

# POLICY DOCUMENT

## POLICY F1.09



# CITY OF UMHLATHUZE

## SUPPLY CHAIN MANAGEMENT

# U姆HLATHUZE SUPPLY CHAIN MANAGEMENT POLICY

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## PREAMBLE

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- Section 111 of the Municipal Finance Management Act requires each municipality and municipal entity to adopt and implement a supply chain management policy, which gives effect to the requirements of the Act.
- In addition, the Preferential Procurement Policy Framework Act requires an Organ of State to determine its Preferential Procurement Policy and to implement it within the framework prescribed. This requirement is given effect to in the Preferential Procurement section of this Policy.

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## OBJECTIVES OF THE POLICY

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The principal objectives of the Council of uMhlathuze is to provide a mechanism to ensure sound, sustainable and accountable supply chain management within the City of uMhlathuze, whilst promoting black economic empowerment, "Local Content" which will be defined to specify businesses operating within the City of uMhlathuze which includes but not solely confined to achieving the following socio-economic principles:

- To stimulate and promote Local Economic Development in a targeted and focused manner;
- To promote resource efficiency and greening;
- To facilitate creation of employment and business opportunities for the people of uMhlathuze with particular reference to Historically Disadvantaged Individual's (HDIs) as cited in section 217 (2) of the Constitution of the Republic of South Africa Act 106 of 1996 ;
- To promote Local Content and the competitiveness of local businesses operating within the City of uMhlathuze;
- To increase the small business sector access, in general, to procurement business opportunities created by Council;
- To increase participation by small, medium and micro enterprises (SMME's), including cooperatives and
- To promote joint venture partnerships with businesses operating within the City of uMhlathuze.
- Foreign company with a partnership with the local company where the local company holds not less than 40% share on the project.
- To spend a minimum of 40% (forty percent) of its annual procurement budget with Historically Disadvantaged Individuals (HDIs) youth, women, people

disabilities within the jurisdiction of the City of uMhlatuze, through the application of Preferential Procurement Policy and relevant policies.

- 40% Youth
  - 40% Women
  - 20% People living with disabilities
- Sub-contracting to a maximum of 25% on contracts of the approved budget per department. The 25% would be allocated to local black emerging contractor(s), local youth emerging contractor(s) inclusive of women and contractors of people with disabilities and co-operatives.]

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## 1. DEFINITIONS

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

**“Accounting Officer”** means the Municipal Manager or his delegate;

**“Adjudication points”**: means the points for price and points for B-BBEE contribution referred to in the Preferential Procurement Regulations, 2011 and the Preferential Procurement section of this policy, also referred to as “evaluation points”.

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

**“Artificial person”** means a legal entity, not a human being, recognized as a person in law to whom certain legal rights and duties may attached - e.g. a body corporate

**“Asset”**: means a tangible or intangible resource capable of ownership

**“B-BBEE Status Level of Contributor”**: means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.

**“Bid”**: means a written offer in a prescribed or stipulated form in response to an invitation by the City for the provision of goods, services or construction works through price quotations, advertised competitive bidding processes or proposals.

**“Bidder”**: means any person submitting a competitive bid or a quotation

**“Broad-Based Black Economic Empowerment (BBBEE) Act”**: means the Broad-Based Black Economic Empowerment Act, 53 of 2003 and Codes of Good Practice pertaining thereto.

**“Capital Asset”**: means:

- (a) any immovable asset such as land, property or buildings; or
- (b) any movable asset that can be used continuously or repeatedly for more than one year in the production or supply of goods or services, for rental to others or for administrative purposes, and from which future benefit can be derived, such as plant, machinery and equipment

**“Central Supplier Database”**: means the South African Government single web based Central Supplier Database (CSD) for the registration of prospective suppliers to assist in performing validation functions of key supplier information.

**“City”**: means the City of uMhlathuze or any person(s) or committee delegated with the authority to act on its behalf.

**“Chief financial officer”** means a person designated in terms of section 80 (2) (a) of the Municipal Finance Management Act;

**“Closing Time”**: means the time and day specified in the bid documents for the receipt of bids and the official watch will be that of the municipality or municipal official.

**“Community Based Vendor”**: means a supplier of goods, services and/or construction works who resides in a target area or community, who meets the criteria for community based vendors as determined by the Manager: Supply Chain Management from time to time, and who is registered as such on the Council’s Supplier database.

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

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

**“Competitive bidding process”** means a call for supply of goods and services, the receipt of offers for supply thereof from qualifying Vendors and the evaluation of offers received;

**“Construction Industry Development Board (CIDB) Act”**: means the Construction Industry Development Board Act, 38 of 2000 and includes the regulations pertaining thereto.

**“Construction Works”**: means any work in connection with:

- (a) the erection, maintenance, alteration, renovation, repair, demolition or dismantling of or addition to a building or any similar structure;
- (b) the installation, erection, dismantling or maintenance of a fixed plant;
- (c) the construction, maintenance, demolition or dismantling of any bridge, dam, canal, road, railway, sewer or water reticulation system or any similar civil engineering structure; or
- (d) the moving of earth, clearing of land, the making of an excavation, piling or any similar type of work.

**“Consortium”**: also referred to as a “Joint Venture”

**“Consultant”**: means a person or entity providing services requiring knowledge based expertise, and includes professional service providers.



**“Contract”**: means the agreement which is concluded when the Council accepts, in writing, a bid or quote submitted by a provider

**“Contractor”**: means any person or entity whose bid or quote has been accepted by the Council.

**“Contract participation goal”**: the value of the participation of a specific target group that a contractor must achieve in the performance of a contract, expressed as a percentage of the bid sum less provisional sums, contingencies and VAT.

**“Co-operative”** mean a group of people acting together to meet the common needs and aspirations of its members, sharing ownership and profits making decisions democratically as espouse by national government to give work to such formation.

**“Day(s)”**: means calendar days unless the context indicates otherwise.

**“Delegated Authority”**: means any person or committee delegated with authority by the City in terms of the provisions of the Municipal Finance Management Act.

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

**“Emergency”** means a situation which is life threatening, and/or there is death and/or serious damage to property, and/or serious imminent loss to Council.

**“Evaluation of Bids”**: in respect of bids that exceed R200 000, shall be deemed to take place when the Bid Evaluation Committee meets to make a recommendation to the Bid Adjudication Committee.

**“Evaluation Points”**: also referred to as “Adjudication Points”

**“Exempted Capital Asset”**: means a municipal capital asset which is exempted by section 14(6) or 90(6) of the MFMA from the other provisions of that section.

**“Exempted Micro Enterprise”**: means a bidder with an annual total revenue of R5 million or less (in terms of the Broad-Based Black Economic Empowerment Act).

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

**“Firm Price”**: means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of 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.

**“Formal written price quotation”** “Written Price Quotation”, “Quotation” or “Quote”: means a written or electronic offer to the municipality in response to an invitation to submit a quotation.

**“Functionality”**: is the measure, according to predetermined criteria which must be measurable, of the suitability of a proposal, design or product for the use for which it is intended, and may also include a measure of the competency of a supplier. “Functionality” is also referred to as “Quality”.

**“Granting of Rights”**: means the granting by the Council of the right to use, control or manage capital assets in circumstances where sections 14 and 90 of the MFMA and Chapters 2 and 3 of the Municipal Asset Transfer Regulations do not apply. In other words, where the granting of such rights does not amount to “transfer” or “disposal” of the asset and which includes leasing, letting, hiring out, etc., of the capital asset.

**“Green Procurement”**: is defined as taking into account environmental criteria for goods and services to be purchased in order to ensure that the related environmental impact is minimized.

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

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

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

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

**“Joint Venture or Consortium”**: means an association of persons/companies/close corporations/firms formed for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract or contracts. The Joint Venture must be formalised by agreement between the parties.

**“Local Content”**: means that the portion of the bid price which is not included in the imported content, provided that the local manufacture does not take place. This determines whether the services, works or goods for which an invitation is issued in terms of Regulation 9 of the Preferential Procurement Regulations that will entail the inclusion of a specific condition in the bid documents that only locally produced services, works or goods or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered. This will subsequently have a direct impact on the evaluation of the bid. To be made has been designated for local production and content in

**“Local business enterprise or local Supplier”** means a service provider who permanently resides in the City of uMhlathuze or enterprise that is permanently based in the City of uMhlathuze

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

**“list of accredited prospective providers”** means the list of accredited prospective providers which is maintained by the municipality in terms of clause 14 of this policy;

**“Municipal Asset Transfer Regulations”**: means the Municipal Asset Transfer Regulations published in Government Gazette 31346 of 22 August 2008.

