



## SUPPLY CHAIN MANAGEMENT POLICY

<b>Document Ref No:</b>	MSUKFIN/SCM/2012/05/31
<b>Revision:</b>	1.0
<b>Applicability:</b>	Msukaligwa Municipality
<b>Effective Date:</b>	
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*This policy was adopted by the **Msukaligwa Local Municipality** in terms of section 111 of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003).*



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## DEFINITIONS

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

<b>“Act”</b>	means the Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000);
<b>“All applicable taxes”</b>	includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
<b>“B-BBEE status level of contributor”</b>	means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
<b>“B-BBEE”</b>	means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
<b>“Broad-Based Black Economic Empowerment Act”</b>	MEANS THE Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
<b>“comparative price”</b>	means the price after the factors of a non-firm price and all conditional discounts that can be utilized have been taken into consideration;
<b>“competitive bid”</b>	means a bid in terms of a competitive bidding process;
<b>“competitive bidding process”</b>	means a competitive bidding process referred to in this policy;
<b>“consortium or joint venture”</b>	means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
<b>“contract”</b>	means the agreement that results from the acceptance of a tender by an organ of state;
<b>“designated sector”</b>	Means a sector, sub-sector or industry that has been designated by the Department of Trade and Industry in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content;
<b>“final award”</b>	in relation to bids or quotations submitted for a contract, means the final decision on which bid or quote to accept;
<b>“firm price”</b>	means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
<b>“formal written price quotation”</b>	means quotations referred to in this policy;
<b>“functionality”</b>	means the measurement according to predetermined norms, as set out in the tender documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a tenderer;
<b>“imported content”</b>	means that portion of the tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry;
<b>“in the service of the state”</b>	means to be – <ul style="list-style-type: none"><li> a member of –<ul style="list-style-type: none"><li>➤ any municipal council;</li><li>➤ any provincial legislature; or</li><li>➤ the National Assembly or the National Council of Provinces;</li></ul></li><li> a member of the board of directors of any municipal entity;</li></ul>

	<ul style="list-style-type: none"> <li> an official of any municipality or municipal entity;</li> <li> 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);</li> <li> a member of the accounting authority of any national or provincial public entity; or</li> <li> an employee of Parliament or a provincial legislature;</li> </ul>
<b>“list of accredited prospective providers”</b>	means the list of accredited prospective providers which a municipality or municipal entity must keep in terms of paragraph 14 of this policy;
<b>“local content”</b>	means that portion of the tender price which is not included in the imported content, provided that local manufacture does take place;
<b>“long term contract”</b>	means a contract with a duration period exceeding one year;
<b>“non-firm prices”</b>	means all prices other than “firm” prices;
<b>“other applicable legislation”</b>	means any other legislation applicable to municipal supply chain management, including – <ul style="list-style-type: none"> <li> the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);</li> <li> the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and</li> <li> the Construction Industry Development Board Act, 2000 (Act No.38 of 2000);</li> </ul>
<b>“person”</b>	includes a juristic person;
<b>“rand value”</b>	means the total estimated value of a contract in South African currency, calculated at the time of tender invitations, and includes all applicable taxes and excise duties;
<b>“Regulation”</b>	means the Local Government: Municipal Supply Chain Management Regulations;
<b>“Service provider”</b>	means an accredited service provider by the Council, of goods and services required from to time by the Council.
<b>“Sole supplier”</b>	means sole/single supplier as referred to in paragraph 36 of this policy;
<b>“sub-contract”</b>	means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
<b>“Supply Chain Management Code of Conduct”</b>	means the National Treasury’s Code of Conduct for Supply Chain Management Practitioners and other Role Players, as amended by the Council, which is part of the policy
<b>“Supply Chain Management”</b>	means systems approach to manage the entire flow of goods and services that will create and optimize value for customer in the form of products and services which specifically at satisfying customer demands
<b>“tender”</b>	means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive tendering processes or proposals;
<b>“the Act”</b>	means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);
<b>“total revenue”</b>	Bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the Government Gazette on 9 February 2007;
<b>“Treasury guidelines”</b>	means any guidelines on supply chain management issued by the Minister in terms of section 168 of the Act;
<b>“trust”</b>	means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
<b>“trustee”</b>	means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.
<b>“written quotations”</b>	means quotations referred to in paragraph 8.3.6 of this policy.

## **1. CHAPTER 1 [ESTABLISHMENT AND IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY]**

### **1.1. SUPPLY CHAIN MANAGEMENT POLICY**

- 1.1.1. The Msukaligwa Local Municipality resolves in terms of section 111 of the Act to have and implement a supply chain management policy that gives effect to –
  - 1.1.1.1. section 217 of the Constitution; and
  - 1.1.1.2. Part 1 of Chapter 11 and other applicable provisions of the Act;
  - 1.1.1.3. is fair, equitable, transparent, competitive and cost effective;
- 1.1.2. complies with –
  - 1.1.2.1. the regulatory framework prescribed in Chapter 2 of the Regulations; and
  - 1.1.2.2. any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
  - 1.1.2.3. is consistent with other applicable legislation;
  - 1.1.2.4. does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
  - 1.1.2.5. is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.
  - 1.1.2.6. The municipality may not act otherwise than in accordance with this supply chain management policy when –
    - 1.1.2.6.1. procuring goods or services;
    - 1.1.2.6.2. disposing of goods no longer needed;
    - 1.1.2.6.3. 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
  - 1.1.2.7. 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 that Act.
- 1.1.3. Subparagraphs (1.1.1) and (1.1.2) of this policy do not apply in the circumstances described in section 110 (2) of the Act except where specifically provided otherwise in this policy.

### **1.2. ADOPTION AND AMENDMENT OF THE SUPPLY CHAIN MANAGEMENT POLICY**

- 1.2.1. The accounting officer must –
  - 1.2.1.1. at least annually review the implementation of this policy; and
  - 1.2.1.2. when the accounting officer considers it necessary, submit proposals for the amendment of this policy to the council.
- 1.2.2. 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 the Regulations. The accounting officer must report any deviation from the model policy to the National Treasury and the relevant provincial treasury.
- 1.2.3. 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.
- 1.2.4. The accounting officer of a municipality must in terms of section 62(1)(f)(iv) of the Act, take all reasonable steps to ensure that the municipality has and implements this supply chain management policy.

### **1.3. DELEGATION OF SUPPLY CHAIN MANAGEMENT POWERS AND DUTIES**

- 1.3.1. The council hereby delegates such additional powers and duties to the accounting officer so as to enable the accounting officer –
- 1.3.2. to discharge the supply chain management responsibilities conferred on accounting officers in terms of –

- 1.3.2.1. Chapter 8 or 10 of the Act; and
- 1.3.2.2. the supply chain management policy;
- 1.3.3. to maximise administrative and operational efficiency in the implementation of the supply chain management policy;
- 1.3.4. 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; and
- 1.3.5. to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- 1.3.6. Sections 79 and 106 of the Act apply to the sub delegation of powers and duties delegated to an accounting officer in terms of this policy.
- 1.3.7. The council or accounting officer may not delegate or sub delegate any supply chain management powers or duties to a person who is not an official of the municipality or to a committee which is not exclusively composed of officials of the municipality.
- 1.3.8. This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this policy.

