



# SUPPLY CHAIN MANAGEMENT POLICY

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**1. Definitions**

In this Policy, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) has the same meaning as in the Act, and –

<b>ITEM</b>	<b>DESCRIPTION</b>
Accounting Officer	means a person appointed by the Municipality in terms of Section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) and who is the head of administration and the Municipal Manager for the Municipality.
Adjudication points	means the points referred to in the Preferential Procurement Regulations, 2017 and the Preferential Procurement section of this policy also referred to as “evaluation points”.
Asset	means a tangible or intangible resource capable of ownership.
B-BBEE status level of contributor	means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.
Bidder	means any person submitting a competitive bid or a quotation.
Black designated groups	has the meaning assigned to it in the codes of good practice issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.
Black people	has the meaning assigned to it in section 1 of the Broad-Based Black Economic Empowerment Act.
Broad-Based Black Economic Empowerment (B-BBEE) Act	means the Broad-Based Black Economic Empowerment Act, 53 of 2003 and Codes of Good Practice pertaining thereto.
Budget Holder	means the person/s accountable for expenditure from, and income to a particular budget. Each budget holder is responsible for the control of his/her budget and for the general financial administration of his/her area of responsibility. The Budget Holder is responsible to authorise expenditure from their budget up to a total of their budget allocation.
CIDB	means The Construction Industry Development Board.
Close family member	means a person’s spouse, whether in a marriage or in a customary union according to indigenous law, domestic partner in a civil union, or child, parent, brother, sister, whether such a relationship results from birth, marriage or adoption.
Competitive bid	means a bid in terms of a competitive bidding process.
Competitive bidding process	means a competitive bidding process referred to in paragraph 12 (1) (c) of this Policy.
Construction Industry Development Board (CIDB) Act	means the Construction Industry Development Board Act, 38 of 2000 and includes the regulations pertaining thereto.
Consultant	means a person or entity providing services requiring knowledge-based expertise.
Contract Owner	means the official that is ultimately accountable for the deliverables during the contract lifecycle relevant to the service delivery target that the contract seeks to achieve.
Co-operative	means a co-operative registered in terms of section 7 of the Cooperatives Act, 2005 (Act No. 14 of 2005);
Designated group	means- (a) black designated groups; (b) black people; (c) women;

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	(d) people with disabilities; or (e) small enterprises, as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996)
Designated sector	means a sector, sub-sector or industry or product designated in terms of regulation 8(1)(a).
EME	means an exempted micro enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.
Emergency	means a sudden and dangerous occurrence i.e. an occurrence involving actual or potential threat to human life and or actual material financial loss to Council.
Final award	in relation to bids or quotations submitted for a contract, means the final decision on which bid or quote to accept.
Formal written price quotation	means quotations referred to in paragraph 12(1)(b) of this Policy.
Functionality	means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
In the service of the state	means to be – a) a member of – • any municipal council; • any provincial legislature; or • the National Assembly or the National Council of Provinces; b) a member of the board of directors of any municipal entity; c) an official of any municipality or municipal entity; d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999); e) a member of the accounting authority of any national or provincial public entity; or f) an employee of Parliament or a provincial legislature.
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.
List of accredited prospective providers	means the list of accredited prospective providers which the municipality must keep in terms of paragraph 14 of this policy.
Long term contract	means a contract with a duration period exceeding one year.
Military veteran	has the meaning assigned to it in section 1 of the Military Veterans Act, 2011 (Act No. 18 of 2011).
Municipality	means uMgungundlovu District Municipality.
National Treasury	has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999).
Other applicable legislation	means any other legislation applicable to municipal supply chain management, including – a) Preferential Procurement Regulations, 2017 pertaining to the Preferential Procurement Policy Framework Act, Act No. 5 of 2000. b) The Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and c) The Construction Industry Development Board Act, 2000 (Act No.38 of 2000).
People with disabilities	has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998).
Price	includes all applicable taxes less all unconditional discounts.
Proof of B-BBEE status level of contributor	means- (a) the B-BBEE status level certificate issued by an authorised body or person; (b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or (c) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act.
QSE	means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
Rand value	means the total estimated value of a contract in Rand, calculated at the time of the tender invitation.

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Rural area	means- (a) a sparsely populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or (b) an area including a large settlement which depends on migratory labour and remittances and government social grants for survival, and may have a traditional land tenure system.
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 the minimum threshold stipulated in terms of regulation 8(1)(b).
Sub-contractor	means any person or entity that is employed, assigned, leased, or contracted by the prime contractor to carry out work in support of the prime contractor in the execution of a contract.
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.
The Act	means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003).
The Regulations	means the Local Government: Municipal Finance Management Act, 2003, Municipal Supply Chain Management Regulations published by Government Notice 868 of 2005.
Township	means an urban living area that any time from the late 19th century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994.
Treasury	has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999).
Treasury guidelines	means any guidelines on supply chain management issued by the Minister in terms of section 168 of the Act.
Urgency	means a situation requiring prompt action, i.e., occurrence involving actual or potential material loss to Council.
Written quotations	means quotations referred to in paragraph 12(1) (b) of this Policy.
Youth	has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).

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CHAPTER 1  
IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

**2. Supply chain management policy**

- 2.1. All officials and other role players in the supply chain management system of the **municipality** must implement this Policy in a way that –
- a) gives effect to –
    - i. section 217 of the Constitution; and
    - ii. Part 1 of Chapter 11 and other applicable provisions of the Act;
  - b) is fair, equitable, transparent, competitive and cost effective;
  - c) complies with –
    - i. the 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.
- 2.2. This Policy applies when the **municipality** –
- a) procures goods or services;
  - b) disposes goods no longer needed;
  - c) selects contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
  - d) selects external mechanisms referred to in section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.
- 2.3. This Policy, except where provided otherwise, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –
- a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
  - b) electricity from Eskom or another public entity, another municipality or a municipal entity.

**3. Amendment of the supply chain management policy**

- 3.1. The accounting officer must –
- a) at least annually review the implementation of this Policy; and
  - b) when the accounting officer considers it necessary, submit proposals for the amendment of this Policy to the **council**.

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- 3.2. If the accounting officer submits proposed amendments to the **council** that differs from the model policy issued by the National Treasury, the accounting officer must–
- a) ensure that such proposed amendments comply with the Regulations; and
  - b) report any deviation from the model policy to the National Treasury and the Provincial Treasury.
- 3.3. When amending this supply chain management policy, the need for uniformity in supply chain practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.

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

- 4.1. 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 responsibilities conferred on accounting officers in terms of –
    - i. Chapter 8 or 10 of the Act; and
    - ii. this Policy;
  - b) to maximise administrative and operational efficiency in the implementation of this Policy;
  - c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favoritism, and unfair and irregular practices in the implementation of this Policy; and
  - d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- 4.2. Sections 79 and 106 of the Act apply to the sub delegation of powers and duties delegated to an accounting officer in terms of subparagraph (1).
- 4.3. The accounting officer may not sub delegate any supply chain management powers or duties to a person who is not an official of **the municipality** or to a committee which is not exclusively composed of officials of the **municipality**;
- 4.4. This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 25 of this Policy.

**5. Sub-delegations**

- 5.1. The accounting officer may in terms of section 79 or 106 of the Act sub-delegate any supply chain management powers and duties, including those delegated to the accounting officer in terms of this Policy, but any such sub-delegation must be consistent with subparagraph (2) of this paragraph and paragraph 4 of this Policy.



