



DR NKOSAZANA DLAMINI ZUMA MUNICIPALITY

# DRAFT SUPPLY CHAIN MANAGEMENT POLICY 2021/2022

# **SUPPLY CHAIN MANAGEMENT POLICY FOR THE DR NKOSAZANA DLAMINI ZUMA**

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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 Act has the same meaning as in the Act, and –

**“Accounting Officer”** mean the Municipal Manager, or Acting Municipal Manager, of the DR Nkosazana Dlamini Zuma;

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

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

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

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

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

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

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

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

**“list of accredited prospective providers” Central Supplier Database** means the list of accredited prospective providers which the municipality must keep in terms of paragraph 14 of this Policy;

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

- (a) the Constitution of the Republic of South Africa Act, 1996 (Act No 108 of 1996);
- (b) the Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000);
- (c) the Broad-Based Black Economic Empowerment Act, 2003 (Act No 53 of 2003);
- (d) the Construction Industry Development Board Act, 2000 (Act No 38 of 2000); and
- (e) the Prevention and Combating of Corrupt Activities Act, 2004 (Act No 12 of 2004);

**“Regulations”** means the Local Government: Municipal Finance Management Act, 2003, Municipal Supply Chain Management Regulations;

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

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

**“B-BBEEA”** Broad Based Black Economic Empowerment Act, Act No 53 of 2003

**“BVA”** BEE Verification Certificate Agency.

**“Municipal Bid Appeals 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;

**“Municipality 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).

**“Municipality”** means DR Nkosazana Dlamini Zuma

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

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

**“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.

### **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 public holiday or on a day during the period between 16 December and 7 January, in which case that day must be excluded.

**“Competitive bidding process”** means a transparent procurement method in which bids from competing contractors, suppliers or vendors are invited by openly advertising the scope, specifications, terms and conditions of the proposed contract as well as the criteria by which responsive bids received will be evaluated;

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

**“Consortium or joint venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;

**“Construction works”** means the provision of a combination of goods and services arranged for the development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset including building and engineering infrastructure;

**“Contractor”** means a person or body of persons who undertakes to execute and complete construction works for or on behalf of the municipality;

**“Contract”** means the agreement that results from the acceptance of a tender by the municipality in accordance with this policy;

**“Council”** means the council of Dr Nkosazana Dlamini Zuma Municipality;

**“Day”** unless expressly otherwise provided in this policy, means a calendar day, provided that when any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday;

**“Delegating authority”** means the council, a duly authorized political structure or office

bearer thereof, the Accounting Officer or other employee to whom original powers are assigned in terms of legislation and, in relation to a sub-delegation of a power, that delegated body;

**“Delegation”** means the issuing of a written authorization by a delegating authority to a delegated body to act in his stead and, in relation to a duty, includes an instruction or request to perform or to assist in performing the duty and “delegate” and sub-delegate has a corresponding meaning;

**“Delegated body”** in relation to the delegation of a power means the person to whom a power has been delegated by the delegating authority in writing;  
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**“Designated group”** means-

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

**“Designated Official”** means the official of the municipality to whom the accounting officer or the chief financial officer, as the case may be, have, in accordance with sections 79 and 82 of the Municipal Finance Management Act No. 56 of 2003 delegated powers, functions and duties in connection with the application and implementation of this policy; provided that a sub-delegation by the chief financial officer to an official that has not been allocated to him by the accounting officer or to a person contracted by the municipality for the work of its budget and treasury office may only be so authorized with the concurrence of the accounting officer and provided further that the said chief financial officer is satisfied that effective systems and procedures are in place to ensure control and accountability by the person concerned;

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

**“Disposal”** means a process of preparing, negotiating and concluding a written contract relating to the alienation of a capital asset whether movable or immovable owned by or under the control of the municipality or rights in respect thereof, by means of a sale, lease, donation or cession and “dispose of” has a similar meaning;

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

**“Firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy or tax which, in terms of any applicable law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies or the rendering costs of any service, for the execution of a contract;

**“Formal written price quotations”** means quotations referred to in paragraph 12 (1) (d) of



this policy;

**“Functionality”** means the measurement according to predetermined norms, as set out in the tender specification, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a tenderer;

**“Fronting”** means a deliberate circumvention or attempted circumvention of the "Broad Based Black Economic Empowerment Act and the Codes of Good Practice;

**“Head of Department”** means a senior manager as defined in the Municipal Finance Management Act and who is responsible for a vote as assigned by the accounting officer;

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

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

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

**“Local content”** means that portion of the tender price which is not included in the imported content, provided that local manufacture does take place;

**“Long term contract”** means a contract with a duration period exceeding one (1) year, but not exceeding three (3) years. For contracts exceeding three (3), section 33 of the Municipal Finance Management Act No. 56 of 2003 must be applied.

