that the Municipal Manager as Accounting Officer to ensure that the Municipality has and maintains a Supply Chain Management Policy.

## CHAPTER 1

## ESTABLISHMENT AND IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICIES

### 2. Supply chain management policies

1. (1) The Waterberg District Municipality resolves in terms of section 111 of the Act have and implement a supply chain management policy 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 prescribed in Chapter 2 of these Paragraphs; and
      (ii) any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
   (d) is consistent with other applicable legislation;
   (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) No municipality may act otherwise than in accordance with its supply chain management policy when -
   (a) procuring goods or services;
   (b) disposing of goods no longer needed;
   (c) selecting contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
   (d) in the case of a municipality, selecting 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 the Act.
   (3) Sub-paragraphs (1) and (2) do not apply in the circumstances described in section 110(2) of the Act except where specifically provided otherwise in this policy.

### Adoption and amendment of supply chain management policies

3 (1) the accounting officer must –
   (a) at least annually review the implementation of the policy; and
   (b) when the accounting officer considers it necessary, submit proposals for the amendment of the policy to the council.

   (2) (a) If the accounting officer submits a draft policy to the council that differs from the model policy, the accounting officer must ensure that such draft policy complies with Municipal Supply Chain Management Paragraphs.

(b) The accounting officer must 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 a supply chain management policy.

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

4. (1) The Council of a municipality hereby delegates such additional powers and duties to the accounting officer so as 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 maximise 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, favouritism and unfair and irregular practices in the implementation of the supply chain management policy;

(d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.

(2) Sections 79 and 106 of the Act apply to the sub-delegation of powers and duties delegated to an accounting officer in terms of sub-paragraph (1) of this policy.

(3) No municipal council or accounting officer may 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.

**Sub-delegations**

5. (1) An 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 sub-paragraph (2) and paragraph 4 of this policy.

(2) The power to make a final award –
(a) above R200 000 (VAT included) is not sub-delegated by an accounting officer;
(b) above R30 000 (VAT included), but not exceeding R200 000 (VAT included) is sub-delegated to –
(i) the chief financial officer
(c) not exceeding R30 000 (VAT included) is sub-delegated to –
(i) A manager directly accountable to the chief financial officer namely; Divisional Manager Supply Chain Management.

(d) not exceeding R500 (VAT included) is sub-delegated to –
(i) A manager directly accountable to the accounting officer namely; Head of Department

(3) An official to which the power to make final awards has been sub-delegated in accordance with sub-paragraph (2) of this policy must within five days of the end of each month submit to the official referred to in subsection (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 sub-paragraph (3) must be submitted –
(a) to the accounting officer, in the case of an award by –
(i) the chief financial officer;
(b) to the chief financial officer in the case of an award by –
(i) Divisional Manager Supply Chain Management

(5) Sub-paragraph (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 or consultant.
(8) The **accounting officer** may sub-delegate such powers and duties in terms of section 79 and 106 of the MFMA to officials of the municipality and provide for a bidding system in terms of the committee systems provided for in the procurement paragraphs.
(9) The **accounting officer** may not sub delegate any SCM powers and duties to a person who is not an official of WDM or committee not solely composed of WDM officials.

(10) The **Heads of the Departments** will be responsible for; among others:

- Initiating and planning all the procurements and disposals.
- Drafting and packaging all tender documents including determination of deliverables and / or performance indicators and bid adjudication criteria.

- Keeping records of all procurements and disposals in accordance with the provisions of this policy.
- Submitting monthly reports to the Chief Financial Officer.
- Contract closure report including performance monitoring.

(11) **All officials** dealing with SCM issues as part of their financial responsibilities are also responsible for implementation of this Policy in their day-to-day operations.

**APPROVAL STRUCTURE OF PROCUREMENT OF GOODS AND SERVICES**

| GOODS/SERVICE VALUE | PROCUREMENT METHOD MINIMUM | APPROVAL AUTHORITY | PURCHASE ORDER APPROVAL |
|---|---|---|---|
| R 1 – R 500 | Petty Cash : One (1) Quote | Head of Department | Head of Department |
| R 501 –R 2 000 | Three (3) Quotations of which at least One must be written | Accounting Officers on recommendation of CFO | DM SCM |
| R 2 001 – R 30 000 | Three (3) Written Quotations | DM SCM | DM SCM |
| R 1 – R 200 000 | Notice on public notice boards & website (7 days i.t.o. SCM Paragraph 18) or Advertisement via newspapers : Three Quotations | CFO | CFO |
| R 1 – R 2 Million | Competitive Bidding Process<br>(Advertise for at least 14 days in the newspaper & website) | Accounting Officer on the recommendation of the<br>Bid Adjudication Committee | Municipal Manager |
| R 1 – R 10 Million | Competitive Bidding Process | Accounting Officer on the recommendation of the<br>Bid Adjudication Committee | Municipal Manager |
| Above R 10 Million | Competitive Bidding Process | Accounting Officer on the recommendation of the Bid Adjudication Committee | Municipal Manager |
| Deviations | Any deviation from normal procurement processes | Accounting Officer on the recommendation of CFO | Municipal Manager |

**Oversight role of council**

6. (1) The council must maintain oversight over the implementation of its 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 the supply chain management policy of the municipality to the council of the municipality;
(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 of the municipality.

(4) The reports must be made public in accordance with section 21A of the Municipal Systems Act.

**Supply chain management units**

7. (1) The accounting officer must establish a supply chain management unit to implement its 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 a supply chain management policy should be in accordance with any Treasury guidelines on supply chain management training.

## CHAPTER 2

## FRAMEWORK FOR SUPPLY CHAIN MANAGEMENT POLICIES

### Format of supply chain management policy

9. The supply chain management policy provides systems for-
   (i) demand management;
   (ii) acquisition management;
   (iii) logistics management;
   (iv) disposal management
   (v) risk management;
   (vi) performance management.

### Part 1: 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 of the municipality are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy the needs of the municipality.

This is the beginning of the supply chain, and must begin with a needs assessment, to ensure:

- that goods or services are required in order to deliver the agreed service;
- that specifications are precisely determined;
- that requirements are linked to the budget; and
- that the supplying industry has been analysed.
- That request for goods be submitted 7 working days and request for goods on notice board adverts 15 working days before it is required.

**System of demand management**

(2) The objective is to ensure that the resources required to fulfill the needs identified in the Integrated Development Plan (IDP) are quantified; budgeted for; timely & effectively delivered at the right locations on the critical delivery dates and are of appropriate quality at a fair cost.

**The demand management process**

(3) Accounting officers of municipalities may, upon request, make available to the relevant treasury a procurement plan containing all planned procurement for the financial year, in respect of the procurement of goods, services and infrastructure projects which exceed R200 000 (all applicable taxes included) per case as described in the Supply Chain Management: Guide for Accounting Officers. This procurement plan must be approved by the accounting officer or his or her delegate.

(4) All user departments are required to submit their procurement plans to the Divisional Manager Supply Chain Management in the municipality to improve planning and management of resources.

(5) All procurements should be within approved budget in terms of section 15 of the MFMA and such expenditure shall have been authorized as per delegations and procured as per applicable thresholds.

(6) A total needs assessment should be done on a continuous basis, which should include among others an analysis of needs, frequency of need, linking the requirements to the Medium Term Expenditure Framework, as well as budget for capital expenditure, an analysis of past expenditure as well as an analysis of integrated development plan.

(7) Consistent with the government fiscal discipline, no procurement shall be undertaken unless it is in accordance with Annual Procurement Plan (APP) approved by the Municipal Manager, which must be consistent with the duly approved annual or multi-year budget and service delivery plan.

(8) For the purpose of this policy only those considered crucial to the efficient discharge of the municipal functions shall be included in the APP. Any procurement shall be considered to be crucial if it is required for the day-to-day operations or is in pursuit of the principal mandate of the WDM.

(9) In case of Infrastructure Projects the plan shall consider the appropriate timing/phasing of appropriate activities such as engineering design and construction to reduce/lower project cost and avoid unnecessary roll-overs.

(10) Where possible demand analysis should be used as a tool to stimulate local economic production and development and facilitate SMME development.

**(3) Benefits of Demand Management**

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Demand management should provide benefits such as:

- Best value for money;
- Better risk management;
- More efficient procurement;
- Improvements in procurement outcomes;
- More opportunities for innovating bidding and contract management;
- More opportunities for implementing the National Treasury`s guidelines and objectives

**Acquisition Management**

**System of acquisition management**

11. (1) The accounting officer must establish, through operational procedures an effective system of acquisition management 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) This supply chain management 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; and
    (b) electricity from Eskom or another public entity, another municipality;

(3) The following information must be made public wherever goods or services contemplated in section 110(2) are procured other than through the supply chain management system-
(a) the kind of goods or services; and
(b) the name of the supplier.