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- 5.2. The power to make a final award –
- a) above R5 000 000 (VAT included) may not be sub-delegated by the accounting officer;
  - b) above R2 000 000 (VAT included), but not exceeding R5 0000 000 (VAT included), may be sub-delegated but only to –
    - i. The Chief Financial Officer;
    - ii. The Bid Adjudication Committee.
  - c) not exceeding R2 000 000 (VAT included) may be sub-delegated but only to -
    - i. the Chief Financial Officer;
    - ii. The Bid Adjudicating Committee
  - d) not exceeding R200 000 (VAT included) may be sub-delegated but only to –
    - i. the Chief Financial Officer
    - ii. Divisional Manager: Supply Chain Management
- 5.3. An official or bid adjudication committee to which the power to make final awards has been sub-delegated in accordance with subparagraph (2) must within five days of the end of each month submit to the official referred to in subparagraph (4) a written report containing particulars of each final award made by such official or committee during that month, including –
- a) the amount of the award;
  - b) the name of the person to whom the award was made; and
  - c) the reason why the award was made to that person.
- 5.4. A written report referred to in subparagraph (3) must be submitted –
- a) to the accounting officer, in the case of an award by –
    - i. the Chief Financial Officer;
    - ii. a senior manager; or
    - iii. a bid adjudication committee of which the chief financial officer or a senior manager is a member; or
  - b) to the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by –
    - i. a manager referred to in subparagraph (2)(c)(iii); or
    - ii. a bid adjudication committee of which the chief financial officer or a senior manager is not a member.
- 5.5. Subparagraphs (3) and (4) of this policy do not apply to procurements out of petty cash.
- 5.6. This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub-delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 25 of this Policy.
- 5.7. No supply chain management decision-making powers may be delegated to an advisor or consultant.

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**6. Oversight role of council**

- 6.1. The **council** reserves its right to maintain oversight over the implementation of this Policy.
- 6.2. For the purposes of such oversight the accounting officer must –
- a) within 30 days of the end of each financial year, submit a report on the implementation of this Policy and the supply chain management policy of any municipal entity under the sole or shared control of the municipality, to the council of the municipality; and
  - b) whenever there are serious and material problems in the implementation of this Policy, immediately submit a report **to the council**.
- 6.3. 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 finance committee, chaired by the **mayor**.
- 6.4. The reports must be made public in accordance with section 21A of the Municipal Systems Act.

**7. Supply chain management unit**

- 7.1. A supply chain management unit is hereby established to implement this Policy.
- 7.2. The supply chain management unit operates under the direct supervision of the Chief Financial Officer. The head of the supply chain management unit reports directly to the Chief Financial Officer in terms of supply chain management regulations.

**8. Training of supply chain management officials**

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

**CHAPTER 2**

**SUPPLY CHAIN MANAGEMENT SYSTEM**

**9. Format of supply chain management system**

- 9.1. This Policy provides systems for –
- i. demand management;
  - ii. acquisition management;
  - iii. logistics management;
  - iv. disposal management;
  - v. risk management; and
  - vi. performance management.

**Part 1: Demand management**

**10. System of demand management**

10.1. The accounting officer must establish and implement an appropriate demand management system to ensure that the resources required by **the municipality** support its operational commitments and its strategic goals outlined in the Integrated Development Plan.

**Part 2: Acquisition management**

**11. System of acquisition management**

11.1. The accounting officer must implement the system of acquisition management set out in this Part in order to ensure –

- a) that goods and services are procured by **the municipality** in accordance with authorised processes only;
- b) that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
- c) that the threshold values for the different procurement processes are complied with;
- d) that bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
- e) that any Treasury guidelines on acquisition management are properly taken into account.

11.2. When procuring goods or services contemplated in section 110(2) of the Act, the accounting officer must make public the fact that such goods or services are procured otherwise than through the **municipality's** supply chain management system, including -

- a) the kind of goods or services; and
- b) the name of the supplier.

**12. Range of procurement processes**

12.1. Goods and services may only be procured by way of –

- a) petty cash purchases, up to a transaction value of R2 000 (VAT included) excluding regular or routine items;
- b) written or verbal quotations for procurements of a transaction value over R2 000 up to R10 000 (VAT included);
- c) formal written price quotations for procurements of a transaction value over R10 000 up to R200 000 (VAT included); and
- d) a competitive bidding process for–
  - i. procurements above a transaction value of R200 000 (VAT included); and
  - ii. the procurement of long-term contracts.
- e) Procurement through established panels.

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- 12.2. The **accounting** officer may, in writing recommend to Council that the range of procurement be amended in the policy; provided such recommendation does not violate the Act (Municipal Finance Management Act, No 56 of 2003) and its regulations.
- 12.3. Goods or **services** may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the policy. When determining transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.

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

- 13.1. A written quotation or bid may not be considered unless the provider who submitted the quotation or bid –
- a) has furnished that provider's –
    - i. full name;
    - ii. identification number or company or other registration number; and
    - iii. tax reference number and VAT registration number, if any;
  - b) has submitted the quotation or bid using the service provider's letterhead or other equivalent company documentation.
  - c) has submitted proof of compliance with tax matters e.g., SARS Verification PIN, Central Supplier Database Summary Report; or submitted such proof of compliance to the municipality within 7 working days of request from a municipal official.
  - d) has indicated –
    - i. whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
    - ii. if the provider is not a natural person, whether any of its directors, managers, principal shareholders, or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
    - iii. whether a spouse, child, or parent of the provider or of a director, manager, shareholder, or stakeholder referred to in subparagraph (ii) is in the service of the state or has been in the service of the state in the previous twelve months.

**14. Lists of accredited prospective providers**

- 14.1. The accounting officer must –
- a) refer to/consult the National Treasury Central Supplier Database (CSD) for a list of accredited service providers. Suppliers that are not registered on CSD will not be included into the list of accredited prospective providers;
  - b) disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector; and

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- c) evaluations will continue with the verification of other listing criteria which are not currently validated by CSD, for instance B-BBEE certificates and CIDB rating certificates.

**15. Petty cash purchases**

15.1. The conditions for the procurement of goods by means of petty cash purchases referred to in paragraph 12 (1) (a) of this Policy, are as follows–

- a) Petty cash purchases have being delegated to the Chief Financial Officer. Heads of Department will request in writing, to the CFO, who will authorize purchases;
- b) The maximum amount is R 500 per month;
- c) Petty Cash purchases to be made in accordance with the municipality's petty cash policy;
- d) A monthly reconciliation report from the expenditure clerk must be provided to the chief financial officer, including –
  - i. the total amount of petty cash purchases for that month; and
  - ii. receipts and appropriate documents for each purchase.

**16. Written quotations or verbal quotations**

16.1. The conditions for the procurement of goods or services through written price quotations, are as follows:

- a) quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the **municipality**;
- b) quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria set out in paragraph 14(1)(b) and (c) of this Policy;
- c) if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the accounting officer;
- d) the accounting officer must record the names of the potential providers and their written quotations; and
- e) Verbal quotations are not permitted.

**17. Formal written price quotations**

17.1. The conditions for the procurement of goods or services through formal written price quotations, are as follows:

- a) that quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the municipality or municipal entity;
- b) that quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria in the supply chain management policy required by regulation 14(l)(b) and (c);
- c) that if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer; and

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

17.2. A designated official referred to in sub regulation (1)(c) must within three days of the end of each month report to the chief financial officer on any approvals given during that month by that official in terms of that sub regulation.

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

18.1. The procedure for the procurement of goods or services through written quotations and formal written price quotations is as follows:

- a) when using the list of accredited prospective providers, the accounting officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;
- b) all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 16, be advertised for at least seven working days on the official notice board of the municipality;
- c) that the accounting officer must take all reasonable steps to ensure that the procurement of goods and services through written or verbal quotations or formal written price quotations is not abused;
- d) that the accounting officer or chief financial officer must on a monthly basis be notified in writing of all written or verbal quotations and formal written price quotations accepted by an official acting in terms of a sub delegation;
- e) offers received must be evaluated on a comparative basis taking into account unconditional discounts;
- f) offers must be awarded based on the highest points scored in terms of the guidelines of the PPPFA Regulations;
- g) acceptable offers, which are subject to the preference points system (PPPFA and associated regulations), must be awarded to the bidder who scored the highest points;
- h) A register of all requests received from the user departments to be maintained. Minimum fields would include date request received, user department, and date of requisition, requisition number and name of the buyer.
- i) In instances where there were no responsive bids received for a formal written price quotation advert, the requisition must be re-advertised for a second period. If again there are no responsive bids received, then quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the municipality or be referred back to the user department to revise their specifications.