**“List of accredited prospective providers”** means the list of accredited prospective providers which the municipality must keep in terms of paragraph 15 of this policy;

**“Mayor”** means the councillor elected by the council as Mayor in terms of section 48 of the Local Government: Municipal Structures Act No. 117 of 1998 read with section 58 of the Municipal Finance Management Act;

**“Municipality”** means the Dr Nkosazana Dlamini Zuma Municipality, a municipality established in terms of section 12 of the Local Government: Municipal Structures Act No. 117 of 1998 and includes any employee entitled to or duly authorized to perform any function or duty in terms of this policy and/or is responsible for the implementation of this policy or any part thereof;

**“Municipal Finance Management Act”** means the Local Government: Municipal Finance Management Act No. 56 of 2003 and, unless otherwise stated in this policy, any reference to

**“The Act”** shall mean a reference to this Act;

**“Municipal Systems Act”** means the Local Government: Municipal Systems Act No. 32 of 2000 and includes the regulations under this Act;

**“Non-firm prices”** means all prices other than “firm” prices;

**“Other applicable legislation”** means any other legislation applicable to municipal supply chain management, including but not limited to –

(a) the Preferential Procurement Policy Framework Act No. 5 of 2000;

(b) the Broad-Based Black Economic Empowerment Act No. 53 of 2003;

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(c) The Construction Industry Development Board Act No. 38 of 2000;

(d) The Local Government: Municipal Systems Act No. 32 of 2000 (Municipal Systems Act);

(e) the Promotion of Administrative Justice Act No. 3 of 2000;

(f) the Promotion of Access to Information Act No. 2 of 2000;

(g) the Protected Disclosures Act No. 26 of 2000;

(h) the Competition Act No. 89 of 1998;

(i) the Prevention and Combating of Corrupt Activities Act No. 12 of 2004;

**“Person”** includes an enterprise, partnership, trust, association, consortium, joint venture or a juristic person;

**“Petty cash”** means a relatively small amount of cash kept at hand for making immediate payment for miscellaneous small expenses incurred by the municipality.

**“Preferential Procurement Regulations”** means the Preferential Procurement Regulations, 2017 contained in Government Notice R32 of 2017 promulgated in Government Gazette No. 40553 of this date;

**“Procurement”** means the processes leading to the negotiation and conclusion of contracts whether in writing or verbally for the acquisition of goods, services or construction works or any combination thereof or the disposal of assets whether movable or immovable or any rights in such assets by means of purchase, sale, lease or donation and includes the preparation of all associated bid and contractual documentation and “procured” or “procuring” has a similar meaning;

**“Responsive bid”** means a bid that complies in all material aspects with the requirements set out in or contained in an invitation to bid including the applicable specification;

**“Small enterprise”** means a separate and distinct business entity, together with its branches or subsidiaries, if any, including cooperative enterprises, managed by one owner or more predominantly carried on in any sector or sub-sector of the economy mentioned in column 1 of the Schedule to the National Small Business Act No. 102 of 1996 which is contained in Annexure B to this policy and classified as a micro-, a very small, a small or a medium enterprise by satisfying the criteria mentioned in columns 3, 4 and 5 of the said schedule;

**“Stipulated minimum threshold”** means that portion of local production and content as

determined by the Department of Trade and Industry from time to time;

**"Sub-contract"** means the primary contractor's assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of a contract;

**"Rand value"** means the total estimated value of a contract in South African currency calculated at the time of tender invitations, and includes all applicable taxes and excise duties;

**"SANAS"** means the South African National Accreditation System;

**"Tender"** means a written offer in a prescribed or stipulated form in response to an invitation by the municipality for the provision of services, works or goods, through price quotations, advertised competitive tendering processes or proposals and "bid" has a corresponding meaning;

**"Total revenue"** bears the same meaning assigned to this expression in the Codes of Good Practice;

**"Trust"** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person;

**"Trustee"** means any person, including the founder of a trust, to whom property is Bequeathed in order for such property to be administered for the benefit of another person;

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

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

**"Verification Certificate"** means a B-BBEE certificate issued in compliance with the BBEE Codes of Good Practice and all Sector Codes issued in terms of Section 9(1) of the Broad-Based Black Economic Empowerment Act;