#### **1.4. SUB DELEGATIONS**

- 1.4.1. The accounting officer may in terms of section 79 or 106 of the Act sub delegate any supply chain management powers and duties, including those delegated to the accounting officer in terms of this policy, but any such sub delegation must be consistent with subparagraph (1.4.2.2) and paragraph (1.4.2.4) of this policy.
- 1.4.2. The power to make a final award –
  - 1.4.2.1. above R200 000 (VAT included) may not be sub delegated by the accounting officer;
  - 1.4.2.2. above R100 000 (VAT included), but not exceeding R200 000 (VAT included), may be sub delegated but only to:
    - 1.4.2.2.1. the chief financial officer;
    - 1.4.2.2.2. a senior manager; or
    - 1.4.2.2.3. a bid quotation committee of which the chief financial officer or a senior manager directly accountable to the CFO is a member; or
  - 1.4.2.3. not exceeding R100 000 (VAT included) may be sub delegated but only to –
    - 1.4.2.3.1. the chief financial officer;
    - 1.4.2.3.2. a senior manager;
    - 1.4.2.3.3. a manager directly accountable to the chief financial officer or a senior manager; or
    - 1.4.2.3.4. a quotation bid adjudication committee.
  - 1.4.2.4. The acquisition Committees, which solely are composed of employees, shall make decisions in accordance with their Terms of Reference. No advisor or consultant will have decision-making powers to make final awards on behalf of the council.
  - 1.4.2.5. An official or bid adjudication committee to which the power to make final awards has been sub delegated in accordance with this policy must within five days of the end of each month submit to the official referred to in subparagraph (1.4.1) of this policy a written report containing particulars of each final award made by such official or committee during that month, including–
    - 1.4.2.5.1. the amount of the award;
    - 1.4.2.5.2. the name of the person to whom the award was made; and
    - 1.4.2.5.3. the reason why the award was made to that person.

- 1.4.2.5.4. The reason for deviations in the implementation of this policy
- 1.4.2.5.5. A written report referred to in subparagraph (1.4.2.5) of this policy must be submitted – to the accounting officer, in the case of an award by –
  - 1.4.2.5.5.1. the chief financial officer;
  - 1.4.2.5.5.2. a senior manager; or
  - 1.4.2.5.5.3. a bid adjudication committee of which the chief financial officer or a senior manager is a member; or
  - 1.4.2.5.5.4. to the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by –
    - 1.4.2.5.5.4.1. a manager referred to in subparagraph (1.4.2.5.5) of this policy; or
    - 1.4.2.5.5.4.2. a bid adjudication committee of which the chief financial officer or a senior manager is not a member.
- 1.4.2.5.6. to the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by –
  - 1.4.2.5.6.1. a manager referred to in subparagraph (1.4.2.5.5) of this policy; or
  - 1.4.2.5.6.2. a bid adjudication committee of which the chief financial officer or a senior manager is not a member.
- 1.4.2.6. Subparagraphs (1.4.2) of this policy do not apply to procurements out of petty cash.
- 1.4.2.7. 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.
- 1.4.2.8. supply chain management decision-making powers may be delegated to an advisor or consultant.

## **1.5. OVERSIGHT ROLE OF COUNCIL**

- 1.5.1. The council must maintain oversight over the implementation of this supply chain management policy.
- 1.5.2. For the purposes of such oversight the accounting officer must –
  - 1.5.2.1. 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 and of any municipal entity under its sole or shared control, to the council of the municipality; and
  - 1.5.2.2. whenever there are serious and material problems in the implementation of the supply chain management policy, immediately submit a report to the council.
- 1.5.3. 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 Executive Mayor.
- 1.5.4. The reports must be made public in accordance with section 21A of the Municipal Systems Act.
- 1.5.5. The Council may require a monthly report on all bids awarded during that month.

## **1.6. SUPPLY CHAIN MANAGEMENT UNIT**

- 1.6.1. The accounting officer must establish a supply chain management unit to implement this supply chain management policy.
- 1.6.2. 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.



## 1.7. TRAINING OF SUPPLY CHAIN MANAGEMENT OFFICIALS

- 1.7.1. The training of officials involved in implementing the supply chain management policy should be in accordance with any Treasury guidelines on supply chain management training, South African Qualification Act, Skills Development Act and best practises.

## **2. CHAPTER 2 [FRAMEWORK FOR SUPPLY CHAIN MANAGEMENT]**

### **2.1. FORMAT OF SUPPLY CHAIN MANAGEMENT**

- 2.1.1. This supply chain management policy provides systems for –
- 2.1.1.1. demand management;
  - 2.1.1.2. acquisition management;
  - 2.1.1.3. logistics management;
  - 2.1.1.4. disposal management;
  - 2.1.1.5. risk management; and
  - 2.1.1.6. performance management.

### **2.2. SYSTEM OF DEMAND MANAGEMENT**

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

### **2.3. SYSTEM OF ACQUISITION MANAGEMENT**

- 2.3.1. The accounting officer must establish, through operational procedures, an effective system of acquisition management in order to ensure –
- 2.3.1.1. that goods and services are procured by the municipality or municipal entity in accordance with authorised processes only;
  - 2.3.1.2. that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
  - 2.3.1.3. that the threshold values for the different procurement processes are complied with;
  - 2.3.1.4. that bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
  - 2.3.1.5. that any Treasury guidelines on acquisition management are properly taken into account.
- 2.3.2. This supply chain management policy, except where provided otherwise in the policy, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –
- 2.3.2.1. water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
  - 2.3.2.2. electricity from Eskom or another public entity, another municipality or a municipal entity.
- 2.3.3. The following information must be made public wherever goods or services contemplated in section 110(2) of the Act are procured other than through the supply chain management system –
- 2.3.3.1. the kind of goods or services; and
  - 2.3.3.2. the name of the supplier.

### **2.4. RANGE OF PROCUREMENT PROCESSES**

- 2.4.1. The procurement of goods and services through this policy is provided by way of –
- 2.4.1.1. petty cash purchases, up to a transaction value of R1000 (VAT included);
  - 2.4.1.2. at least two written quotations for procurement of a transaction value from R1000 up to R5 000 (VAT included) for the Msukaligwa Municipality main offices and R1 000 (VAT included) for water services regions;
  - 2.4.1.3. formal written price quotations for procurements of a transaction value over R10 000 up to R200 000 (VAT included); and
  - 2.4.1.4. a competitive bidding process for–
    - 2.4.1.4.1. procurements above a transaction value of R200 000 (VAT included); and
    - 2.4.1.4.2. the procurement of long term contracts.

- 2.4.1.5. The accounting officer may, in writing; -
  - 2.4.1.5.1. lower, but not increase, the different threshold values specified in subparagraph (2.4.1.2); or
  - 2.4.1.5.2. direct that –
    - 2.4.1.5.2.1. written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000;
    - 2.4.1.5.2.2. formal written price quotations be obtained for any specific procurement of a transaction value lower than R10 000; or
    - 2.4.1.5.2.3. a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000.
- 2.4.1.6. Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the policy. When determining transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.

## 2.5. GENERAL PRECONDITIONS FOR CONSIDERATION OF WRITTEN QUOTATIONS OR BIDS

- 2.5.1. A written quotation or bid may not be considered unless the provider who submitted the quotation or bid –
  - 2.5.1.1. has furnished that provider's –
    - 2.5.1.1.1. full name;
    - 2.5.1.1.2. identification number or company or other registration number; and
    - 2.5.1.1.3. tax reference number and VAT registration number, if any;
    - 2.5.1.1.4. has authorised the municipality to obtain a tax clearance from the South African Revenue Services that the provider's tax matters are in order; and
    - 2.5.1.1.5. has indicated –
      - 2.5.1.1.5.1. whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
      - 2.5.1.1.5.2. 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
      - 2.5.1.1.5.3. whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to is in the service of the state, or has been in the service of the state in the previous twelve months.