**“Municipal Entity”**: means an entity as defined in the Systems Act.

**“Municipal manager”**: means a person appointed in terms of section 82 (1) (a) or (b) of the Municipal Structures Act;

**“Municipality”**: means the uMhlathuze Municipality or any entity under its control,

**“Municipal Finance Management Act” (MFMA)**: means the Local Government: Municipal Finance Management Act, 56 of 2003.

**“Non-compliant Contributor”**: means a person who does not meet the minimum score to qualify as a status level 8 B-BBEE Contributor, or a person who is not verified in terms of the required Sector Charter.

**“Non-exempted Capital Asset”**: means a municipal capital asset which is not exempted by section 14(6) or 90(6) of the MFMA, from the other provisions of that section.

**“Non-firm Prices”**: means all prices other than “firm” prices.

**“Natural person”** means a natural person is a human being that has the capacity for rights and duties. The person is not a natural person in terms of the Companies Act, No. 71 of 2008, Section 69. If a person was disqualified or found to be an un-rehabilitated insolvent or has been removed from an office of trust on the grounds of misconduct involving dishonesty or convicted of fraud, theft or forgery or any conduct involving fraud, misrepresentation or dishonesty. This includes flouting statutes like the Insolvency Act, the Close Corporation Act, the Competition Act, the Financial Intelligence Centre Act, the Securities Act or the Prevention and Combating of Corrupt Activities Act.

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

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

**“Person”**: includes a natural or juristic entity.

**“Policy”**: means this Supply Chain Management Policy as amended from time to time.

**“Preference points”**: mean the points for preference referred to in this Policy.

**“Preferential Procurement Policy Framework Act”** (PPPFA): means the Preferential Procurement Policy Framework Act, 5 of 2000.

**“Preferential Procurement Regulations”**: means the regulations pertaining to the PPPFA.

**“Prime Contractor”**: shall have the same meaning as “Contractor”.

**“Promotion of Administrative Justice Act”**: means the Promotion of Administrative Justice Act, 3 of 2000.

**“Quality”**: also referred to as “Functionality” (see clause 1.34 above).

**“Rand Value”**: means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties.

**“Regulation”** means the Local Government: Municipal **Finance Management Act, 2003, Municipal** Supply Chain Management Regulations **published by Government Notice** [686 of 2005]

**“Republic”**: means the Republic of South Africa.

**“Responsible Agent”**: means those internal project managers being Council officials or external consultants appointed by the Council responsible for the administration of a project or contract.

**“SARS”**: means the South African Revenue Services.

**“Small, Medium and Micro Enterprises (SMME’s)”**: bears the same meaning assigned to this expression in the National Small Enterprise Act, 102 of 1996.

**“Stipulated Minimum Threshold”**: means that portion of local production and content as determined by the Department of Trade and Industry.

**“Sub-contract”**: means the prime contractor’s assigning, leasing, making out work to, or employing, another person to support such prime contractor in the execution of part of a project in terms of the contract.

**“Sub-contractor”**: means any person that is assigned, leased, employed or contracted by the prime contractor to carry out work in support of the prime contractor in the execution of a contract.

**“Substitute Bid”** Means a second official Bid submitted by the same person, to replace a bid for the same Bid, already submitted by them into the Bid box.

**“Supplier/Vendor”**: are generic terms which may include suppliers of goods and services, contractors and/or consultants.

**“Supplier Database”**: means the list of accredited prospective providers which a municipality or municipal entity must keep in terms of Regulation 14 of the Supply Chain Management Regulations.

**“Supply Chain Management (SCM) Regulations”**: means the Municipal Supply Chain Management Regulations published in Government Gazette 27636 of 30 May 2005.

**“Systems Act”**: means the Local Government: Municipal Systems Act, 32 of 2000.

**“Sundry Purchases”** mean purchases made without going through a verbal or written quotation process;

**“Targeted Labour”**: means those individuals employed by a contractor, or sub-contractor, in the performance of a contract, who are defined in the contract as the target group, and who permanently reside in the defined target area.

**“Targeted Enterprises”**: means those enterprises (suppliers, manufacturers, service providers or construction works contractors) that own, operate or maintain premises within the target area defined in the contract, for the purposes of carrying out their normal business operations.

**“Tender/Tenderer”**: means “bid/bidder” in the context of construction works procurement.

**“Tender Waiver”**: means right given to End User to request the evaluation committee to consider its input / other service provider/bidder not recommended by pre-evaluation process. A waiver exists only where one with full knowledge of a material (legal/risks/technical/safety or other) fact does or forbears to do something inconsistent with the existence of the right or of his intention to rely on that right."

**“Term Bid”**: means rates based bid for the ad-hoc or repetitive supply of goods, services or construction works, where the individual rates are approved for use over a specified contract period.

**“Total Revenue”**: 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.

**“Transaction Value”**: means the actual contract value (the bid sum or price) in South African currency, inclusive of all applicable taxes in respect of the goods, services or construction works that are contracted for.

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

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

**“Unbundling of Contracts or Tender”**: means to “break” a contract into smaller pieces that could result in a project having multiple Contractors, performing separate pieces of work for the project.

**“Unsolicited Bid”**: means an offer submitted by any person at its own initiative without having been invited by the Council to do so.

**“Variation Order”**: means an alteration to the scope of works during the construction contract or delivery of goods and services in the form of an addition, substitution or omission from the original scope with the limitation as determined by MFMA Circular 62 of the original value of the contract.

**“Web site”**: means the Council’s official web site

**“Written or verbal quotations”** means quotations referred to in [paragraph] **clause 12 (1)(c)** of this policy.

- 1.2 Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include females and words importing persons shall include companies, close corporations and firms, unless the context clearly indicates otherwise.
- 1.3 Unless otherwise indicated, all amounts/limits stated in this document shall be deemed to be inclusive of all applicable taxes.

## CHAPTER 1

### ESTABLISHMENT AND IMPLEMENTATION OF THE SUPPLY CHAIN MANAGEMENT POLICY

#### 2. OBJECTIVES OF THE SUPPLY CHAIN MANAGEMENT POLICY

- (1) The City of uMhlatuze resolves in terms of section 111 of the Act to have and implement a supply chain management policy that –
  - (a) gives effect to –
    - (i) section 217 of the Constitution; and
    - (ii) Part 1 of Chapter 11 and other applicable provisions of the Act;
  - (b) is fair, equitable, transparent, competitive and cost effective;
  - (c) complies with –
    - (i) the regulatory framework prescribed in Chapter 2 of the Regulations; and
    - (ii) any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
  - (d) is consistent with other applicable legislation;
  - (e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
  - (f) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.
- (2) The supply chain management policy of a municipal entity must, in addition to complying with clause 2(1) of this policy, and to the extent determined by the parent municipality, also be consistent with the supply chain management policy of the parent municipality. If the supply chain management policy of an entity is not consistent with the supply chain management policy of its parent municipality, the Council of the parent municipality must take appropriate steps to ensure consistency.
- (3) The municipality may not act otherwise than in accordance with this supply chain management policy when –
  - (a) procuring goods or services;
  - (b) disposing of goods no longer needed;

- (c) selecting contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
  - (d) 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.
- (4) Sub-clauses (1) and (2) of this policy do not apply in the circumstances described in section 110 (2) of the Act (other organs of state) except where specifically provided otherwise in this policy.

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### 3. ADOPTION AND AMENDMENT OF THE SUPPLY CHAIN MANAGEMENT POLICY

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This policy applies to the City of uMhlatuze and any of the City's entities.

- (1) The accounting officer must –
  - (a) at least annually review the implementation of this policy; and
  - (b) when the accounting officer considers it necessary, submit proposals for the amendment of this policy to the Council.
- (2) 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.**

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### 4. DELEGATION OF SUPPLY CHAIN MANAGEMENT POWERS AND DUTIES

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- (1) The Council hereby delegates all powers and duties to the accounting officer which are necessary to enable the accounting officer
  - (a) to discharge the Supply Chain Management responsibility in terms of:-
    - (i) Chapter 8 or 10 of the Act; and
    - (ii) this Council's supply chain management policy;
  - (b) to maximize administrative and operational efficiency in the implementation of the supply chain management policy;
  - (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favoritism and unfair and irregular practices in the implementation of the supply chain management policy; and



- (d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- (2) Sections 79 and 106 of the Act apply to the sub-delegation of powers and duties delegated to an accounting officer in terms of sub clause (1) of this policy.
- (3) The council or accounting officer may not delegate or sub-delegate any supply chain management powers or duties to a person who is not an official of the municipality or to a committee which is not exclusively composed of officials of the municipality;
- (4) This clause 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 clause 26 of this policy.