**19. Competitive bids**

19.1. Goods or services above a transaction value of R200 000 (VAT included) and long-term contracts may only be procured through a public bidding process, subject to paragraph 11(2) of this Policy.

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- 19.2. 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 public bidding process.
- 19.3. The municipality may allow price adjustments based on escalation. A careful analysis of escalation clauses and formulae should be undertaken to ensure the best interests of the municipality are served.
- 19.4. If the Accounting Officer resolves to allow escalations, this must be specified in the bid documents, including the formula and time frames at which intervals such price escalations will be considered.
- 19.5. Exchange rate fluctuations must be considered when items are imported or have imported content and forward exchange contracts will be compulsory on imports.
- 19.6. Extra works or variations must be authorized in writing by the Accounting Officer. 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. Requests for variations must be submitted to the Accounting Officer for consideration and approval. Approved variation requests must be submitted to the Manager: Supply Chain Management to be filed.
- 19.7. Variations in excess of the 20% for construction related goods, services and/or infrastructure projects and 15% for all other goods and/or services must be subjected to the conditions of Section 116(3) of the Act. Contract Owners must submit a written request, approved by the respective Head of Department, to the Manager: Supply Chain to motivate for the application of Section 116(3). The Manager: Supply Chain Management must upon consideration of the application submit a report to the accounting officer who shall present the request to council for approval.

**20. Process for competitive bidding**

- 20.1. The procedures for the following stages of a competitive bidding process are as follows -
- a) Bid specification committee to create bid specifications as detailed in paragraph 26;
  - b) Compilation of bidding documentation as detailed in paragraph 20;
  - c) Public invitation of bids as detailed in paragraph 21;
  - d) Site meetings or briefing sessions as detailed in paragraph 21;
  - e) Handling of bids submitted in response to public invitation as detailed in paragraph 22; bids placed in a sealed envelope deposited into the tender box;
  - f) Evaluation of bids as detailed in paragraph 27;
  - g) Adjudication of bids as detailed in paragraph 28;
  - h) Award of contracts as detailed in paragraph 28;
  - i) Administration of contracts

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- i. After approval of a bid, the accounting officer and the bidder must enter into a written agreement.
- j) Proper record keeping
  - i. Original / legal copies of written contracts agreements should be kept in a secure place for reference purposes.

**21. Bid documentation for competitive bids**

21.1. The criteria to which bid documentation for a competitive bidding process, must comply, with the following–

- a) take into account –
  - i. the general conditions of contract and any special conditions of contract, if specified;
  - ii. any Treasury guidelines on bid documentation; and
  - iii. the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
- b) include the preference points system to be used , goals as contemplated in the Preferential Procurement Regulations and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish–
  - i. if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
    - for the past three years; or
    - since their establishment if established during the past three years;
  - ii. a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
  - iii. particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
  - iv. a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
- e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

**22. Public invitation for competitive bids**

22.1. The procedure for the invitation of competitive bids, is as follows:

- a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally subject to Regulation 11 of the



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Cost Containment Regulations 2019, the website of the **municipality, on the National Treasury eTender Publication Portal** or any other appropriate ways (which may include an advertisement in the Provincial Government Gazette); 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 (including weekends and public holidays) in the case of transactions over R10 million (VAT included), or which are of a long-term nature, or 14 days (including weekends and public holidays) in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2) of this policy;
  - ii. date, time and venue of any proposed site meetings or briefing sessions.;
  - iii. where procurement opportunities for designated groups have been identified, tenders must be advertised with a clear tendering condition that the tenders will be prequalified based on one or more of the criteria.

22.2. 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. The Bid Specification Committee must submit a written motivation to the accounting officer for the requesting of a shortened advert period.

22.3. Bids submitted must be sealed and properly bound

22.4. The invite must indicate that late bids cannot be accepted.

22.5. A validity period of 90 calendar days is to be used for all tenders except in construction projects where the latest CIDB regulations regarding the validity period are to be adhered to.

22.6. The Bid Evaluation Committee, after identifying that they will not complete the evaluation on time, must immediately make submission to the Accounting Officer to extend the validity period for an extension period not exceeding 30 days. The Accounting Officer will assess the reasons and make the decision. If the decision is approved, then letter/s will be sent to suppliers informing them of the extension. The validity period must not exceed 180 days in total from the closing date of the tender.

22.7. Once the validity period expired, no extension can be made, and that bid should be cancelled.

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

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

- a) Bids–
  - i. must be opened only in public;

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- ii. must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
- iii. received after the closing time should not be considered and returned unopened immediately.
- b) The names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price and B-BBEE Level;
- c) No information, except the provisions in subparagraph (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
- d) The accounting officer must –
  - i. record in a register all bids received in time;
  - ii. make the register available for public inspection; and
  - iii. publish the entries in the register and the bid results.

**24. Negotiations with preferred bidders**

- 24.1. The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation -
- a) does not allow any preferred bidder a second or unfair opportunity;
  - b) is not to the detriment of any other bidder; and
  - c) does not lead to a higher price than the bid as submitted.

24.2. The Municipality may-

- 24.2.1. negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
- 24.2.2. if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
- 24.2.3. the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.

24.3. If a market-related price is not agreed as envisaged above, the tender must be cancelled.

24.4. Minutes of such negotiations must be kept for record purposes.

**25. Two-stage bidding process**

25.1. A two-stage bidding process is allowed for –

- a) large complex projects;
- b) projects where it may be undesirable to prepare complete detailed technical specifications; or
- c) long term projects with a duration period exceeding three years.

25.2. 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.

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25.3. In the second stage final technical proposals and priced bids should be invited.

**26. Committee system for competitive bids**

26.1. A committee system for competitive bids is hereby established, consisting of the following committees for each procurement or cluster of procurements as the accounting officer may determine:

- a) a bid specification committee;
- b) a bid evaluation committee; and
- c) a bid adjudication committee;

26.2. The accounting officer appoints the members of each committee, taking into account section 117 of the Act; and

26.3. A neutral or independent observer, appointed by the accounting officer, must attend, or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.

26.4. The committee system must be consistent with –

- a) paragraph 26, 27 and 28 of this Policy; and
- b) any other applicable legislation.

26.5. The accounting officer may apply the committee system to formal written price quotations.

**27. Bid specification committees**

27.1. A bid specification committee must compile the specifications for each procurement of goods or services by the **municipality**.

27.2. A bid specification committee must identify feasible procurement opportunities where subcontracting as condition of tender for procurement must be applied by following the process of the application of pre-qualifying criteria.

27.3. Tenders in respect of goods and services that have been designated for local production and content, must contain a specific bidding condition that only locally produced goods or services with a stipulated minimum threshold for local production and content will be considered.

27.4. Specifications –

- a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
- b) must take into account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised

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by the South African National Accreditation System with which the equipment or material or workmanship should comply;

- c) must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
- d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labeling of conformity certification;
- e) may not make reference to any particular trademark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word “equivalent”;
- f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2017.
- g) must indicate the subcontracting requirement conditions in terms of Section 9 of the Preferential Procurement Regulations 2017.
- h) Where it is not possible to apply the 30% subcontracting requirement for contracts more than R30 Million, the chairperson of the Bid Specification Committee must report this to the Accounting Officer. Furthermore, approval must be sought from the Chief Director: SCM Centre of Excellence at Provincial Treasury where the municipality deems it not feasible to sub-contract a portion of the contract.
- i) must be approved by the Accounting Officer.

27.5. A bid specification committee must be composed of two or more officials of the **municipality** preferably the manager responsible for the function involved, one official from the supply chain management unit; and may, when appropriate, include external specialist advisors. A quorum is constituted by at least 50% of the number of permanent committee members, plus one member.

27.6. 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.

## **28. Bid evaluation committees**

28.1. A bid evaluation committee must –

- a) evaluate bids in accordance with –
  - i. the specifications for a specific procurement; and
  - ii. the points system set out in terms of paragraph 27(4) (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.