## 2.6. LISTS OF ACCREDITED PROSPECTIVE PROVIDERS

- 2.6.1. The accounting officer must –
  - 2.6.1.1. keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements of the through written or verbal quotations and formal written price quotations; and
  - 2.6.1.2. at least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
  - 2.6.1.3. specify the listing criteria for accredited prospective providers; and
  - 2.6.1.4. disallow the listing of any prospective provider whose name appears on the National Treasury's or Provincial database as a person prohibited from doing business with the public sector.
  - 2.6.1.5. The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services.
  - 2.6.1.6. Prospective providers must be allowed to submit applications for listing at any time.

2.6.1.7. The list must be compiled per commodity and per type of service.

## **2.7. PETTY CASH PURCHASES**

2.7.1. The conditions for the procurement of goods by means of petty cash purchases referred to in point 8.3.2.1.1 of this Policy, are that minor items purchased for up to R1000 (VAT Included) where it is impractical, impossible or not cost effective to follow the official procurement process as follows-

2.7.1.1. The Chief Financial Officer will authorise officials from his/her department to keep petty cash register and to grant refunds for cash purposes or allow cash advances.

2.7.1.2. Cash advances can only be granted for out-of-pocket expenses for delegated representatives of the Municipality and upon written quotation but in all instances should a petty cash voucher be approved by the relevant departmental head.

2.7.1.3. Officially delegated persons will agree to the deduction from his/her remuneration for any cash advances of which no proof of expenditure is presented on return from the attended event.

2.7.1.4. Petty cash shall be issued by the Budget and Treasury department as and when required by departments in terms of a procedure manual.

2.7.1.5. Petty cash requests must be properly authorised and have the correct line item description. All requests must be accompanied by relevant / appropriate supporting documentation e.g. cash sale slips, receipts.

2.7.1.6. The practise of "breaking" up purchases in order to circumvent the formal procurement process is not permissible.

2.7.1.7. determining the terms on which a manager may delegate responsibility for petty cash to an official reporting to the manager;

2.7.1.8. limiting the number of petty cash purchases or the maximum amounts per month for each manager;

2.7.1.9. excluding any types of expenditure from petty cash purchases, where this is considered necessary; and-

2.7.1.9.1. requiring monthly reconciliation reports from each manager to the chief financial officer, including –

2.7.1.9.1.1. the total amount of petty cash purchases for that month; and

2.7.1.9.1.2. receipts and appropriate documents for each purchase.

## **2.8. WRITTEN QUOTATIONS**

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

2.8.1.1. that quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the municipality or municipal entity, provided that 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 this policy;

2.8.1.2. that, to the extent feasible, providers must be requested to submit such quotations in writing;

2.8.1.2.1. 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;

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

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

## **2.9. FORMAL WRITTEN PRICE QUOTATIONS**

2.9.1. The accounting officer must establish the conditions for the procurement of goods or services through formal written price quotations, which must include conditions stating –

2.9.1.1. that quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the municipality or municipal entity;

2.9.1.2. 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;

- 2.9.1.3. that if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer, and
- 2.9.1.4. that the accounting officer must record the names of the potential providers and their written quotations.

2.9.2. A designated official must within three days of the end of each month report to the chief financial officer on any approvals given during that month by that official in terms of that subparagraph.

## **2.10. PROCEDURES FOR PROCURING GOODS OR SERVICES THROUGH WRITTEN QUOTATIONS AND FORMAL WRITTEN PRICE QUOTATIONS**

- 2.10.1. 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, which must stipulate –
  - 2.10.1.1. that all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, be advertised for at least seven days on the website and an official notice board of the municipality or municipal entity;
  - 2.10.1.2. that when using the list of accredited prospective providers the accounting officer must promote ongoing competition amongst providers, including by inviting providers to submit quotations on a rotation basis;
  - 2.10.1.3. 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;
  - 2.10.1.4. 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;
  - 2.10.1.5. requirements for proper record keeping.

## **2.11. COMPETITIVE BIDDING PROCESS**

- 2.11.1. Goods or services above a transaction value of R200 000 (VAT included) and long term contracts may only be procured through a competitive bidding process, and
- 2.11.2. No requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

## **2.12. PROCESS FOR COMPETITIVE BIDDING**

- 2.12.1. The accounting officer must establish procedures for a competitive bidding process for each of the following stages:
  - 2.12.1.1. the compilation of bidding documentation;
  - 2.12.1.2. the public invitation of bids;
  - 2.12.1.3. site meetings or briefing sessions, if applicable;
  - 2.12.1.4. the handling of bids submitted in response to public invitation;
  - 2.12.1.5. the evaluation of bids;
  - 2.12.1.6. the award of contracts;
  - 2.12.1.7. the administration of contracts; and
  - 2.12.1.8. proper records keeping;
  - 2.12.1.9. Original/legal copies of written contracts/agreements should be kept in a secured place for reference purposes.

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

- 2.13.1. The accounting officer must establish the criteria to which bid documentation for a competitive bidding process must comply, which in addition to paragraph 13 of this policy, the bid documentation must –
- 2.13.2. take into account –
  - 2.13.2.1. the general conditions of contract;
  - 2.13.2.2. any Treasury guidelines on bid documentation; and
  - 2.13.2.3. the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;

- 2.13.3. include evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- 2.13.4. compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- 2.13.5. if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish–
  - 2.13.5.1. if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
    - 2.13.5.1.1. for the past three years; or
    - 2.13.5.1.2. since their establishment if established during the past three years;
  - 2.13.5.2. 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;
  - 2.13.5.3. 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;
  - 2.13.5.4. a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
  - 2.13.5.5. a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
- 2.13.6. 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.

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

- 2.14.1. The accounting officer must determine the procedure for the invitation of competitive bids, which must stipulate that:
  - 2.14.1.1. 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 or municipal entity or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and
  - 2.14.1.2. the information contained in a public advertisement, must include –
    - 2.14.1.2.1. 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, and
    - 2.14.1.2.2. a statement that bids may only be submitted on the bid documentation provided by the municipality or municipal entity.
  - 2.14.1.3. 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.
  - 2.14.1.4. Bids submitted must be sealed.
  - 2.14.1.5. Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

## **2.15. SUBMISSION OF BIDS**

- 2.15.1. Bids must be submitted before the closing time, at the address and in accordance with the directives in the bid documents.
- 2.15.2. Each bid must be in writing using non-erasable ink and must be submitted on the official form of bid/offer issued with the bid documents. Only one (1) tender offer from a bidding entity will be accepted.
- 2.15.3. The bid must be submitted in a separate sealed envelope with the name and address of the bidder, the bid number and title, the bid box number (if applicable), and the closing date indicated on the envelope. Only sealed envelopes will be accepted. The municipality will accept tenders where envelopes have been inadvertently marked with the name of the bidder.
- 2.15.4. The onus shall be on the bidder to place the sealed envelope in the official, marked and locked bid box provided for this purpose, at the designated venue not later than the closing date and time specified in the bid notice.
- 2.15.5. Postal bids will not be accepted for consideration, nor shall proof of posting of a delivery, be accepted as proof that the bids were delivered if received after the closing date.
- 2.15.6. No bids forwarded by telegram, facsimile or similar apparatus shall be considered unless stated otherwise in the bid document.
- 2.15.7. Electronic bids will not be accepted.
- 2.15.8. The bidder shall choose a *domicilium citandi et executandi* in the Republic and unless notice of change thereof has duly been given in writing, it shall be the address stated in the bid.
- 2.15.9. No person may amend or tamper with any bids or quotation after its submission.