**"Panel"** means a list of service providers appointed on a framework agreement

**"Functionality"** means a process of assessing ability and capability of service providers.  
**Bid Committees** means the committees established in terms of this policy to prepare bid specifications, bid documentation, evaluate responsive bids and, where so authorized, to adjudicate responsive bids and any reference in section 117 of the Municipal Finance Management Act to municipal tender committees shall be construed as a reference to the aforesaid committees;

**"Bid documentation"** means all documentation relating to or necessary in order to complete a procurement or disposal including but not limited to such specification, bidding, certification and contractual documentation as may be prescribed by National Treasury or the Construction Industry Development Board, as the case may be, for municipal supply chain management

purposes and the implementation of this policy;

“Bidder” means any person who submits a bid or quotation to the municipality in response to an invitation to bid or quote and includes a “tenderer”;

“**Bid rigging**” means a prohibited collusive bidding practice in terms of which bidders that would normally be expected to compete in a procurement process either singularly or by association with other persons or firms in a horizontal relationship, secretly conspire to raise prices or lower the quality of goods and/or services or agree not to compete against each other in such process;

"**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" is a generic term which means Africans, Coloureds and Indians;

## INTRODUCTION

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

## OBJECTIVES OF THE POLICY

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

- To stimulate and promote Local Economic Development in a targeted and focused manner;
- To promote resource efficiency and greening;
- To facilitate creation of employment and business opportunities for the people of Dr Nkosazana Dlamini Zuma Municipality with particular reference to Historically Disadvantaged Individual's (HDIs) as cited in section 217 (2) of the Constitution of the Republic of South Africa Act 106 of 1996 ;
- To promote Local Content and the competitiveness of local businesses operating within the Dr Nkosazana Dlamini Zuma Municipality;
- To increase the small business sector access, in general, to procurement business opportunities created by Council;
- To increase participation by small, medium and micro enterprises (SMME's), including cooperatives and
- To promote joint venture partnerships with businesses operating within the Dr Nkosazana Dlamini Zuma Municipality.
  - To spend a minimum of 40% (forty percent) of its annual procurement budget with Historically Disadvantaged Individuals (HDIs) youth, women, people with disabilities within the jurisdiction of the Dr Nkosazana Dlamini Zuma Municipality, through the application of Preferential Procurement Policy and relevant policies.
    - 30% EME or QSE which is at least 51% owned by Youth
    - 30% EME or QSE which is at least 51% owned by Women
    - 5% EME or QSE which is at least 51% owned People living with disabilities
    - 5% EME or QSE which is at least 51% owned by black people who are military veterans;
- Sub-contracting after award to a maximum of 25% on contracts of the approved budget per department. The 25% would be allocated to local black emerging contractor(s), local youth emerging contractor(s) inclusive of women and contractors of people with disabilities and co-operatives.]

## CHAPTER 1

### ESTABLISHMENT AND IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

#### 2. Principles and pledges

- (1) The principles of this policy are that it:
  - (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) The municipality pledges effective and efficient service delivery by acquiring goods and services of optimum value through best purchasing practices. In addition to the above, this municipality will pursue the following four main aims:
  - (a) The promotion of the Interdivisional Support Policy;
  - (b) The promotion, development and support of business from historically disadvantaged and Individuals communities (HDI);
  - (c) The promotion of local, provincial and national suppliers and agents before considering international suppliers; and
  - (d) The development, promotion and support of moral values that underpin the above in terms of the municipality's Ethical Code.

- (3) The municipality further supports the creation and maintenance of a good, sound business relationship with the bidding public in general, as well as with its valued supplier base, without which it cannot survive in a competitive market.
- (4) The municipality also seeks to develop and maintain positive, long term relationships based on mutual trust and respect with those suppliers who demonstrate their commitment to the municipality's shared goals. The municipality also commits itself to clarity in its communication of requirements, and to be professional, courteous, fair, factual and responsive in its business dealings.
- (5) The municipality may not act otherwise than in accordance with this policy when –
  - (a) Procuring goods or services;
  - (b) Disposing of goods no longer needed;
  - (c) Selecting contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
  - (d) Selecting external mechanisms referred to in section 80(1)(b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.
- (6) 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. Adoption and amendment of the Supply Chain Management Policy**

- (1) The Accounting Officer must:
  - (a) At least annually review the execution of provisions contained in this policy; and



- (b) when the Accounting Officer considers it necessary, submit proposals for the amendment of this policy to the Council.
- (2) If the Accounting Officer submits a draft policy to the Council that differs from the model policy issued by the National Treasury, the Accounting Officer must –
  - (a) ensure that such draft policy complies with the regulations; and
  - (b) report any deviation from the model policy to the National Treasury and the relevant provincial treasury.
- (3) When amending this policy, the need for uniformity in supply chain practices, procedures and norms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.
- (4) The Accounting Officer must, in terms of section 62(1)(f)(iv) of the Act, take all reasonable steps to ensure that the municipality has and implements this Supply Chain Management Policy.