28.2. A bid evaluation committee must as far as possible be composed of-

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- a) officials from departments requiring the goods or services; and
- b) at least one supply chain management practitioner of the **municipality**
- c) may include a supply chain management practitioner who is also a member of the bid specification committee;
- d) A quorum is constituted by at least 50% of the number of permanent committee members, plus one member.

**29. Bid adjudication committees**

29.1. A bid adjudication committee (BAC) must –

- a) consider the report and recommendations of the bid evaluation committee;
- b) The chairperson of the BAC must submit a report on the decisions of the BAC, and
- c) either –
  - i. depending on its delegations, make a final award (for bid values not exceeding R5 000 000) or a recommendation to the accounting officer to make the final award (for bid values greater than R5 000 000); or
  - ii. make another recommendation to the accounting officer how to proceed with the relevant procurement.

29.2. A bid adjudication committee must consist of at least four senior managers of the **municipality** which must include –

- a) the chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer; and
- b) at least one senior supply chain management practitioner who is an official of the **municipality**; and
- c) a technical expert in the relevant field who is an official, if such an expert exists and is required by the adjudication committee.

29.3. Bid Adjudication Committee cannot undertake business without a quorum present, consisting of half plus one of its total membership with voting power.

29.4. The accounting officer must appoint the chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.

29.5. Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.

29.6. The bid adjudication committee may not award a tender to more than one bidder unless the tender document specifically mentioned that the tender may be awarded to more than one bidder.

29.7. If the bid adjudication committee decides to –

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- a) 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 at all times.
  - iii. cancel a tender for the second time, the bid adjudication committee must obtain prior approval from Provincial Treasury explaining the reasons for cancellation.
- b) The accounting officer may –
  - i. after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
  - ii. if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.

29.8. 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.

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

29.10. Where bids involve internal audit service, the audit of the bidding process may be outsourced to an independent external service provider or internal audit function of another organ of state, subject to the oversight of the audit committee.

29.11. The accounting officer may, at his or her discretion, decide to have a specific contract audited by external service providers prior to the award of the contract.

29.12. The accounting officer must comply with section 114 of the Act within 10 working days. Section 114 of the Act refers:

- i. If a tender other than the one recommended in the normal course of implementing the supply chain management policy of a municipality or municipal entity is approved, the accounting officer of the municipality or municipal entity must, in writing, notify the Auditor-General, the relevant provincial treasury and the National Treasury and, in the case of a municipal entity, also the parent municipality, of the reasons for deviating from such recommendation.
- ii. Subsection (1) does not apply if a different tender was approved in order to rectify an irregularity.

### **30. Procurement of banking services**

30.1. A contract for banking services –

- a) must be procured through competitive bids;

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- 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.

30.2. The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.

30.3. The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of paragraph 22(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

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

31.1. 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.

31.2. Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to SITA.

31.3. 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).

31.4. If SITA comments on the submission and the **municipality** disagree with such comments, the comments, and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the Provincial Treasury and the Auditor General.

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

32.1. 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;
- d) that other organ of state and the provider have consented to such procurement in writing; and
- e) consent has been received from the KZN Provincial Treasury to proceed with regulation 32.

32.2. Subparagraphs (1) (c) and (d) do not apply if –

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

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

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

32.4. The accounting officer must also publish the details of the participation contract award on the municipality or municipal entity's official website in line with section 75 of the MFMA.

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

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

33.2. Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership, cost advantages and environmental impact and must be approved by the accounting officer.

**34. Local Production and Content**

34.1. The invitation to tender for sectors designated by the Department of Trade and Industry (DTI), including those mentioned below must be advertised with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered.

- 34.1.1. Furniture
- 34.1.2. Set top boxes
- 34.1.3. Buses
- 34.1.4. Steep power pylons
- 34.1.5. Canned or processed vegetables
- 34.1.6. Textiles, clothing, and footwear
- 34.1.7. Rail rolling stock
- 34.1.8. Solar water heater components
- 34.1.9. Electrical and telecom cable products
- 34.1.10. Residential electricity meters
- 34.1.11. Working vessels (boats)
- 34.1.12. Valve products and actuators

34.2. A condition may also be applied where the goods or services are not from a designated sector.

34.3. A tender that fails to meet the minimum stipulated threshold for local production and content must not be accepted.



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**35. Appointment of consultants**

- 35.1. The accounting officer may procure consulting services provided that the Municipal Cost Containment Regulations, 2019 are complied with and any Treasury guidelines in respect of consulting services are considered when such procurements are made.
- 35.2. Consultancy services must be procured through public bids if -
- a) the value of the contract exceeds R200 000 (VAT included); or
  - b) the duration period of the contract exceeds one year.
- 35.3. In addition to any requirements prescribed by this policy for Public 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.
- 35.4. 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 during the consultancy service is vested in the **municipality**.

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

- 36.1. The accounting officer may –
- a) dispense with the official procurement processes established by this Policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only –
    - i. in an emergency;
    - ii. if such goods or services are produced or available from a single provider only;
    - iii. (for the acquisition of special works of art or historical objects where specifications are difficult to compile;
    - iv. acquisition of animals for zoos and/or nature and game reserves; or
    - v. in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
  - b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.
- 36.2. A deviation authorisation form must be completed and submitted to the relevant Head of Department (HOD) and the Chief Financial Officer (CFO) for consideration before being submitted to the accounting officer for approval in respect of (36.1) above. The deviation request must be submitted together with proof of tax compliance as well as a declaration of interest form. A purchase order must be issued to the nominated service provider and be signed by the CFO or the Accounting Officer only.

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

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

**37. Unsolicited bids**

37.1. In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.

37.2. 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.

37.3. If the accounting officer decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with –

- a) reasons as to why the bid should not be open to other competitors;
- b) an explanation of the potential benefits if the unsolicited bid were accepted; and
- c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.

37.4. The accounting officer must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder to the National Treasury and the Provincial Treasury for comment.

37.5. 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.

37.6. A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.

37.7. When considering the matter, the adjudication committee must consider –

- a) any comments submitted by the public; and
- b) any written comments and recommendations of the National Treasury or the Provincial Treasury.

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37.8. 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 Provincial Treasury and the National Treasury the reasons for rejecting or not following those recommendations.

37.9. Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the **municipality** to the bid may be entered into or signed within 30 days of the submission.

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

38.1. 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, favoritism, unfair or irregular practices or failure to comply with this Policy, and when justified –
  - i. take appropriate steps against such official or other role player; or
  - ii. report any alleged criminal conduct to the South African Police 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;
  - iii. has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - iv. has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).

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

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

**39. Logistics management**

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

- a) the monitoring of spending patterns on types or classes of goods and services incorporating, where practical, the coding of items to ensure that each item has a unique number;
- b) the setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;
  - i. identification of items and quantities that should be held
  - ii. minimum and maximum levels ascertained by historical data and inputs from user departments
  - iii. Safety or buffer stocks of approximately 25% above minimum quantities maybe set to cover unforeseen circumstances
- c) the placing of manual or electronic orders for all acquisitions other than those from petty cash;
- d) before payment is approved, certification by the responsible officer that the goods and services are received or rendered on time and is in accordance with the order, the general conditions of contract and specifications where applicable and that the price charged is as quoted in terms of a contract;
- e) appropriate standards of internal control and warehouse management to ensure that goods placed in stores are secure and only used for the purpose for which they were purchased;
- f) regular checking to ensure that all assets including official vehicles are properly managed, appropriately maintained and only used for official purposes; and
- g) monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for goods or services.

**40. Disposal management**

40.1. The disposal management system must provide for the disposal or letting of assets, including unserviceable, redundant, or obsolete assets, subject to Section 14 and 90 of the Act.

40.2. An obsolescence plan must be determined by the user department for each asset to ensure that when the asset can no longer be maintained or used for its original purpose, that there is a plan to replace it.