## **2.16. TWO ENVELOPE SYSTEM**

- 2.16.1. A Two envelope system differs from a two-stage (pre-qualification) bidding process in that a technical proposal and a financial offer are submitted in separate envelopes at the same time. The financial offer will only be opened once the technical proposals have been evaluated.

## **2.17. TWO-STAGE BIDDING PROCESS**

- 2.17.1. A two-stage bidding process is allowed for –
  - 2.17.1.1. large complex projects;
  - 2.17.1.2. projects where it may be undesirable to prepare complete detailed technical specifications; or
    - 2.17.1.2.1. long term projects with a duration period exceeding three years.
  - 2.17.1.3. 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.
  - 2.17.1.4. In the second stage final technical proposals and priced bids should be invited.

## **2.18. SAMPLES**

- 2.18.1. Where samples are called for in the bid documents, samples (marked with the bid and item number as well as the bidder's name and address) shall be delivered separately (to the bid) to addressee mentioned in the bid documents by no later than the closing date and time of the bid.
- 2.18.2. Bids may not be included in the parcels containing the samples.
- 2.18.3. If samples are not submitted as required in the bid documents, then the bid concerned may be declared invalid.

- 2.18.4. Samples shall be supplied by a bidder at his/her own expenses and risk. The municipality shall be obliged to pay for such samples or compensate for the loss thereof, unless otherwise specified in the bid documents, and shall reserve the right not to return such samples and to dispose of them at its own discretion.
- 2.18.5. If a bid accepted for the supply of goods according to the sample submitted by the bidder, that sample will become the contract sample. All goods/materials supplied shall comply in all respects to that contract sample.

**2.19. PROCEDURE FOR HANDLING, OPENING AND RECORDING OF BIDS**

- 2.19.1. The accounting officer must determine the procedures for the handling, opening and recording of bids, which must stipulate that:
  - 2.19.1.1. Bids–
    - 2.19.1.1.1. must be opened only in public; and
    - 2.19.1.1.2. must be opened at the same time and as soon as possible after the period for the submission of bids has expired;
    - 2.19.1.1.3. received after the closing time should not be considered and should be returned back unopened immediately.
  - 2.19.2. Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder’s total bidding price; and
    - 2.19.2.1. The accounting officer must –
      - 2.19.2.1.1. record in a register all bids received in time;
      - 2.19.2.1.2. make the register available for public inspection; and
      - 2.19.2.1.3. publish the entries in the register and the bid results on the website.
  - 2.19.3. No information, except the provisions of this policy, relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award.

**2.20. EVALUATION OF TENDER**

**2.20.1. The 80/20 preference point system for acquisition of services, works or goods up to a Rand value of R1 million**

- 2.20.1.1. The following formula must be used to calculate the points for price in respect of tenders (including price quotations) with a Rand value equal to, or above R30 000 and up to a Rand value of R1 000 000 (all applicable taxes included):

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

Where

Ps = Points scored for comparative price of tender or offer under consideration;  
 Pt = Comparative price of tender or offer under consideration; and  
 Pmin= Comparative price of lowest acceptable tender or offer.

- 2.20.1.1.1. Organs of state may apply the formula in this policy for price quotations with a value less than R30 000, if and when appropriate:
- 2.20.1.2. Subject to a sub-regulation , points must be awarded to a tenderer for attaining the B—BBEE status level of contributor in accordance with the table below.

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

2.20.1.3. A maximum of 20 points may be allocated in accordance with sub-regulations.

2.20.1.4. The points scored by a tenderer in respect of B-BBEE contribution contemplated in this policy must be added to the points scored for price as calculated in accordance with sub-regulations.

2.20.1.5. Subject to regulation 7, the contract must be awarded to the tenderer who scores the highest total number of points.

**2.20.2. The 90/10 preference point system for acquisition of services, works or goods with a Rand value above R1 million**

2.20.2.1. The following formula must be used to calculate the points for price in respect of tenders with a Rand value above R1 000 000 (all applicable taxes included):

$$P_s = 90 \left\{ \frac{1 - P_t - P_{\min}}{P_{\min}} \right\}$$

Where

$P_s$  = Points scored for comparative price of tender or offer under consideration;  
 $P_t$  = Comparative price of tender or offer under consideration; and  
 $P_{\min}$  = Comparative price of lowest acceptable tender or offer.

2.20.2.2. Subject to sub-regulation , points must be awarded to a tenderer for attaining their B-BBEE status level of contributor in accordance with the table below:

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

2.20.2.3. A maximum of 10 points may be allocated in accordance with sub-regulations.

2.20.2.4. The points scored by a tenderer in respect of the level of B-BBEE contribution contemplated in this section must be added to the points scored for price as calculated in accordance with 2.20.2.

## 2.21. EVALUATION OF BIDS BASED ON FUNCTIONALITY AS A CRITERION

2.21.1. Bids invited on the bases of functionality as a criterion must be evaluated in two stages;

2.21.1.1. First functionality must be assessed and then in accordance with the 80/20 or 90/10 preference point system prescribed in preferential regulations 5 and 6. The evaluation must be done as follows;

### 2.21.1.1.1. First Stage – Evaluation of functionality

- 2.21.1.1.1.1. Bids must be evaluated in terms of the evaluation criteria embodied in the bid documents. The amendment of evaluation criteria, weights, applicable values and/or the minimum qualifying score for functionality after the closure of bids is not allowed as this may jeopardise the fairness of the process.
- 2.21.1.1.1.2. A bid will be considered further if it achieves the prescribed minimum qualifying score for functionality.
- 2.21.1.1.1.3. Bids that fail to achieve the minimum qualifying score for functionality must be disqualified.
- 2.21.1.1.1.4. Score sheets should be prepared and provided to panel members to evaluate the bids.
- 2.21.1.1.1.5. The score sheet should contain all the criteria and the weight for each criterion as well as the values to be applied for evaluation as indicated in the bid documents.
- 2.21.1.1.1.6. Each panel member should after thorough evaluation independently award his/her own value to each individual criterion.
- 2.21.1.1.1.7. Score sheets should be signed by panel members and if necessary, written motivation may be requested from panel members where vast discrepancies in the values awarded for each criterion exist.
- 2.21.1.1.1.8. If the minimum qualification score for functionality is indicated as a percentage in the bid documents, the percentage scored for functionality may be calculated as follows;
- 2.21.1.1.1.9. The value awarded for each criterion should be multiplied by the weight for the relevant criterion to obtain the score for the various criteria;
- 2.21.1.1.1.10. The scores for each criterion should be added to obtain the total score; and
- 2.21.1.1.1.11. The following formula should be used to convert the total score to percentage for functionality:

$$Ps = \frac{\{SO\}}{\{MS\}} \times 100$$

Where:

- Ps = Percentage scored for functionality by bid under consideration  
S0 = Total score of bid under consideration  
Ms = Maximum possible score

2.21.1.1.1.12. The percentage of each panel member should be added and divided by the number of panel members to establish the average percentage obtained by each bidder for functionality.

### 2.21.1.1.2. Second Stage – Evaluation in terms of the 80/20 or 90/10 preference point systems

2.21.1.1.2.1. Only bids that achieve the minimum qualifying score / percentage for functionality must be evaluated in accordance with the 80/20 or 90/10 percentage point systems prescribed in Preferential Procurement regulations 5 and 6.