(4) This management of the municipality must:

- to decide on the manner in which the market will be approached;
- to establish the total cost of ownership of a particular type of asset;
- to ensure that bid documentation is complete, including evaluation criteria;
- to evaluate bids in accordance with published criteria; and
- that proper contract documents are signed

(5) Procurements and all other phases of the Supply Chain Management will be conducted in accordance with provisions of Chapter 11 of the Municipal Finance Management Act, (No. 56 of 2003): Framework for Supply Chain Management; and this policy.

(6) In support, procurements and disposals will be procured as per Standard Rules for Public Procurements and Disposals as published by the Construction Industry Development Board, Policy Strategy to Guide Uniformity in Procurement reform

process in government and Paragraphs in terms of Section 168) of the Municipal Finance Management Act, (No. 56 of 2003): Framework for supply chain management and Procurement and Disposals Policies of the Municipality.

(7) Procurements will only take place against approved budget in terms of section 15 of the MFMA.

**Procurement process**

(8) The procurement process will be managed as per SCM Standard Operational Procedures included in this policy and clearly outline the procedures and conditions for use of petty cash, written or verbal quotations, formal written quotations and competitive bidding process in support of this policy.

**Range of procurement processes**

12. (1) The procurement of goods and services through this policy is provided by way of –
    (a) one written quotation for petty cash purchases, up to a transaction value of R500 (VAT included);
    (b) one written quotation for procurements of a transaction value over R501-00 but below R2 000 (VAT included);
    (c) formal written price quotations for procurements of a transaction value over R2 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.

(2) 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; and

(3) When determining transaction values, a requirement for goods or services consisting of different parts or items must as far a possible be treated and dealt with as a single transaction.

**General preconditions for consideration of written quotations or bids**

13 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 authorised the municipality to obtain a tax clearance from South African Revenue Services that the provider's tax matters are in order;
    (c) has indicated-
        (i) whether he or she is in the service of the state, or has been in 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.

**List of accredited prospective providers**

14. (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 of the municipality through written or verbal quotations and formal written price quotations; Waterberg District Municipality will use CSD as the list of accredited prospective provider, and

(b) at least once a year through newspapers commonly circulating locally, the website of the municipality and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers on CSD.

(c) specify the listing criteria for accredited prospective providers; and

(2) The list must be compiled per commodity and per type of service.

(3) Central Supplier Database **will automatically validate the following registration documents for the municipality:-**

- Confirmation and status of Business Registration Documents
- Proof of Bank Account Registration
- Tax compliance status
- Employee in the service of state as defined in the Municipal SCM Paragraphs
- Identity Documentation
- Tender defaulters and restrictions status

(4) It is the responsibility of the municipality to continue with verification of other listing criteria which are not currently validated by CSD, for instance, proof of municipal account, BBBEE status level of contributor and accreditation of regulatory bodies.

**Petty cash purchases**

15 (1) 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;

This responsibility is not delegated at WDM and remains with the departmental manager.

(b) Limiting the number of petty cash purchases or the maximum amounts per month for each manager;

- Departments are not allowed to have more than 5 petty cash purchases per month.

(c) Excluding any types of expenditure from petty cash purchases, where this is considered necessary; and

Prohibited Petty Cash Payments are as follows:

1 Petty cash advances must not be used to provide change, to give salary advances to employees or to cash cheques.

2 No personal use or cheque cashing from these funds is allowed. It shall be deemed an offense to use Petty Cash for private matters even if the intention is to repay.

3 Petty cash shall not pay for instalment invoices such as rental or equipment or open orders even if the amount falls within the limit specified.

4 Energy drinks (e.g. Red Bull)

5 Petrol charges

6 Toll gate slips

7 Travel or any other salary claims

8 Purchase and lease of Assets

(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.

This exercise is currently performed by the cashier, but may be delegated to Departmental Mangers by the Municipal Manager.

**Written or verbal quotations**

16. (1) The accounting officer must establish the conditions for the procurement of goods or services through written or verbal quotations, which must include conditions stating –

(a) that quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on central

supplier database, if quotations are obtained from providers who are not listed, such providers must meet the listing criteria in the supply chain management policy required by paragraph 14(1)(b) and (c);

(b) that, to the extent feasible, providers must be requested to submit such quotations in writing;

(c) 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;

(d) that the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices; and

(e) that if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.

(f) The quotations received will be evaluated using 80/20 preferential point system.

**Formal written price quotations**

17. (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 that –

(a) that quotations must be obtained in writing from at least three different providers whose names appear on central suppliers database and are complaint with SCM legislative requirements as outlined in the policy or;

(b) that quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria in the supply chain management policy required by regulation14(l)(b) and (c);

(c ) that if it is not possible to obtain at least three quotations, the reasons must be recorded and recommended by the chief financial officer and approved by the accounting officer; and

(d) that the accounting officer must record the names of the potential providers and their written quotations; and

(2) A designated official referred to in sub-paragraph (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 sub-paragraph.

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

18. (1) The accounting officer must determine the operational procedure for the procurement of goods or services through written or verbal quotations or formal written price quotations, stipulate –

(a) that all requirements in excess of R30 000 (VAT included) that are to be procured by means or formal written price quotations must, in addition to the requirements of paragraph 17, be advertised for at least seven days on the website and an official notice board of the municipality;

(b) that when using central suppliers database the accounting officer must promote ongoing competition amongst providers, including by inviting providers to submit quotations on a rotation basis;

(c) that the accounting officer must take all reasonable steps to ensure that the procurement of goods and services through written or verbal quotations or formal written price quotations is not abused;
(d) that 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; and
(e) requirements for proper record keeping.

(2) The procedures for procuring goods and service between R 2 000 and R 30 000 are:

(a) The project manager or end-user must submit a duly completed request for a quotation form which has been authorised by the Head of Department to SCM unit at least seven (7) working days before the date of the required goods or service.
(b) The project manager or end-user must also capture the request for goods or service on the Integrated Financial Management System (IFMS) which must be authorised the Head of Department or Manager at least seven (7) working days before the date of the required goods or service.
(c) The project manager will take the request for goods form to Budget and Reporting Division for vote allocation and budget availability confirmation before submitting to SCM Practitioner for processing.
(d) SCM practitioner will source quotations from the service providers registered on Central Supplier Database within that commodity with the submission of the following documents:

1. Quotations must be in line with scope of work
2. Copy Valid Tax Compliance Status Pin – the recommended bidder is not tax compliant, the bidder will be notified of their non-compliant status and the bidder must be requested to submit to the municipality, within 7 working days, written proof from SARS of their tax compliance status or proof from SARS that they have made an arrangement to meet their outstanding tax obligations. The proof of tax compliance status submitted by the bidder to the municipality must be verified via the CSD or e-Filing.
3. Completed MDB 4 form
4. CSD Registration Report
5. Copy of regulatory body certificate (If applicable)
6. Municipal accounts for company and director(s)
(Not older than 2 months)(Not in arrears for more than 90 days)
7. Price(s) quoted must be valid for at least thirty (30) days from the closing date of the quotation;

Failure to submit the abovementioned documents will results in the quotation submitted not being considered.

**The quotations will further be evaluated on 80/20 preferential point system:**

(1) The following formula must be used to calculate the points out of 80 for price in respect of an invitation for a tender with a Rand value equal to or below R50 million, inclusive of all applicable taxes:

$$Ps = 80 \left(1 - \frac{Pt - P\,min}{P\,min}\right)$$

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of lowest acceptable tender.

(2) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.

(3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

(4) Subject to section 2(1)*(f)* of the Act, the contract must be awarded to the tenderer scoring the highest points.

**Specific goals will be allocated as follows:**

| **Historically Disadvantaged Individuals - HDI** | **80/20 Preferential Point System** **20** | **Means of Verification** |
|---|---|---|
| **Race – people who are Black, Coloured or Indian** | **10** | **CSD report and Copy of Identification Documentation** |
| **Gender - Women** | **3** | **CSD report and Copy of Identification Documentation** |
| **Youth** | **4** | **CSD report and Copy of Identification Documentation** |
| **Disability** | **3** | **Certified copy of Doctor's Certificate with medical practice number** |

**Suppliers are required to submit the documents listed in means of verification as per above table for points allocation during 80/20 preferential point system evaluation.**

**The specific goals allocated points will be apportioned in line with percentage on shareholding of the company.**

**Points will not be allocated on specific goals without supporting documents as listed in means of verification column above.**

(e) SCM practitioner will evaluate quotations received in line with the conditions stipulated above and capture it on the IFMS with the recommended service provider.
(f) The Head of Department will authorise the award of the service provider on the IFMS.
(g) The Head of Department will also approve the manual documentation and the project manager or end user will then submit the authorised purchase requisition to SCM unit.
(h) The SCM practitioner will then issue an official purchase order.
(i) The official purchase order will be authorised in line with the delegation powers as outlined in this policy.
(j) SCM practitioner will notify or inform the project manager that the purchase order has been authorised.
(k) The project manager or end-user will the send the purchase order to service provider and communicate further with the appointed service provider with regards to goods or services required and the delivery timeframes.