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## 5. SUB-DELEGATIONS

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- (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 clause (2) below and section 4 of this policy.
- (2) The power to make a final award –
  - (a) above R10 million (VAT included) may not be sub-delegated by the accounting officer. To comply with this requirement, the accounting officer may either chair the bid adjudication committee or consider recommendations of the bid adjudication committee and make a final award for bids above R10m inclusive of vat,
  - (b) above R 200 000 (VAT included), but not exceeding R10 million (VAT included), may be sub-delegated but only to a bid adjudication committee of which the chief financial officer (Deputy Municipal Manager: Financial Services) or a senior manager is a member;
  - (c) not exceeding R 200 000 (Vat included) may be sub-delegated but only to the manager directly accountable to the Deputy Municipal Manager: Financial Services;
- (3) The Bid Adjudication Committee to which the power to make final awards has been sub-delegated in accordance with clause (2) must within five days of the bid adjudication committee meeting submit to the

accounting officer particulars of each final award made by such committee during that meeting, including–

- (a) the amount of the award;
  - (b) the name of the person / company to whom the award was made; and
  - (c) the reason why the award was made to that person.
  - (d) the BBBEE status of the successful company;
- (4) Sub clause (3) of this policy do not apply to procurement out of petty cash.
  - (5) No final award in a competitive bidding process may be affected otherwise than through the committee system provided for in clause 26 of this policy.
  - (6) No supply chain management decision-making powers may be delegated to an advisor or consultant.

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## 6. OVERSIGHT ROLE OF COUNCIL

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- (1) The right to maintain oversight over the implementation of this Supply Chain Management policy rests with the Council.
- (2) For the purposes of such oversight the accounting officer must –
  - (i) within 30 days (within 20 days for municipal entity) 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,
  - (ii) whenever there are serious and material problems in the implementation of the supply chain management policy, immediately submit a report to the council.
- (3) The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the mayor.
- (4) The reports must be made public in accordance with section 21A of the Municipal Systems Act.
- (5) Section 117 of the Municipal Finance Management Act prohibits a Councillor from being a member of a bid committee or any other committee evaluating or approving quotations or bids nor may a Councillor attend any such meeting as an observer.

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## **7. SUPPLY CHAIN MANAGEMENT UNIT**

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- (1) The accounting officer must establish a Supply Chain Management unit to implement this supply chain management policy. This supply chain management unit may be jointly established by the municipality and entities under its sole or shared control.
- (2) The supply chain management unit must operate under the direct supervision of the Chief Financial Officer (Deputy Municipal Manager: Financial Services) or an official to whom this duty has been delegated in terms of section 82 of the Act or any official to whom this duty has been delegated in terms of section 82 of the Act.

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## **8. TRAINING OF SUPPLY CHAIN MANAGEMENT OFFICIALS**

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The training of officials involved in implementing the supply chain management policy should be in accordance with National Treasury guidelines on supply chain management training.

## CHAPTER 2

### COMPONENTS OF SUPPLY CHAIN MANAGEMENT

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#### 9. FORMAT OF SUPPLY CHAIN MANAGEMENT

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This Supply Chain Management policy provides systems for –

- (i) demand management;
- (ii) acquisition management;
- (iii) logistics management;
- (iv) disposal management;
- (v) risk management; and
- (vi) performance management.

#### *Part 1: Demand Management*

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#### 10. SYSTEM OF DEMAND MANAGEMENT

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- (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 outlined in the Integrated Development Plan are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy the needs.
- (2) The demand management system must :-
  - (a) include timely development of procurement plans and management processes to ensure that all goods and services required by the municipality are quantified, budgeted for and timely and effectively delivered at the right locations and at the critical delivery dates, and are of appropriate quality and quantity at a fair cost;
  - (b) take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature;
  - (c) The development of a system which results in continuing improvement in affordability and value for money, based on total cost of ownership and quality of procurement as competition amongst suppliers is enhanced.
  - (d) provide for the compilation of the required specifications to ensure that its needs are met and
  - (e) provide for an appropriate industry analysis and research to ensure that innovations and technological benefits are maximised.

***Part 2: Acquisition management***

**11. SYSTEM OF ACQUISITION MANAGEMENT**

- (1) The accounting officer must establish, through operational procedures, an effective system of acquisition management in order to ensure –
  - (a) that goods and services, including construction works and consultant services are procured by the municipality in accordance with authorised processes only;
  - (b) that expenditure on goods and services, including construction works and consultant services is incurred in terms of an approved budget in terms of section 15 of the Act;
  - (c) that the threshold values for the different procurement processes are complied with;
  - (d) that bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; including, the Constitution of the Republic of South Africa Act, the Preferential Procurement Policy Framework Act, and any conditions of the Construction Industry Development Board Act; and
  - (e) that any Treasury guidelines on acquisition management are properly taken into account, this include the Provincial Government and National Government programmes on National Key Priorities to address socio-economic development. ,
  
- (2) This policy except where provided otherwise in the policy, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –
  - (a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
  - (b) electricity from Eskom or another public entity, another municipality or a municipal entity.
  
- (3) Whenever the municipality procures goods or services contemplated in section 110(2) of the Act the accounting officer must make public the fact that it procures such goods or services otherwise than through its Supply Chain Management system, including –
  - (a) the kind of goods or services; and
  - (b) the name of the supplier

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## 12. RANGE OF PROCUREMENT PROCESSES

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- (1) The procurement of goods and services, including construction works and consultant services shall be procured through the range of procurement processes set out below only:
- (a) **petty cash purchases**, up to a transaction value of R 500 (VAT included);
  - (b) **sundry purchases** excluding Petty cash up to R 2 000 (Vat included);
  - (c) written or verbal quotations for procurements of a transaction value over R2 000 up to R10 000 (VAT included);
  - (d) **formal written price quotations** for procurements of a transaction value over R10 000 up to R200 000 (VAT included); and
  - (e) a **competitive bidding** process for:
    - (i) procurements above a transaction value of R200 000 (VAT included); and
    - (ii) the procurement of long term contracts exceeding one year in duration (which includes any defects liability period, if applicable)
  - (f) **Procurement of Consultant Services**
    - (i) Where the estimated value of fees exceeds R200 000 or where the duration of the appointment will exceed one year, a competitive bidding process shall apply. Unless the bidding process would compromise service delivery or it is of minor margin as may be allowed by the delegation. The Manager of Supply Chain Management Unit may approve such quotation.
    - (ii) Where the estimated value of fees is less than or equal to R200 000 and the duration of the appointment will be less than one year, a selection process as described in this Policy, as amended from time to time, shall be applied.
  - (g) **Term Bids**

For the supply of goods and services or construction works that is of an ad-hoc or repetitive nature for a predetermined period of time.

**(2) Reduction in Threshold Values**

The accounting officer may, in writing:

- (a) lower, but not increase, the different threshold values specified in clause (1); or
- (b) direct that:
  - (i) written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000 (VAT included);
  - (ii) formal written price quotations be obtained for any specific procurement of a transaction value lower than R10 000 (VAT included); or
  - (iii) a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000. (VAT included).

**(3) Parcelling**

- (i) Goods or services may not deliberately be split into parts/ parceled or items of a lesser value merely to avoid complying with the requirements of the policy, unless it is line with the unbundling strategies, in order to distribute work amongst the different suppliers for fair distribution of economy.
- (ii) 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, i.e. no splitting of orders.

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

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A written quotation or bid may not be considered unless the provider/ bidder who submitted the quotation or bid:

- (a) has furnished the municipality with that provider's:
  - (i) full name;
  - (ii) identification number or company or other registration number; and
  - (iii) tax reference number and VAT registration number, if any;
  - (iv) statement(s) proving that water, electricity, rates and business levy accounts of the owners or directors of the company, including the business are up to date or formal payment arrangement have been made; and
  - (v) original tax clearance from the South African Revenue Services that proves the provider's tax matters are in order; and
  - (vi) certificate of attendance at a compulsory site inspection, where applicable;
  - (vii) Central Supplier Database registration number as determined by National Treasury.
- (b) it is not the responsibility of the municipality to obtain a tax clearance from the South African Revenue Services that will confirm that the provider's tax matters are in order, the municipality can or may check the validity of the tax clearance systems through South African Revenue Services; and
- (c) has indicated:
  - (i) whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
  - (ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
  - (iii) whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to in subclause (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.