## 2.22. AWARDING OF CONTRACTS / TENDERS

### 2.22.1. NEGOTIATIONS WITH PREFERRED BIDDERS

- 2.22.1.1. 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 –
  - 2.22.1.1.1. does not allow any preferred bidder a second or unfair opportunity;
  - 2.22.1.1.2. is not to the detriment of any other bidder; and
  - 2.22.1.1.3. does not lead to a higher price than the bid as submitted.
  - 2.22.1.1.4. Minutes of such negotiations must be kept for record purposes.
- 2.22.1.2. Only a tenderer who has completed and signed the declaration part of the tender documentation may be considered.
- 2.22.1.3. When calculating comparative prices, take into account any discounts which have been offered unconditionally. A discount which has been offered conditionally must, despite not being taken into account for evaluation purposes, be implemented when payment is effected.
- 2.22.1.4. Points scored must be rounded off to the nearest 2 decimal places.
  - 2.22.1.4.1. In the event that two or more tenders have scored equal total points, the successful tender must be the one scoring the highest number of preference points for B-BBEE.
  - 2.22.1.4.2. However, when functionality is part of the evaluation process and two or more tenders have scored equal points including equal preference points for B-BBEE, the successful tender must be the one scoring the highest score for functionality.
  - 2.22.1.4.3. Should two or more tenders be equal in all respects, the award shall be decided by the drawing of lots.

## 2.23. SUB CONTRACTING

- 2.23.1. A bidder must not be awarded the points claimed for B-BBEE Status Level of contribution if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the contract value to any other enterprise that does not qualify for at least the same number of points that the bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 2.23.2. A contractor is not allowed to sub-contract more than 25% of the contract value to another enterprise that does not have equal or higher B-BBEE status level, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 2.23.3. In relation to a designated sector, a contractor must not be allowed to sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

## 2.24. CANCELLATION AND RE-INVITATION OF TENDERS

- 2.24.1. In the event that, in the application of the 80/20 preference point system as stipulated in the tender documents, all tenders received exceed the estimated Rand value of R1 000 000, the tender invitation must be cancelled.
  - 2.24.1.1. If one or more of the acceptable tenders received are within the prescribed threshold of R1 000 000, all tenders received must be evaluated on the 80/20 preference point system.
- 2.24.2. In the event that, in the application of the 90/10 preference point system as stipulated in the tender documents, all tenders received are equal to, or below R1 000 000, the tender must be cancelled.
  - 2.24.2.1. If one or more of the acceptable tenders received are above the prescribed threshold of R1 000 000, all tenders received must be evaluated on the 90/10 preference point system.
- 2.24.3. An organ of state which has cancelled a tender invitation as contemplated in this policy must re-invite tenders and must, in the tender documents, stipulate the correct preference point system to be applied.
- 2.24.4. An organ of state may, prior to the award of a tender, cancel a tender if-
  - 2.24.4.1. due to changed circumstances, there is no longer a need for the services, works or goods requested; or
  - 2.24.4.2. are no longer available to cover the total envisaged expenditure; or
  - 2.24.4.3. no acceptable tenders are received.

2.24.5. The decision to cancel a tender in terms of this policy must be published in the Government Tender Bulletin or the media in which the original tender invitation was advertised.

## **2.25. COMMITTEE SYSTEM FOR COMPETITIVE BIDS**

2.25.1. The accounting officer is required to –

- 2.25.1.1. establish a committee system for competitive bids consisting of at least –
  - 2.25.1.1.1. a bid specification committee;
  - 2.25.1.1.2. a bid evaluation committee; and
  - 2.25.1.1.3. a bid adjudication committee;
  - 2.25.1.1.4. a disposal committee
  - 2.25.1.1.5. a quotation committee
- 2.25.1.2. appoint the members of each committee, taking into account section 117 of the Act; and
- 2.25.1.3. 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.
- 2.25.1.4. The committee system must be consistent with –
  - 2.25.1.4.1. paragraph 27, 28 and 29 of this policy; and
  - 2.25.1.4.2. any other applicable legislation.
  - 2.25.1.4.3. The accounting officer may apply the committee system to formal written price quotations.

### **2.25.2. BID SPECIFICATION COMMITTEES**

- 2.25.2.1. The bid specification committee must compile the specifications for each procurement of goods or services by the municipality or municipal entity.
- 2.25.2.2. Specifications –
  - 2.25.2.2.1. must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
  - 2.25.2.2.2. 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;
  - 2.25.2.2.3. where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
  - 2.25.2.2.4. 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;
  - 2.25.2.2.5. 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”;
  - 2.25.2.2.6. must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2001; and
  - 2.25.2.2.7. must be approved by the accounting officer prior to publication of the invitation for bids in terms of paragraph 22 of this policy.
  - 2.25.2.2.8. The bid specification committee must be composed of one or more officials of the municipality or municipal entity, preferably the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.
  - 2.25.2.2.9. 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.

### 2.25.3. BID EVALUATION COMMITTEES

- 2.25.3.1. The bid evaluation committee must –
  - 2.25.3.1.1. evaluate bids in accordance with –
  - 2.25.3.1.2. the specifications for a specific procurement; and
  - 2.25.3.1.3. the points system set out in terms of this policy;
  - 2.25.3.1.4. evaluate each bidder's ability to execute the contract;
  - 2.25.3.1.5. check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, and;
  - 2.25.3.1.6. submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
  
- 2.25.3.2. The bid evaluation committee must as far as possible be composed of –
  - 2.25.3.2.1. officials from departments requiring the goods or services; and
  - 2.25.3.2.2. at least one supply chain management practitioner of the municipality.

### 2.25.4. BID ADJUDICATION COMMITTEES

- 2.25.4.1. The bid adjudication committee must –
  - 2.25.4.1.1. consider the report and recommendations of the bid evaluation committee; and either –
    - 2.25.4.1.1.1. depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or
    - 2.25.4.1.1.2. make another recommendation to the accounting officer how to proceed with the relevant procurement.
  
- 2.25.4.2. The bid adjudication committee must consist of at least four senior managers of the municipality or municipal entity which must include –
  - 2.25.4.2.1. the chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer; and
  - 2.25.4.2.2. at least one senior supply chain management practitioner who is an official of the municipality; and
  - 2.25.4.2.3. a technical expert in the relevant field who is an official, if such an expert exists.
  - 2.25.4.2.4. 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.
  - 2.25.4.2.5. 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.
  - 2.25.4.2.6. If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –
    - 2.25.4.2.6.1. check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;
    - 2.25.4.2.6.2. notify the accounting officer.
  
- 2.25.4.3. The accounting officer may –
  - 2.25.4.3.1. after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in this policy; and
  - 2.25.4.3.2. if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
  
- 2.25.4.4. 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.