(3) The procedures for procuring goods and service between R30 000 and R200 000 are:

(a) The project manager or end-user must submit a duly completed request for a goods form, captured on the IFMS, which has been authorised by the Head of Department or Manager to SCM unit at least fifteen (15) working days before the date of the required goods or service.
(b) The project manager will take the request for goods form to Budget and Reporting Division for vote allocation and budget availability confirmation before submitting to SCM Practitioner for processing.
(c) SCM practitioner will send a request to suppliers listed on CSD and advertise project specifications on the notice board and WDM website for at least seven days with the following conditions:

- Tender proposal / quotation will be evaluated on 80/20 Preferential Procurement Points System;
- Price(s) quoted must be valid for at least ninety (90) days from the closing date of the tender;
- Price(s) quoted must be firm and inclusive of VAT (if VAT registered) and detailed price schedule must be attached;
- Municipal accounts for the physical address of the business and residential addresses of each of its shareholders. The municipal accounts submitted may not be older than 2 months from the closing date of tender.
  - If the proof submitted is not in the name of the company or shareholder, written explanations and evidence must be attached indicating how the proof submitted relates to the said business or shareholder;

- In cases where the address of the business or shareholder is not through ownership but through a lease agreement, a copy of municipal account for the owner of the building must be attached as well as a copy of the lease agreement with the said business or shareholder;
- This should provide clear evidence that the municipal accounts of the business' address and the residential addresses of every individual shareholder are not in arrears for more than 90 days;
- Copy Valid Tax Compliance Status Pin – the recommended bidder is not tax compliant, the bidder will be notified of their non-compliant status and the bidder must be requested to submit to the municipality, within 7 working days, written proof from SARS of their tax compliance status or proof from SARS that they have made an arrangement to meet their outstanding tax obligations. The proof of tax compliance status submitted by the bidder to the municipality must be verified via the CSD or e-Filing.
- Exclusion of other items will cause a disqualification, all quotes must be prepared according to the scope of work;
- No pricing options will be allowed, only one pricing schedule must be submitted by the tendering service provider;
- Form must be signed in black ink (no pencil is allowed or other colour);
- All MBD Forms must be completed and signed in black ink;
- Any alterations on the proposals or the tender document must be initialled.
- Proof of registration of Central Supplier Database
- Initial each page of National Treasury Conditions of Contract.
- In case of a Joint Venture, Association or Consortium a formal contract agreement must be signed by both parties and be attached;
- Detailed price schedule as per the full scope of work (compliance to specification)
- Copy of Regulatory body certificate (If applicable)

Failure to submit the abovementioned documents will results in the quotation submitted not being considered.

**Tender to be evaluated on functionality**

(1) The municipality will state in the tender documents if the tender will be evaluated on functionality.
(2) The evaluation criteria for measuring functionality must be objective.
(3) The tender documents must specify-
(a) the evaluation criteria for measuring functionality;
(b) the points for each criteria and, if any, each sub-criterion; and
(c) the minimum qualifying score for functionality.
(4) The minimum qualifying score for functionality for a tender to be considered further-
(a) must be determined separately for each tender; and
(b) may not be so-

(i) low that it may jeopardise the quality of the required goods or services; or
(ii) high that it is unreasonably restrictive.
(5) Points scored for functionality must be rounded off to the nearest two decimal places.
(6) A tender that fails to obtain the minimum qualifying score for functionality as indicated in the tender documents is not an acceptable tender.
(7) Each tender that obtained the minimum qualifying score for functionality must be evaluated further in terms of price and the preference point system.

**The quotations will then be evaluated on 80/20 preferential point system:**

(1) The following formula must be used to calculate the points out of 80 for price in respect of an invitation for a tender with a Rand value equal to or below R50 million, inclusive of all applicable taxes:

$$Ps = 80 \left(1 - \frac{Pt - P\,min}{P\,min}\right)$$

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of lowest acceptable tender.

(2) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.
(3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.
(4) Subject to section 2(1)*(f)* of the Act, the contract must be awarded to the tenderer scoring the highest points.

**Specific goals will be allocated as follows:**

| **Historically Disadvantaged Individuals - HDI** | **80/20 Preferential Point System**<br>**20** | **Means of Verification** |
|---|---|---|
| **Race – people who are Black, Coloured or Indian** | **10** | **CSD report and Copy of Identification Documentation** |
| | | |

| | | |
|---|---|---|
| **Gender - Women** | **3** | **CSD report and Copy of Identification Documentation** |
| **Youth** | **4** | **CSD report and Copy of Identification Documentation** |
| **Disability** | **3** | **Certified copy of Doctor's Certificate with medical practice number** |

**Suppliers are required to submit the documents listed in means of verification as per above table for points allocation during 80/20 preferential point system evaluation.**

**The specific goals allocated points will be apportioned in line with percentage on shareholding of the company.**

**Points will not be allocated on specific goals without supporting documents being attached as listed in means of verification column above.**

(d) SCM practitioner and project manager will evaluate quotations received in line with the above mentioned conditions.
(e) SCM Practitioner and project manager will then submit an evaluation report to divisional manager SCM for recommendation before final approval of award by CFO.
(f) The Head of Department will authorise award to service provider on the IFMS.
(g) The Head of Department will also approve the manual documentation for order and the project manager or end user will then submit the authorised purchase requisition to SCM unit.
(h) The SCM practitioner will then issue an official purchase order.
(i) The official purchase order will be authorised as delegation of powers as outlined in this policy.
(j) SCM practitioner will notify or inform the project manager that the purchase order has been authorised.
(k) The project manager or end-user will the send the purchase order to service provider and communicate further with the appointed service provider with regards to goods or services required and the delivery timeframes.

**Competitive bids**

19. (1) Goods or services above a transaction value of R200 000 (VAT included) and long term contracts may be procured by the municipality only through a competitive bidding process, subject to paragraph 11(2); and

(2) No requirement for goods or services above and 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.

**Process for competitive bidding**

20. (1) The accounting officer must establish procedures for a competitive bidding process for each of the following stages:
    (a) the compilation of bidding documentation;
    (b) the public invitation of bids;
    (c) site meeting or briefing sessions, if applicable;
    (d) the handling of bids submitted in response to public invitation;
    (e) the evaluation of bids;
    (f) the award of contracts;
    (g) the administration of contracts; and
    (h) proper record keeping.

    (2) The procedures for the stages of the competitive bidding process are as follows:-
        (a) Compilation of bidding documentation and specification by the project manager in consultation with SCM practitioner and Bid Specifications Committee.
        (b) The bid documentation and specifications should be based on a thorough analysis of the market and costing of specifications
        (c) Finalisation and recommendation of the bid document and specifications by the bid specification committee
        (d) Approval of the specifications for advert by the Project Manager, Departmental Manager, BSC Chairperson, DM SCM, CFO and Municipal Manager
        (e) Public invitation for bids by SCM as per paragraph 22
        (f) Site meeting or briefing session if applicable
        (g) Public opening of the tender box on closing date as per the tender advert, recording of bids received and safekeeping of bids received in storeroom as per paragraph 23.
        (h) Evaluation, finalisation and recommendation of the bid by bid evaluation committee as contained in the evaluation report
        (i) Consideration of the evaluation report and final recommendations by the bid adjudication committee
        (j) Internal audit function to carry out audit procedures and provide an opinion on compliance of the bidding process with the Municipal Supply Chain Management Regulations before the Accounting Officer can endorse the BAC recommendations.

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

        (k) Contracts above the value of R10 million (all applicable taxes included) may only be awarded to the preferred bidder after the Chief Financial Officer has verified in writing that budgetary provision exists for the acquisition of the goods, infrastructure projects and/or services and that it is consistent with the Integrated Development Plan.

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

(i)Internal audit units must compile risk based audit plans, review internal control measures, and ensure that supply chain management, including the requirements of this Circular, is sufficiently and adequately covered in the annual coverage plan.
Internal auditors must be alert to fraud risks and design audit procedures and indicators that would reasonably assist in preventing and detecting potential or actual fraud and corruption.

(ii)During competitive bidding and adjudication processes or before the award of a contract, the accounting officer may, at his or her discretion, specifically request the internal audit function to carry out audit procedures and provide an opinion on compliance of the bidding process with the Municipal Supply Chain Management Regulations.

(iii)Where bids involve internal audit service, the audit of the bidding process may be outsourced to an independent external service provider or internal audit function of another organ of state, subject to the oversight of the audit committee.
The accounting officer may, at his or her discretion, decide to have a specific contract audited by external service providers prior to the award of the contract.

(m) Award of contract by the accounting officer
(n) Issue letters of notification to all unsuccessful bidders
(o) Resolve all queries, objections and disputes relating to unsuccessful bids
(p) Issue appointment letter to successful bidder
(q) Receipt of formal acceptance by successful bidder
(r) Drafting of service level agreements by DM legal and Administration in consultation with Departmental Manager and Project Manager.
(s) Administration of the contract after awarding of the bid - the municipality and the bidder must enter into a written agreement where the Service Level Agreement or contract must be signed

(t) **Legal sound written contracts or service level agreements**

Accounting officers must ensure that all written contracts or service level agreements that are entered into by their respective institutions are legally sound. This measure is aimed at avoiding potential litigation and minimizing possible fraud and corruption.
Such contracts or agreements must be actively managed in order to ensure that both parties (the municipality or municipal entity and the contractors) meet their respective obligations.