40.3. A renewal plan must be determined for assets that have reached the end of its useful life.

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- 40.4. Asset disposal decisions must be made within an integrated, service, and financial planning framework, where the asset management unit within the budget and treasury office is advised of the plan and the need to procure a new asset in order for them to check the availability of funds before the procurement of an asset proceeds.
- 40.5. Assets may be disposed of by –
- 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 through an auction;
  - iv. donating the asset to a non-governmental organisation; and charity organisations or
  - v. destroying the asset.
- 40.6. The Municipality must establish a disposal strategy to determine the best mechanism of disposal for each asset and the accounting officer must ensure that –
- a) immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
  - b) movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
  - c) firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;
  - d) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;
  - e) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;
  - f) where assets are traded in for other assets, the highest possible trade-in price is negotiated; and
  - g) in the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment by the SCM unit. The IT department must provide a list all computers to be disposed of and advise the asset management unit in order for them to make a proper adjustment in the asset register.
- 40.7. The Municipality may not transfer ownership as a result of a sale or other transaction, or otherwise permanent dispose of a capital asset needed to provide the minimum level of basic municipal services.
- 40.8. The Municipality may transfer ownership or otherwise dispose of a capital asset other than one mentioned above, only after the Council, in a meeting open to the public has approved such disposal.

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40.9. The municipality must in addition to paragraph 39 implement the disposal policy set out in the Municipality's Fixed Asset Management Policy. The Accounting Officer must appoint a disposal committee in writing.

**41. Risk management**

41.1. The Accounting Officer must ensure that the Municipality has and maintains an effective system of risk management for the identification, consideration, and avoidance of potential risks in the SCM system.

41.2. Aspects of risk management must be allocated to the CFO, the SCM practitioners, the internal audit function and the Audit Committee, each of which shall ultimately be accountable to the Accounting Officer or the Council for the discharge of their responsibilities.

41.3. Risk management must include –

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

**42. Performance management**

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

**Part 4: Other matters**

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

43.1. No award above R15 000 may be made in terms of this Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order. The designated official should verify the bidder's tax compliance status prior to the finalization of the award of the bid or price quotation in terms of MFMA Circular No. 90. Where the recommended bidder is not tax compliant, the bidder should be notified of their non-compliant status and the bidder must be requested to submit to the municipality within 7 working days, written proof from SARS of their tax compliance status or proof from SARS that they arranged to meet their outstanding tax obligations. Tax status must be checked for all quotations above R15 000.

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43.2. Before making an award to a person the accounting officer must first check with SARS whether that person's tax matters are in order. This may be done by verifying the Tax Compliance Status Pin or confirming via the Central Supplier Database (CSD) web portal.

43.3. If the SARS does not respond within 7 working days such person's tax matters may for purposes of subparagraph (1) be presumed to be in order.

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

44.1. Irrespective of the procurement process followed, no award may be made to a person in terms of this Policy –

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

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

45.1. The accounting officer must ensure that the notes to the annual financial statements disclose particulars of any award of more than R2 000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –

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

**46. Ethical standards**

46.1. A code of ethical standards as set out in the "*National Treasury's code of conduct for supply chain management practitioners and other role players involved in supply chain management*" is hereby established for officials and other role players in the supply chain management system of the **municipality** in order to promote –

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

46.2. An official or other role player involved in the implementation of this Policy –

- a) must treat all providers and potential providers equitably;
- b) may not use his or her position for private gain or to improperly benefit another person;
- c) may not accept any reward, gift, favor, 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;

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- d) notwithstanding subparagraph (2) (c), must declare to the accounting officer details of any reward, gift, favor, 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 **municipality**;
- h) must assist the accounting officer in combating fraud, corruption, favoritism and unfair and irregular practices in the supply chain management system; and
- i) must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –
  - i. any alleged fraud, corruption, favoritism or unfair conduct;
  - ii. any alleged contravention of paragraph 47(1) of this Policy; or
  - iii. any alleged breach of this code of ethical standards.

46.3. A breach of the code of ethics must be dealt with as follows -

- a) in the case of an employee, in terms of the disciplinary procedures of the **municipality** envisaged in section 67(1)(h) of the Municipal Systems Act;
- b) in the case a role player who is not an employee, through other appropriate means in recognition of the severity of the breach.
- c) In all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act.

**47. Inducements, rewards, gifts and favors to municipalities, officials and other role players**

47.1. 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, favor or hospitality to –
  - i. any official; or
  - ii. any other role player involved in the implementation of this Policy.

47.2. The accounting officer must promptly report any alleged contravention of subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.

47.3. Subparagraph (1) does not apply to gifts less than R350 in value.



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**48. Sponsorships**

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

**49. Objections and complaints**

- 49.1. Persons aggrieved by decisions or actions taken in the implementation of this supply chain management system may, within 14 calendar days of the decision or action –
- a) on written request, any bidder should be provided with the reasons why his / her own bid was unsuccessful.
  - b) if the objection or complaint 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, refer the written objection or complaint to the Chief Financial Officer for resolution; or
  - c) if such complaint or objection is not satisfactorily answered per section 49.1(b), lodge a written appeal with the Municipal Bid Appeals Tribunal in accordance with the provisions of paragraph 54.

**50. Unsatisfactory performance**

- 50.1. The accounting officer must continuously communicate unsatisfactory performance to contractors in writing, compelling the contractor to perform according to the contract and thus to rectify or to restrain from unacceptable actions.
- 50.2. Where the supplier fails to render the services within the stipulated period, or should services rendered be deemed not to the satisfaction of the uMgungundlovu District Municipality, the tenderer will receive written notice of poor performance. Failure to address performance issues could result in the entire contract being reviewed or cancelled.
- 50.3. If the Accounting Officer intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the Accounting Officer may regard the supplier as having no objection and proceed with the restriction.
- 50.4. If a restriction is imposed, the Accounting Officer must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- i. the name and address of the supplier and / or person restricted by the purchaser;
  - ii. the date of commencement of the restriction

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- iii. the period of restriction; and
- iv. the reasons for the restriction.

- 50.5. The **municipality may** disregard the bid of any bidder if that bidder, or any of its directors-
- a) have abused the **municipality's** SCM system;
  - b) have committed fraud or any other improper conduct in relation to such system; or
  - c) have failed to perform on any previous contract; and
  - d) must inform the Provincial Treasury of any action taken in terms of the aforementioned paragraph.

## 51. Contract termination

- 51.1. Municipality must cancel a contract awarded to a supplier of goods, services, or works:
- a) If the supplier committed any proven corrupt or fraudulent act during the bidding process or the execution of that contract.
  - b) If any official or other role player committed any proven corrupt or fraudulent act during the bidding process or the execution of that contract that benefited the supplier.
- 51.2. Termination of a contract may be considered for a variety of reasons, as stipulated in the general conditions of contract, such as delayed deliveries for a period of more than 14 working days, failing to perform any other contractual obligation or if the supplier has engaged in corrupt and fraudulent practices and insolvency.
- 51.3. Contract termination may be affected if allowed for in the contractual conditions.
- 51.4. The procedures for contract termination must be done in compliance with the applicable General conditions of Contract.
- 51.5. In the case in which, the project is left incomplete by the defaulting contractor:
- a) There will be no automatic award to the second highest scoring bidder in terms of the concluded procurement stage
  - b) The municipality may request either quotations or bids in line with the range of procurement thresholds, subject to paragraph 35 of this policy.

## 52. Objections and complaints

- 52.1. Persons aggrieved by decisions or actions taken in the implementation of this supply chain management system may, within 14 calendar days of the decision or action –
- a) if the objection or complaint 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 48 hours refer the written objection or complaint to an independent and impartial person 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 paragraph 53.

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

- 53.1. 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.
- 53.2. 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.
- 53.3. The person appointed must -
- a) strive to resolve promptly all objections or complaints received; and
  - b) submit monthly reports to the accounting officer on all such objections and complaints received, attended to or resolved.
- 53.4. If the independent and impartial person referred to in paragraph 51.1, is of the view that a matter which should be dealt with in terms of paragraph 52, he or she shall forthwith refer the matter to the Municipal Bid Appeals Tribunal and that Tribunal shall then hear and determine the matter in accordance with the provisions of paragraph 52.
- 53.5. An objection or complaint may be referred to the KwaZulu-Natal Provincial Treasury if:
- a) the objection or complaint is not resolved within 60 days; or
  - b) no response is forthcoming within 60 days.
- 53.6. If the Provincial Treasury does not or cannot resolve the matter, the objection or complaint may be referred to the National Treasury for resolution.
- 53.7. The municipality does not prohibit any person from approaching a court of law to seek relief.