- (d) In the event of the service provider being a joint venture of any nature, sections (a) to (c) shall apply mutatis mutandis to all parties in the joint venture and failure of one party to comply would invalidate the quotation or bid.

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## 14. LISTS OF ACCREDITED PROSPECTIVE PROVIDERS

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- (1) (a) The accounting officer must -
- (i) keep a list of accredited prospective providers of goods and services that must be used for all procurement requirements of the municipality greater than R 2 000.00 including VAT ; and
  - (ii) at least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, prospective providers of goods or services, construction works and consultant services must be invited to apply for evaluation and listing as accredited prospective providers;
- (b) must specify the listing criteria for accredited prospective providers; and;
- (c) the listing must disallow any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.
- (d) ensure that all service providers are registered in Central Supplier Database
- (2) The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services.
- (3) Prospective providers will be allowed to submit applications for listing once a year as prescribed in 14(1)(b). This does not preclude any potential service provider from quoting or bidding. Should service provider be successful they would be required to meet all the requirements of the listing criteria of this policy before awarding is done in order for their quotations/bids to be responsive.
- (4) The list must be compiled per commodity and per type of service.
- (5) Prospective vendors may only register for a maximum of two categories or types of service, this to allow for controlling the distribution of opportunities and accurate reconciliation of spending to support BBEE.
- (6) All parties to a Joint Venture or Consortium must comply with the requirements of clauses 14 (3) (4) and (5) above.

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## 15. PETTY CASH PURCHASES (UP TO R 500,00 - INCLUDING VAT)

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- (a) Petty cash may be used for procurement of goods and services as per clause 12 (1) (a) of this policy.
- (b) Petty cash may only be used for procurement of urgent goods and services from recognized suppliers.
- (c) Petty cash can only be obtained through Councils approved buying procedure (Authorised petty cash application form, acknowledgement of goods received and receipt/ proof of payment).
- (d) Each manager (official responsible for petty cash administration) must submit monthly reconciliation reports to the Chief Financial Officer including total amount of petty cash purchases with receipts and appropriate documents for each purchase, with each application for reimbursement.
- (e) The Manager Supply Chain Management may authorise procurement from petty cash exceeding R500,00, but below R2 000,00 in special circumstances, where goods or services are to be procured from Suppliers with no credit facility.

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## 16. WRITTEN OR VERBAL QUOTATIONS

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The conditions that must be followed when procuring goods or services through written or verbal quotations are as follows -

- 1. for sundry purchases up to R2 000, 00 (including VAT) referred to in clause 12 (1) (b) of this policy. The order may be placed without obtaining any quotations, provided that it is from a recognized supplier of the product/service; and
- 2. for goods and services including construction works and consultant from R2 000, 00 up to R10 000, 00 (including VAT) referred to in clause 12 (1) (c) of this policy –
  - (a) quotations must be obtained from at least three different service 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 (3), (4), (5) and (6) of this policy;
  - (b) to the extent feasible, providers must be requested to submit such quotations in writing from local business enterprise or in terms of clause 34 (1) (a); (2) and (3);

- (c) 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. (This shall be delegated in terms of clause 5 of this Policy);
- (d) the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices; and
- (e) if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider
- (f) A preference point system, as described in the preferential procurement policy, will be applied to such quotations. Meaning
- (g) offers below R30 000 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods or services and which may include the lowest price;
- (h) All orders in respect of written price quotations shall be approved and released by the Accounting Officer, or his delegated authority.

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## 17. FORMAL WRITTEN PRICE QUOTATIONS

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1. The conditions that must be followed when procuring goods or services through formal written quotations are as follows -
  - (a) quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the municipality 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 14 (3), (4), (5) and (6) of this policy;
  - (b) to the extent feasible, providers must be requested to submit such quotations in writing; from local business enterprise or in terms of clause 34 (1) (a); (2) and (3);
  - (c) 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. (This has been delegated in terms of section 5 of this Policy);
  - (d) the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices; and

- (e) if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.
- (2) The designated official referred to in sub clause (1)(c) above, 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] sub clause.

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**18. PROCEDURES FOR PROCURING GOODS OR SERVICES THROUGH WRITTEN OR VERBAL QUOTATIONS AND FORMAL WRITTEN PRICE QUOTATIONS (from R30 000, 00 up to R200 000, 00 (including Vat))**

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- (a) 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 clause 17, be advertised for at least 7 (seven days) on the website and an official notice board of the municipality or municipal entity;
- (b) in order to fulfill the objectives of this policy and other local economic development initiatives or national government priorities like National Development Plan. Notwithstanding clause 18 (a) that requires advertising on Council's website, the Manager Supply Chain Management is delegated to determine that, despite this requirement, and since the advertising on the world wide web (www) may stifle rotation of local suppliers' within the City of uMhlathuze, procurement of quotations may be done by selecting and sending Request for Quotation (RFQ), or targeting a minimum of 10 (ten) local service providers that have not been awarded any orders in the current financial year or previous financial year, without advertising on the Council's official Web site or advertising on the website for LOCAL SUPPLIERS ONLY or as contemplated in clause 34
- (c) notwithstanding clause (17) (1) (b), if quotations have been invited on the municipal's official website and in addition requests for Quotations where faxed or emailed to prospective suppliers, no additional quotes need to be obtained should the number of responses be less than three. Reasons must be recorded as per clause 17(1)(c) on the awarding document
- (d) offers received must be evaluated on a competitive basis taking into account unconditional discounts
- (e) acceptable offers above R30 000 (VAT included) are subject to the preference procurement policy, and must be awarded to the bidder with the highest points;
- (f) 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;
- (g) 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.

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## 19. COMPETITIVE BIDDING PROCESS

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- (1) Goods or services above a transaction value of R200 000 (VAT included) and long term contracts may only be procured through a competitive bidding process, subject to section 11(2) [organs of state] of this policy; and
- (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, as per clause 12 (3)
- (3) The municipality may not enter into any contract that will impose financial obligations beyond the three years covered in the annual budget for that financial year, unless the requirements of section 33 of the Municipal Finance Management Act have been fully complied with.
- (4) No contract shall be extended for more than six months from the date of expiry.
- (5) **Unbundling Strategies:**
  - (a) in order to encourage increased participation and the sustainable growth of the small business sector and cooperatives , the unbundling of larger projects into smaller, more manageable, contracts may be encouraged.
  - (b) unbundling must however be considered in the context of:-
    - (i) economies of scale being lost;
    - (ii) abortive work becoming necessary;
    - (iii) additional demands (not only financial) being placed on the Council resources; and
    - (iv) the risk of later phases not being completed as a result of budget cuts becoming necessary in the future.
    - (v) unbundling, and all of its associated implications, must therefore be carefully considered at the planning stage of any project and the budgets for, and design thereof, should be structured accordingly.

- (vi) the practice of breaking out (parcelling) projects in order to circumvent the formal bid process is not permitted, as per clause 19(2) of this policy .
- (vii) the Manager Supply Chain Management (in the case of orders below R200 000, or Deviations), may negotiate the final terms and conditions, (including price), on Contracts, where it is possible to appoint more than one Contractor, from a Panel of Vendors who responded to the Request for Quotation. Such negotiations to be with the sole aim of treating all respondents fairly and equally, with the aim to distribute work as evenly and fairly as possible. Such Requests for Quotations to specify Council's intention to do so at advertising stage. Minutes of such negotiations to be kept for record purposes. *(This clause is to be read in conjunction with clause 24 of this Policy).*
- (viii) the Bid Evaluation Committee (in the case of Bids, or Deviations), may negotiate the final terms and conditions, (including price), on Contracts, where it is possible to appoint more than one Contractor, from a Panel of Vendors who responded to the Request for Bid. Such negotiations to be with the sole aim of treating all respondents fairly and equally, with the aim to distribute work as evenly and fairly as possible Such Requests for bids to specify Council's intention to do so at advertising stage. Minutes of such negotiations to be kept for record purposes. *(This clause is to be read in conjunction with clause 24 of this Policy).*
- (xi) in order to achieve clause 19(4) (b) (vi) and (vii) above after the normal pre-evaluation (for responsiveness, price and preference points) has been conducted and all the risks have been determined. A list of preferred suppliers or bidders shall be listed in terms of their preference points, where number one will be the highest in terms of points followed by others. If the unbundling targeted two, there, four or more bidders the number as determined on the advert shall be called to negotiate the final offer, where an offer will not be more than 10% (ten percent) from the highest service provider or bidder for the first offer (offer number one) in terms of preference points.
- (x) if one or more of the service providers or bidders cannot agree on the terms, those service providers or bidders would be disqualified and the next service provider or bidder would be approached. If negotiations with the suppliers or bidders cannot be achieved, the quotation or bid shall be re-advertised as it would means the objective set in the advert was not achieved.