(u) The project manager or end-user must submit a duly completed request for a goods form, captured on the IFMS, which has been authorised by the Head of Department or Manager to SCM unit with copies of BAC

recommendations, Appointment letter, acceptance letter, Service level agreement and quotation.

(v) The Head of Department or Manager will authorise purchase requisition on the IFMS.

(w) The Head of Department or Manager will also approve the manual documentation for order and the project manager or end user will then submit the authorised purchase requisition to SCM unit.

(x) The SCM practitioner will then issue an official purchase order.

(y) The official purchase order will be authorised as per section 12(3) of this policy. SCM practitioner will notify or inform the project manager that the purchase order has been authorised.

(z) The project manager or end-user will the send and communicate further with the appointed service provider with regards to goods or services required and the delivery timeframes.

(aa) Proper record keeping of all documents leading to the conclusion of the tender should be kept in a secure place for reference purposes.

(3) **Bid conditions for procurement above R200 000:**

**A. <u>Mandatory Requirements</u>**

- Tender proposal will be evaluated on 80/20 or 90/10 preferential points system;
- Price(s) quoted must be firm and inclusive of VAT (if VAT registered) and detailed price schedule must be attached;
- Price(s) quoted must be valid for at least ninety (90) days from the closing date of the tender;
- Municipal accounts for the physical address of the business and residential addresses of each of its shareholders. The municipal accounts submitted may not be older than 2 months from the closing date of tender.
  - If the proof submitted is not in the name of the company or shareholder, written explanations and evidence must be attached indicating how the proof submitted relates to the said business or shareholder;
  - In cases where the address of the business or shareholder is not through ownership but through a lease agreement, a copy of municipal account for the owner of the building must be attached as well as a copy of the lease agreement with the said business or shareholder;
- This should provide clear evidence that the municipal accounts of the business' address and the residential addresses of every individual shareholder are not in arrears for more than 90 days;
- Copy Valid Tax Compliance Status Pin – the recommended bidder is not tax compliant, the bidder will be notified of their non-compliant status and the bidder must be requested to submit to the municipality, within 7 working days, written proof from SARS of their tax compliance status or proof from SARS that they have made an arrangement to meet their outstanding tax obligations. The proof of tax compliance status submitted by the bidder to the municipality must be verified via the CSD or e-Filing.
- Exclusion of other items will cause a disqualification, all quotes must be prepared according to the scope of work;

- No pricing options will be allowed, only one pricing schedule must be submitted by the tendering service provider;
- Form must be signed in black ink (no pencil is allowed or other colour);
- All MBD Forms must be completed and signed in black ink;
- In case of a Joint Venture, Association or Consortium a formal contract agreement must be signed by both parties and be attached;
- Any alterations on the proposals or the tender document must be initialled.
- Proof of registration of Central Supplier Database
- Initial each page of National Treasury General Conditions of Contract
- Detailed price schedule as per the full scope of work (compliance to specification)
- Copy of Regulatory body certificate (If applicable)
- And any other document the municipality might deem necessary

Failure to submit the abovementioned documents will results in the tender submitted not being considered for further evaluation.

**B. Tenders to be evaluated on functionality**

(1) The municipality will state in the tender documents if the tender will be evaluated on functionality.
(2) The evaluation criteria for measuring functionality must be objective.
(3) The tender documents must specify-
(a) the evaluation criteria for measuring functionality;
(b) the points for each criteria and, if any, each sub-criterion; and
(c) the minimum qualifying score for functionality.

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

**C. Evaluation of bids on preferential point system**

The tender will then be evaluated on either 80/20 or 90/10 preferential point system depending on Rand value of the tender in line with Paragraph 52 of this policy.

**(5) Safekeeping of all procurement related documentation**

The SCM Unit is the custodian of all procurement related documentation and it is not allowed for any such documentation to be removed from the SCM Unit, without supervision by the SCM Unit. If it is necessary to remove documentation for audit purposes or bid meetings, such documents shall be signed out by and returned with 2 weeks. The official signing out documentation will remain responsible for signed out documentation until it is returned to the SCM Unit and shall ensure that the credibility of documentation and information contained therein remains intact.

**(6) Placing of orders for payment in another financial year**

(a) Accounting officers of municipalities and municipal entities are prohibited from deliberately placing orders for goods, services and/or infrastructure projects from suppliers, receiving such goods, services and/or infrastructure projects and arranging with suppliers for such goods, services and/or infrastructure projects to be invoiced and paid for in another financial year.

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

**(7) Management of expansion or variation of orders against the original contract**

(a)It is recognized that, in exceptional cases, an accounting officer of a municipality or municipal entity may deem it necessary to expand or vary orders against the original contract.

(b)The expansion or variation of orders against the original contract has, however, led to wide scale abuse of the current SCM system.

(c ) In order to mitigate such practices, accounting officers of municipality may expanded or vary a contract by not more than 20% for construction related goods, services and/or infrastructure projects and 15% for all other goods and/or services of the original value of the contract. Furthermore, anything beyond the abovementioned thresholds must be reported to council.

(d)Any expansion or variation in excess of these thresholds must be dealt with in terms of the provisions of section 116(3) of the MFMA which will be regarded as an amendment to the contract.

(e)The contents of the above paragraph are not applicable to transversal term contracts, facilitated by the relevant treasuries on behalf of municipalities and municipal entities and, specific term contracts. The latter refers to orders placed as and when commodities are required and at the time of awarding contracts, the required quantities were unknown.

**(8)Payment within 30 days**

The contents of MFMA Circular 49 issued in 2009 with regards to the payment of suppliers within 30 days are confirmed.

**Bid documentation for competitive bids**

21. The accounting officer must establish the criteria to which bid documentation for a competitive bidding process must comply, and state that in addition to paragraph 13 the bid documentation must –
    (a) take into account –
        (i) the general conditions of contract;
        (ii) any Treasury guidelines on bid documentation; and
        (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
    (b) include 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 non-compliance or dispute concerning the execution of such contract;
        (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or is expected to be transferred out of the Republic. The municipality must use the minimum threshold for local production and content as set out by Department of Trade and Industry.
    (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.

**Public invitation for competitive bids**

22. The accounting officer must determine the procedure for the invitation of competitive bids, and which must stipulate that –
    (1) (a) that 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 of or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and

(b) the information a public advertisement must contain, which 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 sub-paragraph (2) of this policy; and

(ii) a statement that bids may only be submitted on the bid documentation provided by the municipality.

(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 to the municipality must be sealed.

(4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

**Advertisement of bids on eTender portal**

5 (a)Accounting officers of municipalities are required to advertise all bids on the eTender Publication Portal as provided below.

(b)All bids advertised on the eTender Publication Administrator must at least contain the following information:

 Bid description;

 Bid number;

 Name of Municipality;

 The physical location where the goods, services or works specified in the bid are required;

 The closing date and time of the bid;

 Municipality's contact details (postal and physical address, telephone number, email address, etc.);

 The physical location where hard copies of bids can be collected;

 The physical location where bids should be delivered; and

 The bid documents (MBDs, Terms of Reference, GCC and any other relevant documents)

## Publication of notices of bid awards, cancellations, deviations, variations and extensions on the eTender publication

6 (a)Accounting officers of municipalities are required to publish the awards of all competitive bids on the eTender Publication Portal as mentioned below.
Municipalities are required to publish the following information on successful bids2 within seven (7) working days of awarding the bids:
 Names of the successful bidder(s) and preference points claimed;

 Contract price(s) ;

 Contract period;

 Contact details
 Names of Directors; and
 Date of completion/award.

(b)In addition to the information required above, accounting officers of municipalities are required to publish information on unsuccessful bids on the eTender Publication Portal and publish the following data within the same time frame referred to above:

 Names of the unsuccessful bidder(s); and

 Contact details.

(c)Notice of a cancelled bid must be published on the same day, or at the latest, the day after a municipality decided to cancel a bid.

(d)Notice of all awards to suppliers through deviations from competitive bidding procedures must be published on the eTender Publication Portal within seven (7) working days after the award was made. Notice of all awards through variations and extensions of existing contracts must be published on the eTender Publication Portal within seven (7) working days after the award was made

### Procedure for handling, opening and recording of bids

23. (1) The accounting officer must determine the procedure for the handling, opening and recording of bids, which must stipulate that–
    (a) Bids –
        (i) must be opened only in public; and
        (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired;
    (b) confer on any bidder or member of the public 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; and
    (c) require the accounting officer –
        (i) to record in a register all bids received in time;
        (ii) to make the register available for public inspection; and
        (iii) to publish the entries in the register and the bid results on the website of the municipality.