**54. Municipal Bid Appeals Tribunal**

- 54.1. 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.
- 54.2. 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.

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54.3. The powers, duties and functions of the Municipal Bid Appeals Tribunal, and matters incidental thereto, are set out in the Rules which are appended to this Supply Chain Management Policy and marked Appendix A.

54.4. 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 paragraph 52.3.

54.5. There shall be no further appeal against a decision of the Municipal Bid Appeals Tribunal.

**55. Access to bidding information**

55.1. Information access:

- a) all bidding information remains strictly confidential.
- b) every bidder shall be informed of final bid results.
- c) the information of one bidder shall not be disclosed to any other bidder.

55.2. Informing the unsuccessful bidders

- a) The SCM Unit must inform unsuccessful bidders in writing that their bids were unsuccessful. At this stage no detail on why bids were unsuccessful, has to be provided. The unsuccessful bidder has fourteen (14) days to raise an objection against the decision. If no response has been received by the municipality within the stipulated period, a letter will be sent to the successful bidder informing him/her of the acceptance of his/her bid.
- b) on written request, any bidder should be provided with the reasons why his / her own bid was unsuccessful.

55.3. Informing the successful bidders

- a) the successful bidder must be notified in writing by registered or certified mail of the acceptance of their bid within the original validity period of the bid.
- b) the information of other bidders will not be disclosed to the successful bidder.

55.4. Disclosure of information

- a) bids are not available for perusal by the public.
- b) (b) according to sections 36 and 63 of the Promotion of Access to Information Act, Act No 2 of 2000, a public body must refuse a request for access to a record of the body if the record contains:
  - i. trade secrets of a third party.
  - ii. financial, commercial, scientific, or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interest of the third party.
  - iii. information supplied in confidence by a third party, the disclosure of which could reasonably be expected:
    - to put that third party at a disadvantage in contractual or other negotiations.
    - to prejudice that third party in commercial competition.

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- iv. personal information about a third party, including a deceased individual.
- c) when divulging information, a balance must be stricken between one party's right to access of information and the right to confidentiality of the other party.
- d) where no bid has been accepted, particulars of the bids received are not made public.
- e) municipality can withhold information if the release or publication of the information:
  - i. will impede law enforcement; or
  - ii. will be contrary to the public interest; or
  - iii. (will harm the legitimate interests of municipality; or
  - iv. will hinder fair competition between providers by revealing any proprietary information of any bidder.

55.5. Publishing of award

- a) awards shall be published in the media by means of which the bids were originally advertised.
- b) Awards shall be published on the National Treasury eTender Publication Portal.
- c) information pertaining to the bid number, successful service provider and amount must be made available on the municipality's website.

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

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

**57. Evaluation of Bids**

57.1. Discounts

- a) When calculating comparative prices:
  - i. unconditional discounts must be taken into account for evaluation purposes; and
  - ii. conditional discounts must not be taken into account for evaluation purposes but should be implemented when payment is effected

57.2. Sub-Contracting

- a) A bidder must not be awarded the points claimed for B-BBEE status level of contribution if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the contract value to any other enterprise that does not qualify for at least the same number of points that the bidder qualifies for, unless subcontracting is a tendering condition of the bid in line with the categories stipulated in PPPFA Regulations of 2017.
- b) A person awarded a contract may only enter into a subcontracting arrangement with the prior approval of the organ of state. A contractor is not allowed to sub-contract more than 25% of the contract value to another enterprise that does not have equal or higher B-BBEE

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status level, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

- c) In relation to a designated sector, a contractor must not be allowed to sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- d) For construction related contracts, the service provider should ensure that a minimum % of the contract, as as per the PPPFA Regulations of 2017, is sub-contracted to qualifying previously disadvantaged companies within the area of jurisdiction of the municipality, subject to (a) and (b) above.

57.3. Evaluation of Bids Based on Functionality as a Criterion

- a) Bids invited on the basis of functionality as a criterion must be evaluated in two stages – first functionality must be assessed together with the eligibility criteria and then in accordance with the 80/20 or 90/10 preference point systems prescribed in Preferential Procurement Regulations 5, 6 and 7.

**1. First stage – Evaluation of functionality**

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

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$$P_s = \frac{S_o}{M_s} \times 100$$

where:

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

- ix. The percentage of each panel member should be added and divided by the number of panel members to establish the average percentage obtained by each bidder for functionality.
- x. During the evaluation of a service provider, for construction related contracts, the Bid evaluation committee should assess whether the service provider is currently rendering services (construction related contracts) to the municipality:
  - a. If the service provider is currently rendering services to the municipality with a stage of completion less than 50% attributable to the main contractor and/or
  - b. the service providers' performance is not in line with the project performance milestones, then the service provider should be disqualified from further evaluation, and should be placed on hold.

**2. Second stage – Evaluation in terms of the 80/20 or 90/10 preference point systems**

– Step 1: Calculation for points for price

- a. Direct Preference Point System (80/20): Consideration of bids for the procurement of goods and services with an estimated value of R 30 000 up to R 50 000 000 including VAT
  - i. The PPPFA prescribes that the lowest acceptable bid will score 80 points for price. Bidders that quoted higher prices will score lower points for price on a pro-rata basis.
  - ii. When calculating prices:
    - a. Unconditional discounts must be taken into account for evaluation purposes and
    - b. Conditional discounts must not be taken into account for evaluation purposes but should be implemented when payment is affected.
  - iii. The formulae to be utilised in calculating points scored for price are as follows:

**80/20 Preference point system [(for acquisition of services, works or goods with Rand value equal to or above R 30 000 up to a Rand value of R50million) (all applicable taxes included)]**

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

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where:

- Ps = Points scored for price of bid under consideration  
 Pt = Rand value of bid under consideration.  
 Pmin = Rand value of lowest acceptable bid.

- b. Direct Preference Point System (90/10): Consideration of bids for the procurement of goods and services with an estimated value above R 50 000 000 including VAT.
- iv. The PPPFA prescribes that the lowest acceptable bid will score 90 points for price. Bidders that quoted higher prices will score lower points for price on a pro-rata basis.
- v. The formulae to be utilised in calculating points scored for price are as follows:

**90/10 Preference point system [(for acquisition of services, works or goods with a Rand value above R50million) (all applicable taxes included)]**

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

Where:

- Ps = Points scored for price of bid under consideration  
 Pt = Rand value of bid under consideration  
 P min = Rand value of lowest acceptable bid

– Step 2: Calculation of points for B-BBEE status level of contributor

- a. Points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

<b>B-BBEE Status Level of Contributor</b>	<b>Number of points (80/20 system)</b>	<b>Number of points (90/10 system)</b>
1	20	10
2	18	9
3	14	6
4	12	5
5	8	4
6	6	3
7	4	2



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8	2	1
Non-compliant contributor	0	0

- b. Bidders are not disqualified from the bidding process if the bidder does not submit a certificate substantiating the B-BBEE status level of contribution or is a non-compliant contributor. Such a bidder will score zero (0) out of a maximum of 20/10 points respectively for B-BBEE.
- c. The points scored for price must be added to the points scored for B-BBEE status level of contribution to obtain the bidder's total points scored out of 100.

57.4. Negotiating a fair market related price

- a) Tender documents must state a condition stating clearly that the award of the tender may be subjected to a price negotiation with the preferred tenderers subject to the following conditions:
  - I. Delegations and threshold values for negotiating by the accounting officer
  - II. Negotiating may not allow any preferred tenderer a second or unfair opportunity
  - III. Is not the detriment of any other tenderer
  - IV. Does not lead to higher price than bid as submitted.