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

#### **2.25.5. BID DISPOSAL COMMITTEE**

- 2.25.5.1. The bid disposal committee must –
  - 2.25.5.1.1. evaluate bids in accordance with –
    - 2.25.5.1.1.1. the specifications for a specific procurement; and
    - 2.25.5.1.1.2. the points system set out in terms of this policy;
  - 2.25.5.1.2. evaluate each bidder's ability to execute the contract;
  - 2.25.5.1.3. check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, and;
  - 2.25.5.1.4. submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
- 2.25.5.2. The bid disposal committee must as far as possible be composed of –
  - 2.25.5.2.1. officials from departments requiring the goods or services;
  - 2.25.5.2.2. supply chain management practitioner of the municipality.
  - 2.25.5.2.3. Asset manager of the Municipality

#### **2.25.6. BID QUOTATION COMMITTEE**

- 2.25.6.1. The bid quotation committee must –
  - 2.25.6.1.1. evaluate bids in accordance with –
    - 2.25.6.1.1.1. the specifications for a specific procurement; and
    - 2.25.6.1.1.2. the points system set out in terms of this policy;
  - 2.25.6.1.2. evaluate each bidder's ability to execute the contract;
  - 2.25.6.1.3. check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, and;
  - 2.25.6.1.4. submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
- 2.25.6.2. The bid quotation committee must as far as possible be composed of –
  - 2.25.6.2.1. officials from departments requiring the goods or services;
  - 2.25.6.2.2. supply chain management practitioner of the municipality.

#### **2.26. PROCUREMENT OF BANKING SERVICES**

- 2.26.1. Banking services –
  - 2.26.1.1. must be procured through competitive bids;
  - 2.26.1.2. must be consistent with section 7 or 85 of the Act; and
  - 2.26.1.3. may not be for a period of more than five years at a time.
- 2.26.2. The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.
- 2.26.3. 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 this policy. Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

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

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

- 2.27.2. Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.
- 2.27.3. The accounting officer must notify SITA together with a motivation of the IT needs if –
  - 2.27.3.1. the transaction value of IT related goods or services required in any financial year will exceed R50 million (VAT included); or
  - 2.27.3.2. the transaction value of a contract to be procured whether for one or more years exceeds R50 million (VAT included).
- 2.27.4. If SITA comments on the submission and the municipality disagrees 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.

## **2.28. PROCUREMENT OF GOODS AND SERVICES UNDER CONTRACTS SECURED BY OTHER ORGANS OF STATE**

- 2.28.1. The accounting officer may procure goods or services under a contract secured by another organ of state, but only if-
  - 2.28.1.1. the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
  - 2.28.1.2. there is no reason to believe that such contract was not validly procured;
  - 2.28.1.3. there are demonstrable discounts or benefits to do so; and
  - 2.28.1.4. that other organ of state and the provider have consented to such procurement in writing.
- 2.28.2. Subparagraph (2.28.1) do not apply if –
  - 2.28.2.1. a municipal entity procures goods or services through a contract secured by its parent municipality; or
  - 2.28.2.2. a municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.

## **2.29. PROCUREMENT OF GOODS NECESSITATING SPECIAL SAFETY ARRANGEMENTS**

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

## **2.30. PROCUREMENT FROM TRUST**

- 2.30.1. A trust, consortium or joint venture will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 2.30.2. A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate tender.

## **2.31. PROCUREMENT FROM TERTIARY INSTITUTIONS**

- 2.31.1. When an organ of state is in need of a service provided by only tertiary institutions, such services must be procured Through;
  - 2.31.1.1. A tendering process from the identified tertiary institutions.
- 2.31.2. Tertiary institutions referred to in sub-regulation (11) will be required to submit their B-BBEE status in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 2.31.3. Should an organ of state require a service that can be provided by one or more tertiary institutions or public entities and enterprises from the private sector, the appointment of a contractor must be done by means of a tendering process;

2.31.4. Public entities will be required to submit their B-BBEE status in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

## **2.32. APPOINTMENT OF CONSULTANTS**

2.32.1. 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.

2.32.2. Consultancy services must be procured through competitive bids if–  
2.32.2.1. the value of the contract exceeds R200 000 (VAT included); or  
2.32.2.2. the duration period of the contract exceeds one year.

2.32.3. In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of –  
2.32.3.1. all consultancy services provided to an organ of state in the last five years; and  
2.32.3.2. any similar consultancy services provided to an organ of state in the last five years.

2.32.4. The accounting officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the municipality.

## **2.33. DEVIATION FROM, AND RATIFICATION OF MINOR BREACHES OF, PROCUREMENT PROCESSES**

2.33.1. The accounting officer may –  
2.33.1.1. dispense with the official procurement processes established by this policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only –  
2.33.1.1.1. in an emergency;  
2.33.1.1.2. if such goods or services are produced or available from a single provider only;  
2.33.1.1.3. for the acquisition of special works of art or historical objects where specifications are difficult to compile;  
2.33.1.1.4. acquisition of animals for zoos and/or nature and game reserves; or  
2.33.1.1.5. in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and  
2.33.1.1.6. ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.  
2.33.1.1.7. Repairs and maintenance e.g strip and quotes

2.33.2. The accounting officer must record the reasons for any deviations in terms of subparagraphs (1)(a) and (b) of this policy and report them to the next meeting of the council and include as a note to the annual financial statements.

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

## **2.34. EMERGENCY**

2.34.1. The conditions warranting emergency dispensation should include the existence of one or more of the following –  
2.34.1.1. The possibility of human injury or death;  
2.34.1.2. The prevalence of human suffering or deprivation of rights;  
2.34.1.3. The interruption of essential services, including transport and communication facilities or support services critical to the effective functioning of the municipality as a whole;  
2.34.1.4. The possibility of serious damage occurring to the natural environment  
2.34.1.5. The possibility that failure to take necessary action may result in the municipality not being able to render essential community services; and  
2.34.1.6. The possibility that the security of the state could be compromised.



- 2.34.2. The prevailing situation, or imminent danger, should be of such a scale and nature that it could not readily be alleviated by interim measures, in order to allow time for the formal procurement process. Emergency dispensation shall not be granted in respect of circumstances other than those contemplated above.
- 2.34.3. Where possible, in an emergency situation, three quotes in accordance with general acquisition management principles should be obtained and a report submitted to the Accounting Officer of Chief Financial officer for approval. However where time is of essence, the emergency shall be immediately addressed and the process formalised in a report to the Accounting Officer as soon as possible

## 2.35. PROUDLY SA CAMPAIGN

- 2.35.1. Msukaligwa Municipality supports the Proudly SA Campaigns to the extent that, all things being equal, preference is given to procuring local goods and services from;
  - 2.35.1.1. **Firstly:** Suppliers and Businesses within the municipality or district to cater 80% Local Economic Advancement in terms of tenders and quotations and 20% of services be procured externally.
  - 2.35.1.2. **Secondly:** Suppliers and Businesses within the relevant province.
  - 2.35.1.3. **Thirdly:** Suppliers and Businesses within the Republic of South Africa.
- 2.35.2. This Section also applies to general construction contracts/tenders by local bidders.
- 2.35.3. Msukaligwa Municipality supports the EPWP initiative.
  - 2.35.3.1. Preference will be given to bidders who will ensure the implementation of EPWP in their contracts.

## 2.36. UNSOLICITED BIDS

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

- 2.36.6. When considering the matter, the adjudication committee must take into account –
  - 2.36.6.1. any comments submitted by the public; and
  - 2.36.6.2. any written comments and recommendations of the National Treasury or the relevant provincial treasury.
- 2.36.7. If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the accounting officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.
- 2.36.8. Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality to the bid may be entered into or signed within 30 days of the submission.