**Negotiations with preferred bidders**

24. (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.
    (3) The above mention provision must be included in the tender document.

**Two-stage bidding process**

25 (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.

**Committee system for competitive bids**

26. (1) The accounting officer is required to -
    (a) establish committee system for competitive bids consisting of at least –
        (i) a bid specification committee;
        (ii) a bid evaluation committee; and
        (iii) a bid adjudication committee;
    (b) appoint members of each committee, taking into account section 117 of the Act; and
    (c) provide for an attendance or oversight process by a neutral or independent observer appointed by the accounting officer when this is appropriate for ensuring fairness and promoting transparency.

    (2) The committee system must be consistent with –
    (a) paragraphs 27, 28 and 29; and
    (b) any other applicable legislation.

    (3) The accounting officer may apply the committee system to formal written price quotations.

**Bid specification committees**

27. (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 Organisation, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;

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

(d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification;

(e) may not make reference to any particular trade mark, name, patent, design, type specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the words “equivalent”;

(f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the supply chain management policy of the municipality as per Preferential Procurement, 2022.

(g) must be approved by the accounting officer prior to publication of the invitation for bids in terms of regulation 22.

(h) Must be accompanied by a detailed evaluation criterion for the said bid.

(i) must be recommended by the BSC Chairperson, Project Manager, Departmental Manager, DM SCM, CFO before approval by accounting officer prior to publication of the invitation for bids.

(j) Specifications already approved in (i) above cannot be changed by the Project Manager without BSC consideration and approval as well as the accounting officer approval.

(l) The Departmental managers must take responsibility for the specifications, costing and budget implications.

(m) The Project Manager should properly research on related specifications and market related pricing.

(n) Project specifications must have a payment schedule based on either project phases or percentage of completion

(o) An individual asset report containing cost price, accumulated depreciation and current value of an asset should be drawn from the IFMS and attached to the specification to establish if it is economical to refurbish an existing an asset or not.

(p) The tender document for consultants must include a table for construction pricing estimate that must be completed by all bidders so to establish their costing for professional fees which must also be indicated on the evaluation report and recommendations.

(q) The functionality criteria and functionality cut off points should be set considering the frequency, technicality and the number of related projects required for the project.

(r) The project manager is appointed as variable BSC members for the specific project in their department.

(3) The 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 as must be set out in the supply chain management policy of the municipality in terms of paragraph 27(2)(f) and as prescribed in terms of the Preferential Procurement Policy Framework Act;

(b) evaluate each bidder's ability to execute the contract;

(c) check in respect of the recommended bidder whether municipal rates and taxed and municipal service charges are not in arrears;

(d) check that all minimum requirements are met;

(e) evaluate and verify functionality criteria, supporting information and allocate functionality points to bidder

(f) check that the tender and bid documentation complies with the WDM SCM Policy

(g) check that the bidder is not a related party (involvement of participants working for organs of state) (MBD4)

(h) recalculate pricing and ensure that the project is implementable on the prices quoted as well as being market-related / value-for-money

(i) submit to the adjudication committee an evaluation report with recommendations regarding the award of bid or any other related matter.

(2) The bid evaluation committee must as far as possible be composed of –

(a) at least four officials at middle management of the municipality;

(b) at least one supply chain management practitioner of the municipality.

(c) an official from Supply Chain management Unit to serve as a scriber.

Subject to the subsection (2): (i) the composition of the bid evaluation committee may change to accommodate different scenarios;

(ii) members from the bid specification committee may also form part of the bid evaluation committee; and

(iii) The chairperson of the Evaluation committee or any member of the bid evaluation committee designated by the Chairperson shall present reports to the bid adjudication committee;

(d) Project managers are appointed as variable BEC members only for the purpose of evaluating their specific projects;

**Bid adjudication committees**

29. (1) The 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) The bid adjudication committee must consist of at least four senior managers of the municipality which must include –

(a) the chief financial officer who will serve as the Chairperson of the Committee 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 Accounting Officer;

(b) at least one senior supply chain management practitioner who is an official of the municipality; and

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

(d) an official from Supply Chain management Unit to serve as a scriber.

(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 a bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –

(i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears; and

(ii) notify the accounting officer.

(b) The accounting officer may –
(i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
(ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.

(6) The accounting officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.

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

(8) Publication of awards in respect of advertised competitive bids above the threshold value of R200 000 (all applicable taxes included)

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

(10)The following information on the successful bids must be made available on the municipal or municipal entity's website:
(a) Contract numbers and description of goods, services or infrastructure projects;
(b) Names of the successful bidder(s);
(c) The contract price(s), and;
(d) Brand names and dates for completion of contracts.
(e)Records of such publication must be retained for audit purposes.

**Procurement of banking services**

30. (1) Banking services –
(a) must be procured through competitive bids;
(b) must be consistent with section 7 and 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 94 of 1990).

**Procurement of IT related goods or services**

31. (1) The accounting officer may request the State Information Technology Agency (SITA) to assist the municipality with the acquisition of IT related goods or services through a competitive bidding process.

(2) The parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to SITA.

(3) The accounting officer must notify SITA together with a motivation of the IT needs of the municipality if –
(a) the transaction value of IT related goods or services required by the municipality in any financial year will exceed R50 million (VAT included); or
(b) the transaction value of a contract to be procured by the municipality whether for one or more years exceeds R50 million (VAT included).

(4) If SITA comments on the submission and the municipality disagree with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the relevant provincial treasury and the Auditor General.

**Procurement of goods and services under contracts secured by other organs of state**

32. (1) A supply chain management policy may allow the accounting officer to procure goods or services for the municipality 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) the municipality has no reason to believe that such contract was not validly procured;
(c) there are demonstrable discounts or benefits for the municipality to do so; and
(d) that other organ of state and the provider have consented to such procurement in writing.

(2) Sub-paragraph (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.

**(3) Principles underpinning the implementation of regulation 32**

(a)Before a municipality decides to become a participant in a contract secured by another organ of state, it must, as part of demand management, conduct a detailed analysis of the goods or services required. When procuring infrastructure, the municipality must also compare for example its topography or other features, to that of

the other organ of state in order to ensure that the service provider will be able to deliver at an acceptable standard.

(b)The contract must have been secured by means of a competitive bidding process applicable to that other organ of state and the municipality or entity has no reason to believe that such contract was not validly procured.

(c)This means that the municipality that intends to use a contract secured by another organ of state must verify and satisfy itself that the contract was procured through a procurement process that was fair, equitable, transparent, competitive and cost effective consistent with the public sector procurement principles set out in section 217 of the Constitution.

(d)In order to verify this, the municipality must obtain copies of the bid advertisements, bid documents, minutes of evaluation and adjudication committee meetings, and any other relevant documents relating to the contract in order to review whether the other organ of state complied with applicable legislation and policies when it procured the contract.

(e )The bid adjudication committee, the internal audit unit of the municipality and that is requesting to procure under the contract secured by the other organ of state must review the obtained documentation from the organ of state, to certify that a competitive bidding process and due process was followed by the other organ of state in concluding the contract.

(f) Internal Audit unit of the municipality must provide further assurance that the requirements as outlined in regulation 32 are complied with before the accounting officer can consider and approve the participation.

(g)The municipality will engage provincial treasury to play an oversight role and provide assurance on the cost effectiveness and compliance with regulation 32 before appointment

(h)The municipality must maintain confidentiality when processing all documentation, as may be appropriate.

(i)There must be demonstrable discounts or benefits for the municipality to procure goods or services under a contract procured by another organ of state.

(j)The municipality must assess the contract terms such as, unit of issue or type of service; delivery lead times and prices; length of contract in line with required goods or service; and undertake a comparative research to determine if this form of procurement is more advantageous than advertising a competitive bid. This must include the determination of a reasonable price for the required goods or services; taking into consideration that the requesting municipality can only utilise the remaining portion of the contract that has not been utilised by the original contracting organ of state and not create an additional contract.

(k)The value or price of the participating municipality’s required goods or services must not exceed the value or price of the original contract.

(l)The decision to participate must be informed by a detailed report that outlines the outcome of the above-mentioned assessment, confirming the legal status of the contract with the other organ of state, reasons for why the municipality could not arrange its own contract through a competitive bidding process; and set out the value the participation will bring to the participating municipality.

(m)The detailed report mentioned above must be submitted to the participating municipality's bid adjudication committee for its consideration and recommendation to the accounting officer, in terms of the municipality's delegation policy. Prior to the recommendation of the bid adjudication committee being submitted to the accounting officer, it must be submitted to its internal audit unit to provide further assurance that the requirements as outlined in regulation 32 have been complied with, and thereafter submitted to the accounting officer or delegated official for his/her consideration and final approval of the participation.

**4. The other organ of state and the service provider have consented to such procurement in writing**

(a)The accounting officer requesting to participate must first obtain written consent from the other organ of state as well as confirmation of the supplier's contractual performance. Once the accounting officer requesting for participation has obtained consent to procure under the contract and confirmation of the supplier's performance from the other organ of state; and has performed all internal due diligence checks, including ensuring compliance with the salient points listed below, may the accounting officer solicit the service provider's written consent.