**58. Commencement**

58.1. This Policy takes effect one month after approval from council.

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ANNEXURE A

uMGUNGUNDLOVU DISTRICT MUNICIPALITY

RULES FOR MUNICIPAL BID APPEALS TRIBUNAL

1. CHAPTER 1: INTERPRETATION

1.1 What words mean in these rules

In these rules any word or expression which is defined in the Municipal Supply Chain Management Regulations published on 30 May 2005 in Government Gazette No 27636 under Notice No 868 of 2005 has the same meaning, unless the context indicates that the word or expression should have another meaning, and –

1.1.1 **“appeal”** means a formal objection to the award of a bid by the Municipality brought in terms of these rules by an appellant;

1.1.2 **“appellant”** means a person who initiates a formal objection to the award of a bid by the Municipality and who qualifies as an appellant in terms of chapter 5 of these rules;

1.1.3 **“bid”** means a written offer equal to or in excess of R 200 000 made by a person in response to an invitation by the Municipality for the supply of goods, services, or works to the Municipality;

1.1.4 **“day”** means a calendar day;

1.1.5 **“deliver”** means to formally provide the Secretariat with a copy of a document in the manner described in rule 9.1;

1.1.6 **“District Municipality”** means the uMgungundlovu District Municipality;

1.1.7 **“interested person”** means either –

1.1.7.1 a person who was awarded a bid; and

1.1.7.2 a person, other than an appellant, whose bid was rejected by the Municipality;

1.1.8 **“Municipal Bid Appeals Tribunal”** and **“Tribunal”** means the tribunal established in terms of rule 3.1 and, in relation to a particular appeal, means the particular tribunal which has jurisdiction to hear the appeal in question;

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1.1.9 **“Municipal Supply Management Regulations”** means the Municipal Supply Chain Management Regulations made in terms of the Local Government Municipal Finance Management Act (Act No. 56 of 2003);

1.1.10 **“Municipality”** means the uMgungundlovu District Municipality;

1.1.11 **“person”** includes a company, close corporation, trust, partnership or association;

1.1.12 **“Provincial Treasury”** means the Provincial Treasury of the province of KwaZulu-Natal; and

1.1.13 **“Secretariat”** means the secretariat established in terms of chapter 4 of these rules to undertake the administration of the Tribunal and to assist with the setting down and conduct appeals.

## 1.2 **How to calculate a period of days**

When a number of days is prescribed for doing something, then that number must be calculated by excluding the first day and including the last day, unless the last day falls on a Sunday or a public holiday or on a day during the period between 16 December to 7 January, in which case that day or period must be excluded.

## 2. **CHAPTER 2: THE PURPOSE OF THE MUNICIPAL BID APPEALS TRIBUNALS**

2.1 The purpose of the Municipal Bid Appeals Tribunal is to receive, hear and decide appeals against the award of bids by the Municipality.

2.2 The Tribunal must act impartially and independently.

2.3 The Tribunal is intended to assist in maintaining the good repute of municipal bid processes in the Municipality by providing an accessible, transparent and speedy mechanism for resolving objections to the award of bids by the Municipality. Service delivery, necessarily delayed by an appeal, requires that the procedure of the Tribunal be efficient and speedy.

## 3. **CHAPTER 3: THE MUNICIPAL BID APPEALS TRIBUNALS**

### 3.1 **Establishment**

3.1.1 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.

3.1.2 The accounting officer of the Municipality, in consultation with the Provincial Treasury, shall appoint the Chairperson, Deputy Chairperson and Members of the Municipal Appeals Tribunal.

3.1.3 The Municipal Bid Appeals Tribunal has as its seat the place where the District Municipality has its seat.

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3.1.4 The Chairperson of the Tribunal may determine that in respect of a particular appeal, the Tribunal should sit at a place other than the seat of the District Municipality.

**4. CHAPTER 4: THE MUNICIPAL BID APPEALS TRIBUNAL SECRETARIAT**

**4.1 Who is the Secretariat?**

The administrative and secretarial work incidental to the performance of the functions of the Municipal Bid Appeals Tribunal shall be performed by officers in the Provincial Treasury designated and assigned for such purpose by the Head of the Provincial Treasury.

**4.2 Opening hours**

The office of the Secretariat must be open for the filing of documents from 08:00 to 12:30 and from 14:00 to 16:00 every day other than a Saturday, Sunday or public holiday.

4.3 Documents may only be filed with the Secretariat at the address, telefax number or email address given in rule 4.3 and during the hours referred to in Rule 4.2. Notwithstanding rule 4.2, documents may be faxed or e-mailed to the Secretariat at any time.

**5 .CHAPTER 5: WHO MAY APPEAL?**

5.1 Only a person who submitted a bid in response to an invitation to bid may appeal against the award of that bid to another party.

5.2 An interested person may lodge an appeal where the Municipality (or any committee or person acting under delegated power) has –

5.2.1 committed misconduct in relation to their duties concerning the awarding of bids;

5.2.2 committed a gross irregularity;

5.2.3 exceeded its or their power;

5.2.4 awarded a contract in an improper manner, or

5.2.5 awarded a bid in a manner which contravenes the Municipality's Supply Chain Management Policy or any applicable law.

**6. CHAPTER 6: PRELIMINARY PROCEDURES**

The Municipality must –

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6.1 Indicate in its bid documents that appeals against the award of bids must be lodged with the Secretariat within the time period referred to in the bid documents.

6.2 At the time of awarding a bid –

6.2.1 formulate comprehensive reasons for the award of the bid to the successful bidder and the failure to award the bid to each interested party; and

6.2.2 prepare and retain for not less than 180 days, a comprehensive file of all documentation relevant to the award of the bid to the successful bidder and the failure to award the bid to each interested party.

6.3 When advertising the award of a bid, the Municipality must inform all interested parties that appeals against the award of the bid in question must be lodged with the Municipal Manager within the time period referred to in the advertisement, and that a copy should be forwarded to the Secretariat.

## **7. CHAPTER 7: PROCESSING AN APPEAL**

7.1 The Appellant must within fourteen days of the award being advertised, file a notice of appeal containing the grounds of appeal with the Municipal Manager. A copy of the notice should be forwarded to the Secretariat.

7.2 The Municipal Manager must maintain a register in which all appeals, and the outcome thereof, are recorded.

7.3 On receiving the notice of the appeal, the Municipal Manager must, within 24 hours, send the appeal to the Secretariat.

7.4 On receiving the notice of the appeal, the Secretariat shall –

7.4.1 issue the appeal with a unique number which must thereafter be reflected on all documents prepared by the Secretariat, the appellant, or any other party participating in the appeal; and

7.4.2 request the Municipality to, within three days:

7.4.2.1 confirm, in writing the names and contact details of all interested parties affected by the appeal;

7.4.2.2 serve on the Secretariat its reasons for awarding the bid to the successful bidder and for its failure to award the bid to the appellant; and

7.4.2.3 serve on the Secretariat all the documentation relevant to the decision relating to the award.

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7.5 After receiving the information from the Municipality, the Secretariat shall:

7.5.1 notify all interested parties affected by the appeal that an appeal has been lodged, advise these persons of their right to respond to the appeal, and describe, in plain language, the next steps; and

7.5.2 provide the appellant with copies of the information supplied by the Municipality; and

7.5.3 require the appellant to provide written representations amplifying (if necessary) its grounds of appeal within a further five days.

7.6 On receiving the further representations from the appellant, or after the five days have lapsed, the Secretariat must, within two days, provide all the interested parties affected by the appeal with copies of the appellant's notice of appeal and further representations (if any) and advise them of their right to lodge, with the Secretariat, a response to the appeal within five days.

7.6.1 Any response to an appeal must include:

7.6.1.1 a concise statement of the grounds on which the matter is supported or opposed;

7.6.1.2 facts or allegations contained in the appellant's representations that the interested party affected by the appeal admits;

7.6.1.3 facts or allegations contained in the appellant's representations that the interested party affected by the appeal denies and the grounds for such denial; and

7.6.1.4 the material facts or points of law on which the interested party affected by the appeal relies.

7.7 Once the Secretariat has received representations from the interested parties affected by the appeal, or the period for doing so has lapsed, the Secretariat shall deliver all the documentation relevant to the appeal to the Chairperson.