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## 20. PROCESS FOR COMPETITIVE BIDDING

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The procedures for the following stages of a competitive bidding process are as follows:-

- (a) compilation of bidding documentation shall at least comply with clause 21 of this policy,
- (b) the public invitation of bids will be administered in terms of clause 22 of this policy
- (c) site meetings or briefing sessions, if applicable as detailed in clause 22
- (d) handling of bids submitted in response to public invitation as detailed in clause 23;

- (i) the Supply Chain Management Unit shall be responsible for the administration of bids received by the Municipality, as described in clause 22 of this Policy;

- (ii) pre-evaluation of responsiveness shall be done by the Supply Chain Management Unit;

- (iii) the Supply Chain Management Unit shall be responsible for the submission of a report to the Bid Evaluation Committee, of which the User Department shall finalise the technical aspect of report with a list of responsiveness (compliance)/ non-responsiveness with tender specifications, must be recorded, with a corresponding recommendation.

- (iv) Tender Waiver

If the user department for any reasonable reasons is not in agreement with the pre-evaluation done by Supply Chain Management Unit as clause 20 (d) (ii). The user department shall compile a tender waiver stating the reasons the pre-evaluation cannot be accepted by Bid Evaluation Committee.

- (v) the Supply Chain Management Unity (SCMU) to check if Tenderer's are not listed on the National Treasury Database for Restricted tenders or Tender defaulters.

(e) the evaluation of bids -

is the responsibility of the Bid Evaluation Committee to evaluate bids and submit recommendations to the Bid Adjudication Committee, as detailed in clause 28 of this policy;

(f) the award of contracts -

final awards will be done by the Bid Adjudication Committee or Accounting Officer (depending on value of bid accepted) and the accounting officer will enter into a contract with the successful bidder, as detailed in clause 29 of this policy;

(g) the administration of contracts -

(i) should include a written agreement between the municipality and the bidder after 14 days of the objection period has been observed in terms of clause 49 and

(ii) all administration of contracts shall be carried out by the person designated or user department monitored by supply chain management unit strictly in terms of these Supply Chain Management Regulations.

(h) all correspondence and records relating to the bid shall be forwarded to the central registry, which records shall be the only official record. Proper record keeping must be such that original /legal copies of written agreements are kept in a secure place for reference purposes.

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## 21. BID DOCUMENTATION FOR COMPETITIVE BIDS

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The Specifications Committee shall approve standard documentation pertaining to a particular type of or group of services for which tender specifications was developed. The criteria to which bid documentation for a competitive bidding process must comply, and state that in addition to regulation 13 of the bid documentation must -

(a) take into account -

(i) the general and special conditions of contract;

(ii) any Treasury guidelines on bid documentation; and

(iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;

(b) include evaluation and adjudication criteria, including any criteria required by other applicable legislation;

(c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;

(d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish -



- (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements:
    - (aa) for the past three years; or
    - (bb) since their establishment and/or if established during the past three years;
  - (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
  - (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
  - (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.
- (f) documents that have to be present at tender opening which must be counter-signed and stamped accordingly are:
- (i) the signed form of tender.
  - (ii) the price and all supporting pricing schedules.
  - (iii) the Preferential Procurement Certificate (Broad Based Black Economic Empowerment Certificate) (compulsory if preference is to be claimed, as this may not be claimed at a later stage);
  - (iv) SARS Tax Clearance
  - (v) all qualitative documents where such are used as part of the pricing, that is where functionality has a weighting for contender score.
  - (vi) Service Provider to must furnish Statement(s) providing that water, electricity, rates and business levy account of the owners or directors of company, including the business are up to date or formal payment arrangement have been made.
  - (vii) Any other documents stated as compulsory on date of the opening
  - (viii) Central Database registration number.
- (g) unless otherwise indicated in the bid documents, the Council shall not be liable for any expenses incurred in the preparation and/or submission of a bid.

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## 22. PUBLIC INVITATION FOR COMPETITIVE BIDS

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The procedure for the invitation of competitive bids, is as follows –

- (1)
  - (a) any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the municipality or municipal entity or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin or Construction Industry Development Board (CIDB) website for contraction related bids); and
  - (b) the information contained in a public advertisement, must include:
    - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to sub clause (2) of this policy; and
    - (ii) a statement that bids may only be submitted on the bid documentation provided by the municipality or municipal entity.
  - (c) to contain all information to ensure unambiguous, free, transparent and competitive procurement, unless otherwise specified.
  - (d) Details of site meetings or briefing sessions and to clearly state:
    - (i) whether a site inspection/meeting is compulsory or not;
    - (ii) criteria for bidders' representative attending the site inspection;
    - (iii) the penalty for noncompliance with compulsory site inspection requirements;
    - (iv) that site meeting will be chaired by the supply chain management unit and ender-user or any other appointed person will attend to brief or provide clarity on the specifications. Official attendance register and minutes must be taken and form part of the report to Bid Evaluation Committee
- (2) the accounting officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or

emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.

- (3) bids submitted must be sealed.
- (4) where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.
- (5) where a compulsory site meeting has taken place, only tenderers that attended the original site meeting, will be allowed to participate in the tender and/or any subsequent site/clarification meetings that need to be held;

Bid closing date may be extended

- (6) the bid closing date may be extended by the Manager: Supply Chain Management if circumstances justify this action; provided that-
  - (a) the closing date may not be extended unless a notice is published in the same media the Bid was originally advertised, prior to the original bid closing date. This notice shall also be posted on the official notice boards and Council's Web site, a notice to this effect to all bidders that have collected documents shall be issued;
  - (b) if on the site meeting a certain issue was raised that would warrant to extend the date. The extension will be granted to only those that attended the compulsory site meeting
- (7) Site Inspections -
  - (a) in general, site inspections, where applicable will be compulsory, provided that the minimum bid period is extended by at least 7 (seven) days;
  - (b) if site inspections are to be held, full details must be included in the bid notice, including whether or not the site inspection is compulsory, failing to attend would nullify the bid;
  - (c) where site inspections are made compulsory, the date for the site inspection shall be at least 7 (seven) days after the bid has been advertised, and a certificate of attendance signed by the responsible agent must be submitted with the bid;
  - (d) if at a site meeting, any additional information is provided or clarification of vague points is given, such additional information or clarification must be conveyed to all bidders;
  - (e) should any alterations/amendments to the specifications as advertised be required, a report to the bid specification committee must be submitted (in the case of official Bids), or to the supply chain management unit (in the case of quotations),

requesting condonation for the amendment and may not deviate from the original purpose of the bid or quotation, especially the evaluation criteria that was not initially stated in the advert or bid documents

- (f) any alterations/amendments to the specifications as advertised may not deviate from any prescripts of the acts
- (g) all affected parties to be notified in writing of any amendments, at least 7 days before the closure of the Bid, or 2 days in respect of Quotations.
- (h) Council reserves the right to cancel any site meeting, provided that the Manager Supply Chain Manager has agreed that the circumstances warrant such cancellation.