(b)Failure to obtain this written consent by the accounting officer requesting to procure under the contract secured by another organ of state will be construed as non-compliance with the regulations and associated expenditure being irregular expenditure.

**5. Salient requirements applicable to Regulation 32**

Over and above the requirements stated in Regulation 32, there are also other salient requirements which must be considered by the participating municipality as well as the organ of state that is approving the procurement under its contract. These include the following:

**(a) <u>The contract must be valid</u>**

The municipality will not enter into a new contract with the service provider/s but will become a participant in an existing contract. The contract must therefore not have expired, or its validity modified to accommodate the procurement from the contract, and must be legally sound as proven in the motivated report mentioned above. The participating municipality will conclude an addendum to the agreement with the service provider/s that stipulates the duration of the participation agreement, which may not exceed the end date of the original contract.

**(b)The duration or variation of the contract**

The municipality must confirm the duration of the contract between the service provider/s and the other organ of state and determine the remaining term of the contract. Once this has been confirmed, the municipality must assess whether the remaining period will be sufficient for the service provider/s to deliver on its requirements. In other words, the participating municipality will only be permitted to utilise the contract of the other organ of state for the balance of the remaining period of the contract.

The contract cannot be extended or varied by the participating municipality. It can only be extended by the original contracting parties in line with the contractual terms agreed to in the original contract. Should the contract between the original contracting parties be terminated for any reason before the contract end date, then that termination applies to the municipality participating on the contract as well. The accounting officer consenting to the participation on the contract must therefore inform the participating accounting officer of any contract amendments or variations made to the contract, in writing.

**(c )The goods or services must be the same and the quantity may not be increased**

The municipality must assess whether the goods or services being provided to the other organ of state are similar to the goods or services required by the municipality. The goods or services required by the participating municipality must be exactly the same as advertised and adjudicated by the other organ of state and may not be increased from the originally contracted quantity. Therefore, the participating municipality will procure the required goods or services under the same scope or specification, terms and conditions as provided for in the original contract.

**(d) Contractual arrangements**

The shared contract must have the same dispute resolution mechanism to settle contractual disputes, a combined periodic contract management performance review to appraise the shared contract, and to regularly report to the council of the participating municipality, as may be appropriate, on the management of the contract, service level agreement and the performance of the shared contractor/s.

The exercising of contractual rights, obligations or remedies in terms of the contract must be exclusively dealt with in terms of the dispute resolution mechanism as stipulated in the original contract. Each contractual party must uphold their legal obligations to the contract.

**(e ) Implications for the organ of state who is the contract owner**

The application of regulation 32 in a procurement process effectively means that the accounting officer of the original contracting organ of state is willing to forfeit a portion of its contract that has not already been utilised to the accounting officer who is requesting to procure under that contract. It may also mean that the accounting officer may no longer procure goods or services from that contract anymore as the balance of the contract would have been allocated to the municipality that is requesting to procure under that contract. The accounting officer of the original contracting organ of state undertakes such decision with the knowledge that the original contracting organ of state no longer requires the remaining portion of that contract. The accounting

officer of the original contracting organ of state must notify the accounting officer of the municipality that is procuring under the original contract of all changes to the contract.

**(f) Panel of consultants/list of approved service providers and framework agreements**

Municipality must not participate on a panel secured by another organ of state as a panel of consultants or a list of service providers or a panel of approved service providers is not a contract. Municipality may only participate on framework agreements arranged by organs of state, for example, State Information Technology Agency (SITA), the relevant treasury; that are empowered by legislation to arrange such on behalf of other organs of state.

**Reporting**

The accounting officer of the participating municipality must utilise the process of reporting as contained in SCM regulation 6, to also include any procurement through SCM regulation 32.

**Procurement of goods necessitating special safety arrangements**

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

(2) Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership and cost advantages for the municipality.

**Proudly SA Campaign**

34. The accounting officer must determine internal operation procedures supporting the Proudly SA Campaign.

**Appointment of consultants**

35. (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 contract must be procured through competitive bids if-
(a) the value of the contract exceeds R200 000 (VAT included);
(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 the municipality with particulars of -
(a) All consultancy services provided to organ of state in the last five years; and
(b) Any similar consultancy services provided to organ of state in the last five years.

(4) The municipality must ensure that copyright in the 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.

(5) The guideline for appointment of consultants issued in terms of Section 168 of the MFMA, as well as the prescripts of the CIDB, for the appointments of professional services shall be used.

(6) In order to maintain such a high standard of work and keeping in mind the possible risk WDM is exposed to, as well as the relevant legislation governing certain professions, only consultants employing professionals registered with the relevant professions' councils shall be engaged, where applicable.

(7) Where appropriate, consultants should have a valid Professional Indemnity Insurance in place at appropriate level for the project.

(8) Consultants (contractors) who are commissioned to prepare a scope of work for a particular contract shall be precluded from submitting tender offers for that procurement.

(9) A municipality or municipal entity may only appoint consultants if an assessment of the needs and requirements confirms that the affected municipality or municipal entity does not have the requisite skills or resources in its full -time employ to perform the function.

(10)An accounting officer must adopt a fair and reasonable remuneration framework for consultants taking into account the rates –

(a) determined in the "Guideline on fees for audits undertaken on behalf of the Auditor -General of South Africa ", issued by the South African Institute of Chartered Accountants;

(b) set out in the "Guide on Hourly Fee Rates for Consultants ", issued by the Department of Public Service and Administration; or

(c) as prescribed by the body regulating the profession of the consultant.

(11) The tender documentation for the appointment of consultants must include a clause that the remuneration rates will be subject to negotiation, not exceeding the applicable rates mentioned in sub -regulation (2).

(12) When negotiating cost -effective consultancy rates for international consultants, the accounting officer may take into account the relevant international and market –determined rates.

(13) When consultants are appointed, an accounting officer must –

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

(b) where practical, appoint consultants on an output- specified basis, subject to specific measurable objectives and associated remuneration;

(c) ensure that contracts with consultants include overall cost ceilings by specifying
whether the contract price is inclusive or exclusive of travel and subsistence disbursements;

(d) ensure the transfer of skills by consultants to the relevant officials of a municipality or municipal entity;

(e) undertake all engagements of consultants in accordance with the Municipal Supply
Chain Management Regulations, 2005 and the municipality supply chain management policy; and

(f) develop consultancy reduction plans to reduce the reliance on consultants.

(14) All contracts with consultants must include a fee retention or penalty clause for poor performance.

(15) A municipality or municipal entity must ensure that the specifications and performance are used as a monitoring tool for the work to be undertaken and are appropriately recorded and monitored.

(16) The travel and subsistence costs of consultants must be in accordance with the national travel policy issued by the National Department of Transport, as updated from time to time.

(17) The contract price must specify all travel and subsistence costs and if the travel and subsistence costs for appointed consultants are excluded from the contract price, such costs must be reimbursed in accordance with the national travel policy of the National Department of Transport.

**Deviation from and ratification of minor breaches of, procurement processes**

36. (1) The accounting officer may-
(a) dispense with the official procurement processes established by the 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; or

(v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and

(b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of technical nature.

(2) The accounting officer must record the reasons for any deviations in terms of sub-paragraph (1)(a) and (b) and report them to the next meeting of the council, in the case of a , and to include as a note to the annual financial statements.

(3) Sub-paragraph (2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this policy.

**Unsolicited bids**

37. (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, it may do so 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 for the municipality.

(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 municipality decides to consider an unsolicited bid that complies with sub-paragraph (2), the municipality must make its decision public in accordance with section 21A of the Municipal Systems Act, together with-

(a) its reasons as to why the bid should not be open to other competitors;

(b) an explanation of the potential benefits for the municipality were it to accept an unsolicited bid; and

(c) an invitation to the public or other potential suppliers to submit their comments within 30 days of notice.

(4) All written comments received pursuant to sub-paragraph (3), including any responses from unsolicited bidder, must be submitted 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 delegation.

(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 recommendation 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 National Treasury the reasons for rejecting or not following those recommendations.

(9) Such submissions 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.

**Combating of abuse of supply chain management system**

38. 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 such abuse;
   (b) investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with the supply chain management policy, and when justified-
      (i) take appropriate steps against such official or other role players; or
      (ii) report any alleged criminal conduct to the South African Police Service;
   (c) check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
   (d) reject any bid from a bidder-
      (i) if any municipal rates and taxes or municipal service charges owed by the bidder or any of its directors to the municipality, are in arrears for more than three months
      (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
   (e) to 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) to cancel the 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 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 of fraud or corruption during the past five years;
(iii) Has wilfully neglected, reneged on or failed to comply with the government, municipal or other public sector contract during the past five years; or
(iv) Has been registered in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combatting of Corrupt Activities Act (No 12 of 2004).

(2) The accounting officer must inform the National Treasury and the provincial treasury in writing of any actions taken in terms of sub-paragraph (1) (b) (ii), (e) or (f) of this policy.