7.8 On receiving the documents from the Secretariat, the Chairperson (or Deputy Chairperson in the Chairperson's absence) must within two days of receiving the documentation decide whether the appeal:

7.8.1 is frivolous, vexatious or without any merit; or

7.8.2 should be determined on the basis of the documents alone; or

7.8.3 should be referred to an oral hearing.

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7.9 The Secretariat, within two days of receiving the Chairperson or Deputy Chairperson's decision on whether or not to proceed with the appeal, must:

7.9.1 issue a notice of non-referral if the appeal has been deemed to be frivolous, vexatious or without any merit; or

7.9.2 notify the appellant, interested parties affected by the appeal and the Municipality that the appeal will be determined on the basis of the documents alone; or

7.9.3 notify the appellant, interested parties affected by the Appeal and the Municipality that the appeal will be determined on the basis of an oral hearing, inform these parties of the venue, date and time of the hearing, and inform them of any directives that may have been issued by the Chairperson with regard to the conduct of the appeal.

**7.10 Withdrawal of matters**

An appellant, before an application has been decided, may withdraw the application, or any part of the application, by serving a notice to this effect on the Secretariat.

**8. CHAPTER 8: HEARINGS**

**8.1 Informality**

8.1.1 Any oral hearing of an appeal must be informal and must follow the procedures determined by the Chairperson or Deputy Chairperson, as the case may be.

8.1.2 The Tribunal shall determine the admissibility of any evidence adduced and of its probative value.

**8.2 Access**

The hearings of the Municipal Bid Appeals Tribunal are open to the public unless otherwise determined by the Chairperson.

**8.3 Witnesses**

If the Tribunal requests a witness to give evidence at the hearing, the Chairperson may request the Municipal Manager to procure the presence of that witness at the hearing.

**8.4 Interpreter**

A party requiring the services of an interpreter must notify the Secretariat at least three days prior to the date for which the matter has been set down.

**8.5 Record of hearing**

The Secretariat must compile a record of the proceedings in respect of any matter that has come before the Tribunal, comprising of:

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- 8.5.1 the application documents.
- 8.5.2 notices;
- 8.5.3 the Chairperson's record of pre-hearing procedures;
- 8.5.4 all documentary evidence;
  
- 8.5.5 the transcript, if any, of the oral evidence given at the hearing; and
- 8.5.6 a written record of the Tribunal's final decision with reasons.

**8.6 Non-appearance**

If a party to an appeal fails to attend any hearing, and that party is –

- 8.6.1 the appellant, the Tribunal may dismiss the matter by issuing a written ruling; or
- 8.6.2 is not the appellant, the Tribunal may –
  - 8.6.2.1 continue with the proceedings in the absence of that party; or
  - 8.6.2.2 adjourn the hearing to a later date
- 8.6.3 The Tribunal must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of this rule.
- 8.6.4 If a matter is dismissed, the Secretariat must send a copy of the ruling to the parties.

**8.7 Hearing procedure**

Subject to any directive issued by the Chairperson of the Tribunal, a hearing shall be conducted as follows:

**8.7.1 Commencement**

The Chairperson shall –

- 8.7.1.1 introduce the members of the Tribunal;
- 8.7.1.2 request any other parties present to introduce themselves;
- 8.7.1.3 explain the procedure of the hearing; and
- 8.7.1.4 provide a brief introduction to the subject matter of the appeal.



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**8.7.2 The Municipality's case**

The Municipality shall –

8.7.2.1 explain the background to the bid;

8.7.2.2 provide reasons for the appointment of the successful bidder and for the failure to appoint the appellant; and

8.7.2.3 deal with the appellant's representations and any pertinent points that may have been made by any of the interested persons.

**8.7.3 Questioning of the Municipality's representative**

The other parties shall be given an opportunity to ask questions of the Municipality, in the following order:

8.7.3.1 the appellant;

8.7.3.2 any interested party affected by the appeal.

**8.7.4 The appellant's case**

The appellant shall have an opportunity to present its case, setting out its grounds for the appeal.

**8.7.5 Questioning of the appellant**

The other parties shall then be given an opportunity to ask questions of the appellant, in the following order:

8.7.5.1 the Municipality

8.7.5.2 any interested party affected by the appeal..

**8.7.6 The case of interested parties affected by the appeal**

Interested parties affected by the appeal shall then have an opportunity to each present their case.

**8.7.7 Questioning of interested parties affected by the appeal**

The other parties shall then be given an opportunity to ask questions of the interested parties affected by the appeal, in the following order:

8.7.7.1 the appellant;

8.7.7.2 the Municipality.

**8.7.8 Closing statements**

Each party shall then have an opportunity to present a brief closing statement, in the following order:

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8.7.8.1 the appellant;

8.7.8.2 the Municipality;

8.7.8.3 interested parties affected by the appeal.

**8.8 Powers of the Municipal Bid Appeals Tribunal**

8.8.1 The Tribunal –

8.8.1.1 must hear and finalise an appeal within five days of the date of the hearing;

8.8.1.2 must make a final binding decision to confirm, vary or set aside the decision of the Bid Adjudication Committee or the Municipal Manager;

8.8.2 If the award is varied or set aside, the Tribunal must make any order it considers appropriate regarding the manner in which the matter is to be resolved.

8.8.3 The Tribunal may make a default order –

8.8.3.1 after it has considered or heard any necessary evidence; and

8.8.3.2 if it is satisfied that the notice of set down was adequately served.

**9. CHAPTER 9: GENERAL RULES**

**9.1 Delivery of documents**

9.1.1 Where a document is required to be delivered to the Secretariat, it may be delivered –

9.1.1.1 at the Secretariat's physical address;

9.1.1.2 by registered mail to the Secretariat;

9.1.1.3 by fax; or

9.1.1.4 by e-mail

9.1.2 Documents sent by fax or e-mail must include all of the following information on a cover page or cover message:

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9.1.2.1 the name, address and telephone number of the sender;

9.1.2.2 the date and time of transmission;

9.1.2.3 the total number of pages sent;

9.1.2.4 the name and telephone number of the person to contact if transmission is flawed; and

9.1.2.5 the manner in which, and the person to whom, an acknowledgement of receipt should be sent.

**9.2 Confidentiality**

If a party alleges that any document or information required to be delivered to the Secretariat is confidential, the Chairperson of the Tribunal shall determine the matter and deal with an request in any manner that he/she deems fit.

**9.3 Representation of parties**

9.3.1 A party to a matter may act in person or appoint a representative.

9.3.2 A person appointed as representative must notify the Secretariat and provide it with the following particulars:

9.3.2.1 name;

9.3.2.2 postal address and address for the service of documents;

9.3.2.3 telephone and fax numbers;

9.3.2.4 e-mail address;

9.3.2.5 the unique reference number of the matter; and

9.3.2.6 name of the person represented.

9.3.3 A party who terminates a representative's authority to act in a matter must notify the Secretariat in writing, and must provide details where the person may be contacted, both telephonically and for the purpose of serving documents.

9.3.4 A party does not need to be represented by a legal representative before the Tribunal.

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**9.4 Powers of the Chairperson to deviate from certain rules**

9.4.1 The Chairperson may on good cause shown, and in keeping with the requirements of justice and expediency:

9.4.1.1 direct that any prescribed time period may be shortened or extended:

9.4.1.2 give directions on the manner, form, and medium in which evidence is to be led.

**9.5 Expert witnesses**

9.5.1 A municipal Bid Appeals Tribunal may appoint such experts or other persons as service providers as it may deem necessary with a view to assisting it in the exercise and performance of its powers, duties and functions.

9.5.2 The terms, conditions and fees applicable to any expert or person appointed under Rule 9.5.1 and the work to be performed or services to be rendered must be determined by the Provincial Treasury, and be contained in a written agreement entered into for that purpose between the Provincial Treasury and the expert or person concerned.

9.5.3 The experts or other persons appointed under Rule 9.5.1 may not vote on any decision taken by the Municipal Bid Appeals Tribunal.