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### **23. PROCEDURE FOR HANDLING, OPENING AND RECORDING OF BIDS**

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1. The procedures for the handling, opening and recording of bids are as follows –
  - (a) Bids shall be placed in the official tender box located in the foyer of the uMhlathuze Civic Centre, situated at 5 Mark Strasse, Richards Bay before the time and date specified in the bid advertisement. Whenever a municipal time piece is out of order for whatever reasons a watch of an official designated shall be used. -
    - (i) the tender box shall be opened only by and in the presence of two officials delegated to do so by the Accounting Officer or his/her delegate
    - (ii) the bid opening shall be open to the public and attendance shall be recorded by signature of each attendee in the register;
    - (iii) bids shall be opened only in public by the officials designated in (ii) above and the results thereof recorded in an official register kept by the Supply Chain Management Unit; and
    - (iv) must be opened at the same time and/ or as soon as possible after the period for the submission of bids has expired;
  - (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price;

- (c) No information, relating to a bid other than one in sub-clause (b) may be disclosed to bidders or other persons until an official award is made; and
- (d) The accounting officer or his delegate must:
  - (i) record in a register all bids received in time;
  - (ii) make the register available for public inspection; and
  - (iii) publish the entries in the register and the bid results on the website.

## 2. Amendment of Bid: “Substitute Bids

Should a bidder indicate that they wish to review their bid that has already been submitted in the bid box, the following procedure must be followed -

- (a) bidder to pay the required Bid fee, for a new set of original documents.
- (b) bidder to note on the cover page and each page of the bid document that this is a “Substitute Bid” that replaces one that has already been submitted for the same bid.
- (c) “substitute bid”, will only be considered, if documentation is completed and signed by the original parties that signed the initial (first Bid), that was submitted.
- (d) “substitute bid” will be subject to the same terms and conditions as per the initial bid submitted, and does not qualify for any preferential treatment.
- (e) all documentation as prescribed/required in the bid document to be submitted with the “substitute bid”, under no circumstance will it be allowed that documents from one bid document be used for another and failure to attach such documents will invalidate the bid.
- (f) once a ‘substitute bid” that complies to all the requirements above, has been submitted, the original bid is automatically regarded as cancelled, and will only be opened at the bid opening, for reference purposes, such as comparison of Signatories
- (g) at no stage may a bid be removed from the bid box, except on the official date and time of the bid opening by the delegated officials.
- (h) Council reserves the right not to accept any “Substitute Bid”

- (i) the period for which bids are to remain valid and binding must be indicated in the bid documents.
- (j) the validity period is calculated from the bid closure date and bids shall remain in force and binding until the end of the final day of that period.

3. Term bids -

- (a) it is permissible to invite bids for the supply of goods and services or construction works that is of an ad-hoc or repetitive nature, for a predetermined period of time (commonly referred to as a term bid).
- (b) the general acquisition procedure for term bids shall comply with procedures contained in the acquisition management system for competitive bids.
- (c) bid documentation, where applicable, shall state that the acceptance of term bids based on a schedule of rates will not necessarily guarantee the bidder any business with the Council.
- (d) the practice of using term bids to circumvent the bid process in respect of what should be planned project work is not permissible.
- (e) material for repairs and maintenance can be purchased on a term bid where circumstances warrant it.
- (f) additional items included in a term bid by any bidder which are clearly not an alternative to any of the items specified shall not be considered.

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## 24. NEGOTIATIONS WITH PREFERRED BIDDERS

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- (1) The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation:
  - (a) does not allow any preferred bidder a second or unfair opportunity;
  - (b) is not to the detriment of any other bidder; and
  - (c) does not lead to a higher price than the bid as submitted.
- (2) Minutes of such negotiations must be kept for record purposes.
- (3) This section be delegated in terms of Section 5 of the Policy to the Manager Supply Chain Management Unit or his delegate.
- (4) The administration of such negotiations will be the responsibility of the Manager: Supply Chain Management Unit (SCMU) or his delegate that has to ensure minutes of such negotiations are kept for record purposes, negotiations will be carried out as follows:
  - (i) It will be the responsibility of the Deputy Municipal Manager/ User Department to ensure that a representative that possess the technical expertise on the tender being called, from that Department is present at such meeting.

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## 25. TWO-STAGE BIDDING PROCESS

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- (1) A two-stage bidding process is allowed for:
  - (a) large complex projects;
  - (b) projects where it may be undesirable to prepare complete detailed technical specifications; or
  - (c) long term projects with a duration period exceeding three years.
- (2) In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.
- (3) In the second stage final technical proposals and priced bids should be invited. Technical evaluation must be conducted as prescribed on section 4, of Councils Preferential Procurement Framework Policy 2011, and should be measurable, by setting up a scoring structure, rewarding Tenderers for compliance to criteria as determined by the Bid Specifications Committee. (*e.g. on a Tender to build pedestrian*

*bridges, points are allocated in proportion to the number of similar projects , successfully completed).*

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

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- (1) The accounting officer must:
  - (a) establish a committee system comprising of at least:
    - (i) a bid specification committee;
    - (ii) a bid evaluation committee; and
    - (iii) a bid adjudication committee;
  - (b) appoint the members of each committee, taking into account section 117 of the Act; and
  - (c) provide for an attendance or oversight process by a neutral or independent observer, appointed by the accounting officer, when this is appropriate for ensuring fairness and promoting transparency.
- (2) The committee system must be consistent with:
  - (a) clause 27, 28, and 29 of this policy; and
  - (b) any other applicable legislation.
- (3) The accounting officer may apply the committee system to formal written price quotations (procurement between R10 000 and R200 000 (including VAT)).

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## **27. BID SPECIFICATION COMMITTEES**

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- (1) The bid specification committee must compile the specifications for each procurement of goods or services, including construction works and consultant services by the municipality or municipal entity.
- (2) Specifications:
  - (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
  - (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organization, or an authority accredited or recognised by the



- South African National Accreditation System with which the equipment or material or workmanship should comply;
- (c) where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
  - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labeling of conformity certification;
  - (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the words “equivalent”;
  - (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2011; and
  - (g) must be approved by the accounting officer prior to publication of the invitation for bids in terms of clause 22 of this policy.
- (3)
- (a) the bid specification committee must be composed of at least one or more officials of the municipality or municipal entity, preferably the manager responsible for the function involved, and may, when appropriate, include internal or external specialist advisors
  - (b) the accounting officer must appoint the members of the committee in terms of clause 26(b) of this policy and the chairperson of the bid specification 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.
  - (c) documentation is to be approved by the Bid Specifications Committee prior to advertisement of bids as stipulated in clause 27 (2)(g)
- (4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.
- (5) Must be appointed for period of 12 months which is in line with financial year end of the municipality, subject to the reviewal of this policy
- (6) The quorum must be equal of the number of permanent (as opposed to co-opted) committee members, plus one.

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## 28. BID EVALUATION COMMITTEES

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- (1) The bid evaluation committee must:
  - (a) evaluate bids in accordance with:
    - (i) the specifications for a specific procurement; and
    - (ii) the points system set out in terms of clause 27(2)(f).
  - (b) evaluate each bidder's ability to execute the contract;
  - (c) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, and;
  - (d) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
- (2) The bid evaluation committee must as far as be possible compose of:
  - (a) officials from departments requiring the goods or services;
  - (b) at least one supply chain management practitioner of the municipality or municipal entity and
  - (c) the accounting officer must appoint the members of the committee in terms of clause 26(b) of this policy and the chairperson of the bid specification 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.
- (3) Must be appointed for period of 12 months which is in line with financial year end of the municipality, subject to the reviewal of this policy
- (4) The quorum must be equal of the number of permanent (as opposed to co-opted) committee members, plus one.

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## 29. BID ADJUDICATION COMMITTEES

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- (1) The bid adjudication committee must:
  - (a) consider the report and recommendations of the bid evaluation committee; and
  - (b) either –
    - (i) depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or
    - (ii) make another recommendation to the accounting officer how to proceed with the relevant procurement.
- (2) The bid adjudication committee must consist of at least three deputy municipal managers of the municipality which must include:
  - (i) the chief financial officer or, if the chief financial officer is not available, another head of the section or manager in the financial services department, reporting directly to the chief financial officer
  - (ii) at least one senior supply chain management practitioner who is an official of the municipality; and
  - (iii) a technical expert in the relevant field who is an official, if such an expert exists; and
- (3) The accounting officer must appoint the chairperson of the bid adjudication committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.
- (4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.
- (5) Be appointed for period of 12 months which is in line with financial year end of the municipality, subject to the reviewal of this policy
- (6) the quorum must be equal of the number of permanent (as opposed to co-opted) committee members, plus one.

- (7) Approval of Bid not recommended –
- (a) 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 –
    - (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;
    - (ii) notify the accounting officer.
  - (b) The accounting officer may –
    - (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in clause (a); and
    - (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (8) 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.
- (9) The accounting officer must comply with section 114 of the Act within 10 working days.