***Part 3: Logistics, disposal, risk and Performance Management***

**Logistics management**

39. (1) The accounting officer must establish effective system of logistics management in order to provide for the setting of inventory levels, placing of orders, receiving and distribution of good, stores and warehouse management, expediting orders, transport management, vendor performance, maintenance and contract administration.

**The Logistics Management Process**

(2) For fixed capital items (construction and road projects, immovable property) a process must be adopted ensuring appropriate classification, recording additions to asset and property registers, valuation, main use, etc.

(3) The financial system necessary to generate payments must be implemented in a manner which is consistent with the principles attached to the logistics management process.

**Inventory Management**

(4) Should the WDM decide to keep stock such stock must be kept to a minimum and must take into consideration all best practices in inventory management and health and safety paragraphs and systems.

**Disposal management**

40. (1) The accounting officer must establish 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 stipulate the following:

(2) Disposal of assets must-
(a) be by one of the following methods-

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

(b) provided that-
(i) immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
(ii) movable assets may be sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous to the municipality;
(iii) in the case of the free disposal of computer equipment, the Provincial Department of Education must be approached to indicate within 30 days whether any of the local schools are interested in the equipment; and
(iii) in the case of the free disposal of firearms, the National Conventional Arms Control Committee has approved any sale or donation of firearms to any person or institution within or outside the Republic;

(c) furthermore ensure that-
(i) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise; and
(ii) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed; and

(d) ensure that where assets are traded in for other assets, the highest possible trade-in price is negotiated

**Risk management**

41. (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.

**Performance management**

42. The accounting officer must establish an effective internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the

authorised supply chain management processes are being followed and whether the desired objectives are being achieved.

***Part 4: other matter***

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

43. (1) The accounting officer must ensure that, irrespective of procurement processes followed, no award above R15 000 to a person whose tax matters have not been declared by the South African Revenue Services to be in order.

(2) Before making an award to a person, the accounting person must first check with SARS whether that person's tax matters are in order.

(3) If SARS does not respond within seven days such person's tax matters may for purposes of subparagraph (1) be presumed to be in order.

(4) Implementation of tax compliance status system

In order to comply with the new Tax Clearance System (TCS) and the condition of bids that a successful bidder's tax matters must be in order, Accounting Officer of the municipality:

(a) Designate SCM officials whose function will be to verify the tax compliance status of a taxpayer and to manage the TCS system on the SARS website and have the functionality to verify the tax compliance status of a taxpayer on the SARS' e-Filing system. Guidance to the Tax Compliance functionality on eFiling is available on the SARS website www.sars.gov.za.

(b) Utilise the Municipal Bid Document 1 (MBD1) issued with this circular when inviting bids.

(c) As a bid condition, request bidders to register on government's Central Supplier Database (CSD) and include in their quotations or bids, their Master Registration Number or tax compliance status PIN to enable the municipality to verify the bidder's tax compliance status.

(d) Utilise the Master Registration Number or tax compliance status PIN to verify bidders' tax compliance status.

(e) Print the tax compliance status screen view or letter with the result of the bidder's status at the date and time of verification to file with the bidder's bid documents for audit purposes.

(f) The CSD and tax compliance status PIN are the approved methods to be used to prove tax compliance as the SARS no longer issues Tax Clearance Certificates but has made provision online, via e-Filing, for

bidders to print their own Tax Clearance Certificates which they can submit with their bids or price quotations.

(g) Accounting Officers may therefore, accept printed or copies of Tax Clearance Certificates submitted by bidders and verify them on e-Filing. The verification result should be filed for audit purposes.

(h) Where a supplier does not submit a tax compliance status PIN but provides a CSD number, the accounting officer should utilise the CSD number via its website www.csd.gov.za to access the supplier records and verify tax compliance status. A printed screen view at the time of verification should then be attached to the supplier's records for audit purposes.

(i) Where goods and services are procured from foreign suppliers with tax obligations in South Africa, proof of tax compliance status should be obtained from the supplier.

(j) Foreign suppliers with neither South African tax obligations nor history of doing business in South Africa should complete a pre-award questionnaire on the MBD 1 for their tax obligation categorisation. Where a recommendation for award of a bid has been made to a bidder who is a foreign supplier and who completed the pre-award questionnaire on the MBD 1, the Accounting Officer must submit a copy of the completed MBD 1 received from the bidder to SARS on the following email address: GovernmentInstitute@sars.gov.za. SARS will issue a letter to the procuring entity confirming whether or not the foreign supplier has tax obligations in South Africa.

(k) Where goods and services are procured from foreign suppliers with no tax obligation in South Africa, there is no need to request proof of tax compliance status.

(l) Where goods and services are imported, all custom related taxes shall be applied as prescribed by SARS.

(l) It is recommended that municipalities and municipal entities discontinue using MBD 2 as there is no longer a use for it within the current tax compliance system.

**(5) Application of SCM process**

(a) SCM official(s) should verify the bidder's tax compliance status prior to the finalisation of the award of the bid or price quotation.

(b) Where the recommended bidder is not tax compliant, the bidder should be notified of their non-compliant status and the bidder must be requested to submit to the municipality or municipal entity, within 7 working days, written proof from SARS of their tax compliance status or proof from SARS that they have made an arrangement to meet their

outstanding tax obligations. The proof of tax compliance status submitted by the bidder to the municipality must be verified via the CSD or e-Filing.

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

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

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

44. The accounting officer must ensure that irrespective of procurement process followed, no award may be made to a person-
    (a) who is in the service of the state;
    (b) if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
    (c) who is an advisor or consultant contracted with the municipality.

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

    (i)The Municipal Bidding Document (MBD 4) *"Declaration of Interest"* attached as Annexure C has been augmented to require bidders to submit the names of their directors / trustees / shareholders, their individual identity numbers, personal tax reference numbers and employee numbers of those who are in the service of the state as defined in the Municipal Supply Chain Management Regulations as part of their bid submissions.

    (ii)A shareholder is defined as a person who owns shares in the company and is actively involved in the management of the company or business, and exercises control over the company. This is applicable for all written price quotations, advertised competitive bids, limited bids, unsolicited bids and proposals.

    (iii)Accounting officers of municipalities and municipal entities are required to utilize the attached revised MBD 4 form when inviting bids and to verify the identity numbers of the directors / trustees / shareholders of the preferred bidder(s) against the municipality's or municipal entity's staff establishment in order to determine whether or not any of the directors / trustees / shareholders are employees of the municipality or municipal entity.

    (iv)Furthermore, other specific information to be disclosed relating to any other official in the service of the state, as defined in the SCM regulations will also be utilized during the evaluation process.

    (v)The review of all disclosures referred to in the previous paragraph must take place during the bid evaluation process. If a bidder / director / trustee /

shareholder declares that he / she is in the employ of the state, the municipality or municipal entity must not make any award to such bidder as this is prohibited in terms of the SCM regulations.

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

(vii)Should it come to light that a false declaration was made by the bidder after the municipality had awarded the bid, the contract must be immediately suspended and payments made, recovered. False declarations by bidders can be viewed as a criminal offence and charges must be laid by the municipality with the South African Police Services for further investigation. Details will be reported to Council at its next meeting and information contained in the Annual Report of the municipality.

(viii)In the event that the Auditor-General detects irregular expenditure during the audit process as a result of possible false declarations and subsequent awards based on those declarations, the municipality or municipal entity will be informed of such irregular expenditure.

(ix)The municipality or municipal entity will be required to rectify this matter by instituting the necessary remedial measures, by investigating the matter, recovering the funds spent, instituting disciplinary proceedings against those liable for such actions and possible criminal prosecution as may be appropriate. The accounting officer must also apply the remedial measures contained under “Termination for Default” in the General Conditions of Contract. The expenditure at this stage will not be classified as irregular expenditure.

(x)In the event that the same expenditure is detected in the following year’s audit and the remedial measures referred to above were not instituted, the expenditure will then be classified as irregular expenditure.

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

(a) the preferred bidders’ tax matters are in order;
(b) the municipal rates and taxes or municipal charges owed by the preferred bidder or any of its directors to the municipality or municipal entity, or to any other municipality or municipal entity, are not in arrears for more than three months;
(c) the names of the preferred bidders and their directors / trustees / shareholders are not listed on the Register for Tender Defaulters and the Database of Restricted Suppliers. These databases are now available on the National Treasury website; and

(d) a process is conducted to determine whether the preferred bidders have the capability and ability to execute the contract.

**(e )Definition of "Principal Shareholder"**

(i) Regulation 44(b) of the Municipal Supply Chain Management Regulations prohibits a municipality or municipal entity from making any awards, if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state. Although the regulation is clear, an elaboration of the terms 'principal shareholder or stakeholder' is provided to assist interpretation and application.
Whilst many have initially pointed to 50% + 1% as explaining who is a principal shareholder, there are other permutations that must be considered when determining the definition.