### 3. CHAPTER 3: Logistics, Disposal, Risk and Performance Management

#### 3.1. LOGISTICS MANAGEMENT

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

#### 3.2. DISPOSAL MANAGEMENT

3.2.1. The accounting officer must establish an effective system of disposal management for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act, which must stipulate the following:

3.2.2. The disposal of assets must–

3.2.2.1. be by one of the following methods –

- 3.2.2.1.1. transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
- 3.2.2.1.2. transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
- 3.2.2.1.3. selling the asset; or
- 3.2.2.1.4. destroying the asset;

3.2.2.2. provided that –

- 3.2.2.2.1. immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
- 3.2.2.2.2. 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;
- 3.2.2.2.3. in the case of the free disposal of computer equipment, the provincial department of education must first be approached to indicate within 30 days whether any of the local schools are interested in the equipment; and
- 3.2.2.2.4. in the case of the disposal of firearms, the National Conventional Arms Control Committee has approved any sale or donation of firearms to any person or institution within or outside the Republic;

3.2.2.3. furthermore ensure that –

- 3.2.2.3.1. immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise; and
- 3.2.2.3.2. all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed; and

3.2.2.4. ensure that where assets are traded in for other assets, the highest possible trade-in price is negotiated.

#### 3.3. RISK MANAGEMENT

3.3.1. The criteria for the identification, consideration and avoidance of potential risks in the supply chain management system, are as follows–

- 3.3.1.1. non compliance by the supplier to deliver within the agreed timeframes;
- 3.3.1.2. supply of inferior goods or services by the supplier;
- 3.3.1.3. inability of the supplier to provide goods or services as ordered;
- 3.3.1.4. non adherence to the municipality policy with regards to utilization of preferred suppliers; and
- 3.3.1.5. procurement of goods or services at prices or of a quality not in the best interest of the municipality.

- 3.3.2. Risk management must include –
- 3.3.2.1. the identification of risks on a case-by-case basis;
  - 3.3.2.2. the allocation of risks to the party best suited to manage such risks;
  - 3.3.2.3. acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
  - 3.3.2.4. the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
  - 3.3.2.5. the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

#### **3.4. PERFORMANCE MANAGEMENT**

- 3.4.1. 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 were followed and whether the desired objectives were achieved.

## 4. CHAPTER 4: Other matters

### 4.1. PROHIBITION ON AWARDS TO PERSONS WHOSE TAX MATTERS ARE NOT IN ORDER

- 4.1.1. The accounting officer must ensure that, irrespective of the procurement process followed, no award above R15 000 is given to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- 4.1.2. Before making an award to a person the accounting person must first check with SARS whether that person's tax matters are in order.
- 4.1.3. If SARS does not respond within 7 days such person's tax matters may for purposes of subparagraph 10.1.1 be presumed to be in order.

### 4.2. COMBATING OF ABUSE OF SUPPLY CHAIN MANAGEMENT SYSTEM

- 4.2.1. The accounting officer must establish measures for the combating of abuse of the supply chain management system, which must stipulate the following:
  - 4.2.2. The accounting officer must–
    - 4.2.2.1. take all reasonable steps to prevent abuse of the supply chain management system;
    - 4.2.2.2. investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this supply chain management policy, and when justified –
      - 4.2.2.2.1. take appropriate steps against such official or other role player; or
      - 4.2.2.2.2. report any alleged criminal conduct to the South African Police Service;
    - 4.2.2.3. 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;
    - 4.2.2.4. reject any bid from a bidder–
      - 4.2.2.4.1. if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality, or to any other municipality or municipal entity, are in arrears for more than three months; or
      - 4.2.2.4.2. 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;
    - 4.2.2.5. 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;
    - 4.2.2.6. cancel a contract awarded to a person if –
      - 4.2.2.6.1. the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
      - 4.2.2.6.2. 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
    - 4.2.2.7. reject the bid of any bidder if that bidder or any of its directors –
      - 4.2.2.7.1. has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;
      - 4.2.2.7.2. has been convicted for fraud or corruption during the past five years;
      - 4.2.2.7.3. has wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
      - 4.2.2.7.4. has been listed in the Register for Tender Defaulters in terms section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).

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

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

4.3.1. The accounting officer must ensure that irrespective of the procurement process followed, no award may be given to a person –

- 4.3.1.1. who is in the service of the state; or
- 4.3.1.2. 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
- 4.3.1.3. a person who is an advisor or consultant contracted with the municipality or municipal entity.

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

4.4.1. The notes to the annual financial statements must disclose particulars of any award of more than R2000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –

- 4.4.1.1. the name of that person;
- 4.4.1.2. the capacity in which that person is in the service of the state; and
- 4.4.1.3. the amount of the award.

#### **4.5. ETHICAL STANDARDS**

4.5.1. A code of ethical standards is hereby established, in accordance with subparagraph (2), for officials and other role players in the supply chain management system in order to promote–

- 4.5.1.1. mutual trust and respect; and
- 4.5.1.2. an environment where business can be conducted with integrity and in a fair and reasonable manner.

4.5.2. An official or other role player involved in the implementation of the supply chain management policy –

- 4.5.2.1. must treat all providers and potential providers equitably;
- 4.5.2.2. may not use his or her position for private gain or to improperly benefit another person;
- 4.5.2.3. may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
- 4.5.2.4. notwithstanding subparagraph (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;
- 4.5.2.5. 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;
- 4.5.2.6. 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;
- 4.5.2.7. must be scrupulous in his or her use of property belonging to the municipality;
- 4.5.2.8. must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
- 4.5.2.9. must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including–
  - 4.5.2.9.1. any alleged fraud, corruption, favouritism or unfair conduct;
  - 4.5.2.9.2. any alleged contravention of paragraph 47(1) of this policy; or
  - 4.5.2.9.3. any alleged breach of this code of ethical standards.

4.5.3. Declarations in terms of subparagraphs (2)(d) and (e) –

- 4.5.3.1. must be recorded in a register which the accounting officer must keep for this purpose;
- 4.5.3.2. by the accounting officer must be made to the mayor of the municipality who must ensure that such declarations are recorded in the register.

4.5.4. 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.

- 4.5.5. It is recommended that the municipality or municipal entity adopt the National Treasury's code of conduct for supply chain management practitioners and other role players involved in supply chain management. When adopted, such code of conduct becomes binding on all officials and other role players involved in the implementation of the supply chain management policy of the municipality or municipal entity. A copy of the National Treasury code of conduct is available on the website [www.treasury.gov.za/mfma](http://www.treasury.gov.za/mfma) located under "legislation". This code of conduct must be adopted by council.
- 4.5.6. A breach of the code of conduct adopted by the municipality must be dealt with in accordance with schedule 2 of the Systems Act.

#### **4.6. INDUCEMENTS, REWARDS, GIFTS AND FAVOURS TO MUNICIPALITIES, OFFICIALS AND OTHER ROLE PLAYERS**

- 4.6.1. No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
- 4.6.1.1. any inducement or reward to the municipality for or in connection with the award of a contract; or
  - 4.6.1.2. any reward, gift, favour or hospitality to –
    - 4.6.1.2.1. any official; or
    - 4.6.1.2.2. any other role player involved in the implementation of the supply chain management policy.
- 4.6.2. The accounting officer must promptly report any alleged contravention of subparagraph 10.1.1 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.
- 4.6.3. Subparagraph 10.6.1.1 does not apply to gifts less than R350 in value.

#### **4.7. SPONSORSHIPS**

- 4.7.1. The accounting officer must promptly disclose to the National Treasury and the relevant provincial treasury any sponsorship promised, offered or granted, whether directly or through a representative or intermediary, by any person who is –
- 4.7.1.1. a provider or prospective provider of goods or services; or
  - 4.7.1.2. a recipient or prospective recipient of goods disposed or to be disposed.