Approval of Bid not recommended Above R10 million

- (10) If the Accounting officer decides to award the bid other than that recommended by the Bid adjudication committee for bids above, R10m, section 114 of the Act must be complied with within 10 working days.

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**30. PROCUREMENT OF BANKING SERVICES**

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- (1) A contract for the provision of banking services:
- (a) must be procured through competitive bids;
  - (b) must be consistent with section 7 or 85 of the Act; and
  - (c) may not be for a period of more than five years at a time.
- (2) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.

- (3) The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of clause 23(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

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

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

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

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- (1) The accounting officer may procure goods or services under a contract secured by another organ of state, but only if:
  - (a) the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
  - (b) there is no reason to believe that such contract was not validly procured;
  - (c) there are demonstrable discounts or benefits to do so; and
  - (d) that other organ of state and the provider have consented to such procurement in writing.
- (2) Sub-clause (1)(c) and (d) do not apply if:

- (a) a municipal entity procures goods or services through a contract secured by the municipality; or
- (b) The municipality procures goods or services through a contract secured by a municipal entity.

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**33. PROCUREMENT OF GOODS NECESSITATING SPECIAL SAFETY ARRANGEMENTS**

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

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**34. PROUDLY SOUTH AFRICA CAMPAIGN AND SUPPORT OF COMMUNITY BASED VENDORS, COUNCIL AND OTHER SPHERES OF GOVERNMENT SOCIO-ECONOMIC INITIATIVES**

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*Proudly SA*

- (1) The accounting officer must determine internal operating procedures supporting the Proudly SA

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

- (a) Firstly – suppliers and businesses within the municipality or district;
- (b) Secondly – suppliers and businesses within the province;
- (c) Thirdly – suppliers and businesses within the Republic of South Africa and
- (d) Foreign company with a partnership with the local company where the local company holds not less than 40% share on the project.

*Community Based Vendors (CBV)*

- (2) The accounting officer must determine internal operating procedures supporting the community based vendors to promote Small Micro Medium Enterprise development including cooperatives, through initiatives from Local Economic Development (Vukuphile, Enterprise

Development, Incubation programs and any other community based initiatives).

- (3) to fulfil clause 34(2), the Head: Supply Chain Management may request quotations directly from Community Based Vendors in a specific area, or from a specific community for the procurement of goods and services for amounts less than R30 000 (including construction works), however such procurement to comply with the requirements as per this policy.

#### *Socio-Economic initiatives*

- (4) This include Council, Provincial Government and National Government programmes / initiatives on National Key Priorities to address socio-economic development (war on poverty)
  - (a) where a successful bidder or bidders may be requested to plough back to the indigent families of uMhlathuze Municipality as part of their social responsibility by selecting one or more initiatives as listed by Council.

#### *Subcontracting*

- (5)
  - (a) If a tender is awarded to a big contractor as determined by the tender value and complexity of the project, 25% would be allocated to local black emerging contractor(s) or local youth emerging contractor(s) inclusive of women and contractors living disabilities and co-operatives.
  - (b) If a tender of R10 million and above was awarded to a well-established black contractor, 25% would be sub-contracted as 34(5)(a).
  - (c) Where a contractor is of high value the 25% can be sub-divided into valuable sizes of two or more sub-contractors following clause 19(5) Unbundling Strategies:]
- (6) *Provisional Sums and Prime Cost or Sub-contract Allowances*

Where monetary allowances in excess of R200 000 in respect of provisional sums or prime cost items have been included in the bid documents, and where the work or items to which the sums relate are to be executed/supplied by sub-contractors/suppliers, then one of the following processes, as determined by the Bid Specification Committee, shall be followed in respect of these allowances:

- (6.1) An open competitive bidding process in which bid documents are prepared by the Responsible Agent in consultation with and to the approval of the contractor, invitations to bid are advertised

in the media or as determined by the Accounting Officer, and whereby the selected sub-contractor/supplier is chosen by the SCMU and/or Responsible Agent together with the contractor from the responses received. The contractor must satisfy him/herself that the selected sub-contractor/supplier can meet the requirements of the sub-contract/supply agreement, and assumes the risk for the performance of the sub-contractor/supplier. The contractor may, on reasonable grounds, elect not to employ a particular sub-contractor/supplier.

- (6.2) A two-stage selection process, whereby the Responsible Agent will advertise (in the media) or as determined by the Accounting Officer for expressions of interest from suitably qualified sub-contractors/suppliers. From the responses received, the Responsible Agent and the contractor, in conjunction with SCMU, shall compile a list of at least three (unless less than three responses were received) suitable sub-contractors/suppliers who will then be asked to submit prices for the works/items required. The contractor will assume the risk for the performance of the selected sub-contractor/supplier identified through this process.
- (6.3) A nominated process, whereby the City instructs the contractor to appoint a particular (typically specialist) sub-contractor/supplier. In this process the sub-contractor/supplier is a nominated sub-contractor/supplier, and the risk is transferred from the contractor to the City. The use of this process must therefore be motivated to, and approved by, the Manager: SCM prior to its implementation. A preference point system must be applied in respect of the processes described in clauses 6.1 and 6.2 above.

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### **35. APPOINTMENT OF CONSULTANTS**

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- (1) The accounting officer may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.
- (2) Consultancy services must be procured through competitive bids if-
- (a) the value of the contract exceeds R200 000 (VAT included); or
  - (b) the duration period of the contract exceeds one year but the contract cannot exceed three years.
- (3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of –
- (a) all consultancy services provided to an organ of state in the last five years; and



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

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

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- (1) The accounting officer may –
  - (a) dispense with the official procurement processes established by this policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only :
    - (i) in an emergency;
    - (ii) if such goods or services are produced or available from a single provider only;
    - (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
    - (iv) acquisition of animals for zoos and/or nature and game reserves; or
    - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and

*Plant and equipment*

- (aa) ad-hoc repairs to plant and equipment where it is not possible to ascertain the nature or extent of the work required in order to call for bids or Quotations; and
- (bb) repairs to plant and equipment by original equipment manufacturer (OEM) or only accredited agents where it is deemed that the nature of the repair by unaccredited persons/vendors, could compromise the lifespan, performance or integrity of the item, subject to approval by manager supply chain management or his/her delegate.

- (cc) a rotation register be utilized as far as possible, to ensure the distribution of work as per (bb) above, to various Service Providers.
- (b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature -
  - (i) the value of a minor breach shall not be more than 10% of all quotations value range subject to the supply chain manager's approval or his delegate.
  - (ii) when the quotations of the value range of R200 000, are above the value of minor breach, clause 36(4) shall apply.
- (2) The accounting officer must record the reasons for any deviations in terms of sub clauses (1)(a) and (b) of this policy and report them to the next meeting of the council and include as a note to the annual financial statements.
- (3) Sub clause (2) does not apply to the procurement of goods and services contemplated in clause 11(2) of this policy.

#### *Deviation Request Form*

- (4) All Deviations be processed on the Deviation Request Form as provided by Council's SCMU (DMS 710756) and must be approved by the accounting officer.
- (5) For practical purposes the requirements in terms of clause 36(2) not be applied for orders for R30 000 or less."

#### *Publications in the Media*

- (6) Publication of official and legal notices and advertisements in the press by or on behalf of the Council, there is no requirement for a competitive bidding process to be followed when there is only one circulating publication in the area, provided that the advertisement is placed directly by Council, with the relevant newspaper/publication.
- (7) Where there are more than two or more local publishers the distribution of work will be done on rotational basis after a competitive process.
- (8) Variation Order

In terms of MFMA - Circular 62 contracts may be expanded or varied by not more than 20% for construction related goods, services and/or infrastructure projects and 15% for all other goods and/or services of the original value of the contract.]