(ii)Any interpretation of regulation 44 without due consideration of the problem the regulation seeks to remedy will always be defective, as it risks being incomplete. One has to consider a scenario where the shareholders have equal shareholding in the entity, say two shareholders holding 50% each or 4 shareholders holding 25% each. Does this imply non-existence of a principal shareholder? Certainly not, because careful reading of regulation 44(b) refers to any principal shareholder, which implies that there could be more than one principal shareholder. This would be the case where the shareholding is equal irrespective of the number of shareholders. It could also happen that one shareholder has the largest holding, though not more than 50%, in comparison to other shareholders either directly or indirectly (e.g. through another company).

(iii)Consideration should also be given to the issue of influence, 'control' and voting rights at meetings, especially decision making at annual, general or board meetings. This is particularly important in cases where there is equal shareholding but one of the members or shareholders have been nominated or appointed as chairperson and the articles of association give such person the power to make final decisions where there is no agreement amongst members or even to provide the decisive vote where there is a tie.

(iv)In this instance, this person can be regarded as the principal shareholder for purposes of regulation 44(b) of the Municipal Supply Chain Management Regulations.
It is evident from the above that due consideration for the problem which the regulation seek to remedy is given. To this end one needs to be mindful of the implied assumption in the regulation and that is that any person in the employ of the state could, by that reason, be conflicted in the procurement process.

(v)This is exactly what section 112(1)(j) of the MFMA is trying to manage by stating that the supply chain management policy of a municipality must address the compulsory disclosure of any conflicts of interests prospective contractors may have in specific tenders and the exclusion of such prospective contractors from those tenders or bids.

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

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

45. The notes to the annual financial statements of a municipality must 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 the person;
    (b) the capacity in which that person is in the service of the state; and
    (c) the amount of the award

**Ethical standards**

46. (1) A code of ethical standards is hereby established, in accordance with sub-paragraph (2) for officials and other role players in the supply chain management system must be established in order to promote-
    (a) mutual trust and respect; and
    (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.

    (2) An official or other role player involved in the implementation of the supply chain management policy of the municipality -
    (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.
    (d) notwithstanding sub-paragraph (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;
    (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate has any private or business interest;
    (g) must be scrupulous in his or her use of property belonging to the municipality;

(h) must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
(i) must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including-
  (i) any alleged fraud, corruption, favouritism or unfair conduct;
  (ii) any alleged contravention of paragraph 47(1) of this policy; or
  (iv) any alleged breach of the code of ethical standards.

(3) Declarations in terms of sub-regulation (2) (d) and (e) -
(a) must be recorded in a register which the accounting officer must keep for this purpose;
(b) by the accounting officer must be made to the mayor of the municipality who must ensure that such declarations are recorded in the register; and
(c) contains 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) 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)The National Treasury's code of conduct for supply chain management practitioners and other role players involved in supply chain management is adopted by the municipality and is binding on all officials.

(6)A breach of code of conduct adopted by the municipality must be dealt with in accordance with schedule 2 of the systems Act.

(7)Sub-paragraph (2) (c) does not apply to gifts less than R350 in value.

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

47. (1) No person who is a provider or prospective provider of goods or services to a municipality, or a recipient or prospective recipient of goods disposed or to be disposed of by a municipality, 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 role player involved in the implementation of the supply chain management policy.

(2) The accounting officer of a municipality must promptly report any alleged contravention of sub-paragraph (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) Sub-paragraph (1) does not apply to gifts less that R350 in value.

**Sponsorships**

48. The accounting officer must promptly disclose to the National Treasury and the relevant provincial treasury any sponsorships promised, offered or granted to the municipality , whether directly or through a representative or intermediary, by any person who is-
    (a) a provider or prospective provider of goods or services to the municipality ; or
    (b) a recipient or prospective recipient of goods disposed or to be disposed of by the municipality.

**Objections and complaints**

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

**Resolution of disputes, objections, complaints and queries**

50. (1) The accounting officer must appoint an independent and impartial person not directly involved in the supply chain management processes of the municipality -
        (a) to assist in the resolution of disputes between the municipality or and other persons regarding-
            (i) any decisions or action taken by the municipality in the implementation of its supply chain management system; or
            (ii) any matter arising from a contract awarded in the course of its 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 received from the municipality within 60 days.

(5) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be transferred 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.

**Contracts providing for compensation based on turnover**

51. If a service provider acts on behalf of a municipality to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of the 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. PREFERENTIAL PROCUREMENT REGULATIONS, 2022**

**1. Identification of preference point system**

(1) A municipality must, in the tender documents, stipulate—

*(a)* the applicable preference point system as envisaged in regulations 4, 5, 6 or 7 of PPPFA;

*(b)* the specific goal in the invitation to submit the tender for which a point may be awarded, and the number of points that will be awarded to each goal, and proof of the claim for such goal.

(2) If it is unclear whether the 80/20 or 90/10 preference point system applies, a municipality must, in the tender documents, stipulate in the case of—

*(a)* an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or

*(b)* any other invitation for tender, 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.

**2. 80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million**

(1) The following formula must be used to calculate the points out of 80 for price in respect of an invitation for a tender with a Rand value equal to or below R50 million, inclusive of all applicable taxes:

$$Ps = 80 \left(1 - \frac{Pt - P\,min}{P\,min}\right)$$

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of lowest acceptable tender.

(2) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.

(3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

(4) Subject to section 2(1)*(f)* of the Act, the contract must be awarded to the tenderer scoring the highest points.

**3. 90/10 preference point system for acquisition of goods or services with Rand value above R50 million**

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

Where-

$$Ps = 90 \left(1 - \frac{Pt - P\,min}{P\,min}\right)$$

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of lowest acceptable tender.

(2) A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.

(3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

(4) Subject to section 2(1)*(f)* of the Act, the contract must be awarded to the tenderer scoring the highest points.

**4.80/20 preference points system for tenders for income-generating contracts with Rand value equal to or below R50 million**

(1) The following formula must be used to calculate the points for price in respect of an invitation for tender for income-generating contracts, with a Rand value equal to or below R50 million,

$$Ps = 80\left(1 - \frac{Pt - Pmax}{Pmax}\right)$$

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmax = Price of highest acceptable tender.

(2) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.

(3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

(4) Subject to section 2(1)*(f)* of the Act, the contract must be awarded to the tenderer scoring the highest points.

**5.90/10 preference point system for tenders for income-generating contracts with Rand value above R50 million**

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

$$Ps = 90 \left(1 - \frac{Pt - Pmax}{Pmax}\right)$$

Where:

Ps = Points scored for price of tender under consideration;
Pt = Price of tender under consideration; and

Pmax= Price of highest acceptable tender.

(2) A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.

(3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

(4) Subject to section 2(1)*(f)* of the Act, the contract must be awarded to the tenderer scoring the highest points.

**6. Specific goals will be allocated as follows:**

| **Historically Disadvantaged Individuals - HDI** | **80/20 Preferential Point System** | **90/10 Preferential Point System** | **Means of Verification** |
|---|---|---|---|
| | **20** | **10** | |
| **Race – people who are Black, Coloured or Indian** | **10** | **4** | **CSD report and Certified Copy of Identification Documentation** |
| **Gender - Women** | **3** | **2** | **CSD report and Certified Copy of Identification Documentation** |
| **Youth** | **4** | **2** | **CSD report and Certified Copy of Identification Documentation** |
| **Disability** | **3** | **2** | **Certified copy of Doctor's Certificate with medical practice number** |

**Suppliers are required to submit the documents listed in means of verification as per above table for points allocation during 80/20 preferential point system evaluation.**

**The specific goals allocated points will be apportioned in line with percentage on shareholding of the company.**

**Points will not be allocated on specific goals without supporting documents being attached as listed in means of verification column above.**

**53. Criteria for breaking deadlock in scoring**

(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 specific goals.
(2) If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots by the bid evaluation committee.

**54. Cancellation of tender**

11.(1) An organ of state may, before the award of a tender, cancel a tender invitation if-

(a) due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;
(b) funds are no longer available to cover the total envisaged expenditure;
(c) no acceptable tender is received; or
(d) there is a material irregularity in the tender process.

**55. Remedies**

(1) If a municipality is of the view that a tenderer submitted false information regarding a specific goal, it must—
*(a)* inform the tenderer accordingly; and
*(b)* give the tenderer an opportunity to make representations within 7 days as to why the tender may 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.

(2) After considering the representations referred to in sub-regulation (1)*(b)*, the municipality may, if it concludes that such information is false—

*(a)* disqualify the tenderer or terminate the contract in whole or in part; and
*(b)* if applicable, claim damages from the tenderer.

**56. Circulars and guidelines**

1. The National Treasury may issue-

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

**57. Annexure**

**Annexure C – Local Government Framework for Infrastructure Delivery and Procurement Management**

**58. Short title and Commencement**

Adopted by Council at its meeting held on _____ 2023.

as per Council Resolution Number _____

Signed at _____on _____ 2023.

_____

**MUNICIPAL MANAGER**