#### **4.8. OBJECTIONS AND COMPLAINTS**

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

#### **4.9. RESOLUTION OF DISPUTES, OBJECTIONS, COMPLAINTS AND QUERIES**

- 4.9.1. The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes –
- 4.9.1.1. to assist in the resolution of disputes between the municipality and other persons regarding –
    - 4.9.1.1.1. any decisions or actions taken in the implementation of the supply chain management system; or
    - 4.9.1.1.2. any matter arising from a contract awarded in the course of the supply chain management system; or
  - 4.9.1.2. to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.
- 4.9.2. 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.
- 4.9.3. The person appointed must –
- 4.9.3.1. strive to resolve promptly all disputes, objections, complaints or queries received; and

- 4.9.3.2. submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.
- 4.9.4. A dispute, objection, complaint or query may be referred to the relevant provincial treasury if –
  - 4.9.4.1. the dispute, objection, complaint or query is not resolved within 60 days; or
  - 4.9.4.2. no response is forthcoming within 60 days.
- 4.9.5. If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.
- 4.9.6. This paragraph must not be read as affecting a person's rights to approach a court at any time.

#### **4.10. REMEDIES FOR B-BBEE**

- 4.10.1. An organ of state must, upon detecting that-
  - 4.10.1.1. the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis; or
  - 4.10.1.2. any of the conditions of the contract have not been fulfilled, Act against the tenderer or person awarded the contract.
- 4.10.2. An organ of state may, in addition to any other remedy it may have against the person contemplated in sub-regulations (1) –
  - 4.10.2.1. disqualify the person from the tendering process;
  - 4.10.2.2. recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - 4.10.2.3. cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - 4.10.2.4. restrict the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
  - 4.10.2.5. forward the matter for criminal prosecution.

#### **4.10.3. EME B-BBEE STATUS LEVEL CERTIFICATES ISSUED BY AUDITOR / ACCOUNTING OFFICERS AS CONTEMPLATED IN THE CLOSE CORPORATION ACT**

- 4.10.3.1. Certificates issued by an Auditor or Accounting Officer will be issued in his or her letterhead with the practice number and contact number clearly specified on the face of the certificates.
- 4.10.3.2. When confirming the validity of such a certificate, and as a minimum requirement, the following should be detailed on the face of the certificate:
  - 4.10.3.2.1. The Auditor's / Accounting Officer's letter head with full contact details;
  - 4.10.3.2.2. The Auditor's / Accounting Officer's practice numbers;
  - 4.10.3.2.3. The name and the physical location of the measured entity;
  - 4.10.3.2.4. The name and / or logo of the verification agency;
  - 4.10.3.2.5. The certificate must be signed by the authorised person from the Verification Agency.
  - 4.10.3.2.6. The registration number and, where applicable, the VAT number of the measured entity;
  - 4.10.3.2.7. The date of issue and the date of expiry;
  - 4.10.3.2.8. The certificate number for identification and reference;
  - 4.10.3.2.9. The scorecard that was used (for example EME, QSE or Generic);
  - 4.10.3.2.10. The B-BBEE Status Level of Contribution obtained by the measured entity; and
  - 4.10.3.2.11. The total black shareholding and total black female shareholding.

#### **4.10.4. EME B-BBEE STATUS LEVEL CERTIFICATES ISSUED BY VERIFICATION AGENCIES ACCREDITED BY THE SANAS**

- 4.10.4.1. In the past, the issuance of B-BBEE Status Level Certificates in respect of EMEs did not form part of the SANAS accreditation scope. SANAS accredited Verification were, therefore, not permitted to use the SANAS symbol (Logo) on EME B-BBEE Status Level Certificates.



- 4.10.4.2. In the light of Preferential Procurement Regulations, 2011 which came into effect on 7 December 2011 and its implementation Guide, issued by the National Treasury as part of Supply Chain Management (SCM) Circular dated 1 December 2011, it has become mandatory for the SANAS symbol (logo) to appear on the EME certificates. This is as a result of a greater need to provide certainty on the validity of EME B-BBEE Status Level Certificates issued.
- 4.10.4.3. AOs / AAs are , therefore, provided with the following guidance on the issuance and validation of EME B-BBEE Status Level Certificates issued by SANAS accredited Certification Agencies.
- 4.10.4.4. AOs / AAs are required to ensure that all EME B-BBEE Status Level Certificates issued by SANAS Accredited Verification Agencies on or after 1 March 2012 bear the SANAS symbol (logo) on the face of certificates.
- 4.10.4.5. EME B-BBEE Status Level Certificates issued by SANAS accredited Verification Agencies prior to 1 March 2012 and which do not bear the SANAS symbol (logo) are acceptable as evidence of their B-BBEE rating. AAs / AOs are, however, required to confirm the validity of the certificate by tracing the name of the issuing Verification Agency to the list of SANAS Accredited Agencies. This list is accessible on <http://www.sanas.co.za>
- 4.10.4.6. Further guidance on the use of the SANAS symbol (logo) will be communicated by the SANAS directly to Verification Agencies.

#### **4.10.5. VERIFICATION AGENCIES ACCREDITED BY SANAS**

- 4.10.5.1. These certificates are identifiable by a SANAS logo and a unique BVA number.
- 4.10.5.2. The relevant BVA may be contacted to confirm whether such a certificate was issued.

#### **4.11. CONTRACTS PROVIDING FOR COMPENSATION BASED ON TURNOVER**

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

#### **4.12. BIDDERS COMMITMENTS**

- 4.12.1. All prospective bidders of the Municipality must –
  - 4.12.1.1. Declare to abide to the mission and vision of Msukaligwa and must assist the municipality to realize and meets its objective.
  - 4.12.1.2. After an award of any contract more than R200 000.00 may voluntary commit itself to a social responsibility program, but the Accounting Officer must ensure compliance with clause 48 of this policy.
  - 4.12.1.3. Ensure and promote good relationship with all structures established in terms of municipal processes and the Municipal System and Municipal Structures Act.
  - 4.12.1.4. Promote the employment of local people, reimburse their services taking into consideration the minimum standards set by the Department of Labour through the Sectoral Determination Act.

#### **4.13. CHECKING THE LIST OF RESTRICTED SUPPLIERS**

- 4.13.1. The Accounting Officer must verify the status of the recommended bidder with the National Treasury prior to awarding a contract.
- 4.13.2. A response will be provided generally within one (1) working day confirming whether the name provided has been listed as a person or company prohibited from doing business with the public sector –
  - 4.13.2.1. The above request shall be forwarded by e-mail to [restrictions@treasurer.gov.za](mailto:restrictions@treasurer.gov.za)
  - 4.13.2.2. Under no circumstances shall a contract be awarded to a service provider whose name appears on the treasury defaulters register.

#### **4.14. REGISTER FOR THE TENDER DEFAULTERS**

- 4.14.1. The Accounting Officer must keep register of service providers that have defaulted with the Municipality in the past stating reasons for defaulting in terms of the Prevention and Combating Activities Act No 12 of 2004.

- 4.14.1.1. The Accounting Officer must reject any bid if that bidder or any of its directors has been listed in the register for tender defaulters of treasury.
- 4.14.1.2. This register determines the period (which may not be less than three years or more than five years) for which the convicted persons or enterprises must be prohibited from doing business with the public sector.
  - 4.14.1.2.1. If the period determined by the register has elapsed the convicted company or person would be permitted to doing business with the public sector.

#### **4.15. COMMENCEMENT**

- 4.15.1. This policy takes effect on the date on which it is adopted by the Council.