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### 37. UNSOLICITED BIDS

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

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

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### **38. COMBATING OF ABUSE OF SUPPLY CHAIN MANAGEMENT SYSTEM**

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

- (1) The accounting officer must–
  - (a) take all reasonable steps to prevent abuse of the supply chain management system;
  - (b) investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this supply chain management policy, and when justified–
    - (i) take appropriate steps against such official or other role player; or
    - (ii) report any alleged criminal conduct to the South African Police Service;
  - (c) check the National Treasury’s database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
  - (d) reject any bid from a bidder–
    - (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality, or to any other municipality or municipal entity, are in arrears for more than three months; or
    - (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the municipality

- or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
- (e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
  - (f) cancel a contract awarded to a person if –
    - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
    - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
  - (g) reject the bid of any bidder if that bidder or any of its directors -
    - (i) has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;
    - (ii) has been convicted for fraud or corruption during the past five years; in terms of the Companies Act, No. 71 of 2008, section 69. If a person was disqualified or found to be an un rehabilitated insolvent or has been removed from an office of trust on the grounds of misconduct involving dishonesty or convicted of fraud, theft or forgery or any conduct involving fraud, misrepresentation or dishonesty. This includes flouting statutes like the Insolvency Act, the Close Corporation Act, the Competition Act, the Financial Intelligence Centre Act, the Securities Act or the Prevention and Combating of Corrupt Activities Act.
    - (iii) has will fully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
    - (iv) has been listed in the Register for Tender Defaulters In terms section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
  - (h) must invalidate recommendations or decisions that were unlawfully or improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by:

- (i) councillors in contravention of item 5 or 6 of the Code of Conduct for Councillors in schedule 1 of the Systems Act; or
  - (ii) municipal officials in contravention of item 4 or 5 of the Code of Conduct for Municipal Staff Members set out in schedule 2 of the Systems Act.
- (2) The accounting officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of sub-clauses (1)(b)(ii), (e) or (f) (g) or (h) this clause 38

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

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#### **39. LOGISTICS MANAGEMENT**

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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, maintenance and contract administration.

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#### **40. DISPOSAL MANAGEMENT**

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- (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:
- (2) The disposal of assets must–
- (a) be by one of the following methods –
    - (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
    - (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
    - (iii) selling the asset in compliance with the Preferential Procurement Policy; or
    - (iv) destroying the asset;
  - (b) provided that –

- (i) immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
  - (ii) movable assets may be sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous. Except when the plight of the poor demands otherwise, the Accounting Officer, together with the Deputy Municipal Manager: Financial Services and the relevant, Deputy Municipal Manager, may issue redundant or obsolete items to the community, including Non-Profit Organisation with a registered NPO number and registered with Department of Social Welfare.;
  - (iii) 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
  - (iv) 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;
- (c) furthermore ensure that –
- (i) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise; and
  - (ii) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed; and
- (d) ensure that where assets are traded in for other assets, the highest possible trade-in price is negotiated.
- (3) The actual approach taken to address various scenarios for the disposal and lease of immovable assets is contained in Disposal and Lease of Immovable Assets Policy.

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#### **41. RISK MANAGEMENT**

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- (1) The accounting officer must establish an effective system of risk management for the identification, consideration and avoidance of potential risks in the supply chain management system.
- (2) Risk management must include –

- (a) the identification of risks on a case-by-case basis;
- (b) the allocation of risks to the party best suited to manage such risks;
- (c) acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
- (d) the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
- (e) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

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## **42. PERFORMANCE MANAGEMENT**

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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.

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

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

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- (1) The accounting officer must ensure that, irrespective of the procurement process followed, no award above **R30 000** is given to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (2) At the time of Bid or Quotation closure, the Bidder must have attached either a valid SARS tax clearance certificate, or alternatively a letter from SARS confirming that the Bidder has applied for a Tax Clearance certificate, as stipulated on clause 13(b)
- (3) In the case where a letter from SARS confirming that an application for tax clearance has been received, such Tax Clearance certificate is to be provided by the Bidder, within 7 (seven) calendar days, failing which the Bid will be regarded as non-responsive. A bidder shall obtain proof of receipt from Council upon submission of the Tax certificate.



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

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

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

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

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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 –

- (a) the name of that person;
- (b) the capacity in which that person is in the service of the state; and
- (c) the amount of the award.

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**46. ETHICAL STANDARDS**

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- (1) A code of ethical standards is hereby established, in accordance with sub clause (2), for officials and other role players in the supply chain management system in order to promote –
  - (a) mutual trust and respect; and
  - (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
- (2) An official or other role player involved in the implementation of the supply chain management policy –
  - (a) must treat all providers and potential providers equitably;

- (b) may not use his or her position for private gain or to improperly benefit another person;
  - (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
  - (d) notwithstanding sub clause (2)(c), must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
  - (e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the municipality ;
  - (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
  - (g) must be scrupulous in his or her use of property belonging to the municipality;
  - (h) must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
  - (i) must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –
    - (i) any alleged fraud, corruption, favouritism or unfair conduct;
    - (ii) any alleged contravention of [paragraph] clause 47(1) of this policy; or
    - (iii) any alleged breach of this code of ethical standards.
- (3) Declarations in terms of sub clauses (2)(d) and (e) -
- (a) must be recorded in a register which the accounting officer must keep for this purpose;
  - (b) by the accounting officer must be made to the mayor of the municipality who must ensure that such declarations are recorded in the register.

- (4) The National Treasury's code of conduct must also be taken into account by supply chain management practitioners and other role players involved in supply chain management.
- (5) 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". Attached Amended coded Annexure DMS 821368)
- (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.

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

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- (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
  - (a) any inducement or reward to the municipality for or in connection with the award of a contract; or
  - (b) any reward, gift, favour or hospitality to –
    - (i) any official; or
    - (ii) any other role player involved in the implementation of the supply chain management policy.
- (2) The accounting officer must promptly report any alleged contravention of sub clause (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
- (3) Sub clause (1) does not apply to gifts less than R350 in value.

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**48. SPONSORSHIPS**

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

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

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#### **49. OBJECTIONS AND COMPLAINTS**

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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) if the objection or complain is against the procurement process, submit a written objection or complaint against the decision or action to the accounting officer of the municipality who shall, in turn, within 24 hours refer the written objection or complaint to the dependent and impartial person referred to in clause 50 for resolution or
- (b) if such complaint or objection is against the award of a bid, lodge a written appeal with the Municipal Bid Appeals Tribunal in accordance with the provisions of clause 50A

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

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- (1) The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes to assist in the resolution of objections and complaints between the municipality and any other person regarding -
  - (a) the implementation of the procurement process in terms of the supply chain management system; or
  - (b) any matter arising from the implementation of the procurement process in terms of the supply chain management system.
    - (i) any decisions or actions taken in the implementation of the supply chain management system; or
    - (ii) any matter arising from a contract awarded in the course of the supply chain management system; or

**Note:**

*A parent municipality and a municipal entity under its sole or shared control may for purposes of sub clause (1) appoint the same person.*

- (2) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.
- (3) The person appointed must –
  - (a) strive to resolve promptly all disputes, objections, complaints or queries received; and
  - (b) submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.
- (4) If the independent and impartial person referred to in clause 50.1, is of the view that a matter which should be dealt with in terms of clause 50A, he or she shall forthwith refer the matter to the Municipal Bid Tribunals and that Tribunal shall then hear and determine the matter in accordance with the provisions of clause 50A.
- (5) Objections or complaints may be referred to the KwaZulu-Natal Treasury if
  - (a) the objection or complaint is not resolved within 60 days; or
  - (b) no response is forthcoming within 60 days.
- (6) If the Provincial Treasury does not or cannot resolve the matter, the objection or complaint may be referred to the National Treasury for resolution.

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## **50A. MUNICIPAL BID APPEALS TRIBUNAL**

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- (1) The council shall establish a Municipal Bid Appeals Tribunal for its area of jurisdiction to hear and determine an appeal against the award of a bid.
- (2) The accounting officer of the municipality, in consultation with the Provincial Treasury, shall appoint the Chairperson, Deputy Chairperson and Members of the Municipal Bid Appeals Tribunal.
- (3) The powers, duties and functions of the Municipal Bid Appeals Tribunal, and matters incidental thereto, are set out in the Rules which must be appended to this Supply Chain Management Policy.

- (4) The administrative and secretarial work involved in the performance of the duties and functions of the Municipal Bid Appeals Tribunal shall be performed by officers of the Provincial Treasury as set out in the Rules referred to in clause 50A.3.
- (5) There shall be no further appeal against a decision of the Municipal Bid Appeals Tribunal.

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

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If a service provider acts on behalf of a municipality or municipal entity 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 or municipal entity must stipulate –

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

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## **52. APPLICATION OF PREFERENTIAL PROCUREMENT**

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The application of this Policy is subject to Council's Preferential Procurement Policy 2011 and Targeted Preferential Procurement Policy

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## **53. COMMENCEMENT**

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This policy takes effect on the date on which it is adopted by the council.