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

- (1) In terms of section 62(1) of the Act the Accounting Officer must take all reasonable steps to enable the Accounting Officer –
  - (a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
    - (i) Chapter 8 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, favouritism and unfair and irregular practices in the implementation of this policy; and
  - (d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.



- (2) Section 79 of the Act applies to the delegation of powers and duties and the authorisation of sub delegations by the Accounting Officer.
- (3) The Council or Accounting Officer may not delegate or sub delegate any supply chain management powers or duties to a person who is not an official of the municipality or to a committee which is not exclusively composed of officials of the municipality.
- (4) This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this policy.

### **Sub-delegation**

<b>STRUCTURE OF APPROVAL</b>		
<b>GOODS/SERVICE VALUE</b>	<b>PROCUREMENT METHOD MINIMUM</b>	<b>APPROVAL AUTHORITY</b>
R0 – R2 000	Petty Cash or One Quote	/ Delegated person
Above R2 000 – R10 000	Verbal or written Three Quotations	/ Delegated Person
Above R10 000– R30 000	Formal written Three Quotations	/ Delegated Person
Above R30 000 – R200 000	Three Formal quotations and 7 days Advertisement via Notice Board	Accounting Officer and /or Chief Financial Officer or delegated person
Above R200 000 – R1 Million	Competitive Bidding Process	Bid Adjudication Committee
Above R1 Million – R10 Million	Competitive Bidding Process	Bid Adjudication Committee
Above R10 Million	Competitive Bidding Process	Accounting Officer

## **5. Final Awards**

- a. The power to make a final award:
  - i. above R10 million (VAT included) may not be delegated by the Accounting Officer;
  - ii. Above R2 million (VAT included), but not exceeding R10 million (VAT included), may be delegated, but only to –

- (i) the Chief Financial Officer;
  - (ii) the Head of a department; or
  - (iii) a Bid Adjudication Committee of which the Chief Financial Officer or Head of a department is a member.
- (c) Not exceeding R2 million (VAT included) may be delegated, but only to–
  - (i) The Chief Financial Officer;
  - (ii) The Head of a department;
  - (iii) An official directly accountable to the Chief Financial Officer or a ; or
  - (iv) A Bid Adjudication Committee.
- (2) An official or bid adjudication committee to which the power to make final awards has been delegated in accordance with paragraph 5(1) of this policy must within five (5) working days of the end of each month submit to the official referred to in paragraph 5(3) of this Policy a written report containing particulars of each final award made by such official or committee during that month, including –
  - (a) the amount of the award;
  - (b) the name of the supplier or person to whom the award was made; and
  - (c) the reason why the award was made to that supplier or person.
- (3) A written report referred to in paragraph 5(2) of this Policy must be submitted –
  - (a) to the Accounting Officer, in the case of an award by –
    - (i) the Chief Financial Officer;
    - (ii) a Head of a Department; or
    - (iii) a Bid Adjudication Committee of which the Chief Financial Officer or a is a member; or
  - (b) to the Chief Financial Officer or the responsible for the relevant bid, in the case of an award by –
    - (i) an official referred to in paragraph 5(1)(c)(iii) of this policy; or
    - (ii) a bid adjudication committee of which the Chief Financial Officer or a is not a member.
- (4) Paragraphs 5(2) and 5(3) do not apply to procurements by way of direct purchases described in paragraph 15 of this policy.

- (5) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this policy.
- (6) No supply chain management decision-making powers may be delegated to an advisor or consultant.

## **6. Oversight role of Council**

- (1) The Council must maintain oversight over the implementation of this policy.
- (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 the Supply Chain Management Policy of the municipality to the Council of the municipality; and
  - (b) Whenever there are serious and material problems in the implementation of such Supply Chain Management Policy, immediately submit a report to the Council.
- (3) The Accounting Officer must, within ten (10) working days of the end of each quarter, submit a report on the implementation of the Supply Chain Management Policy to the Mayor.
- (4) The reports must be made public in accordance with section 21(a) of the Local Government Municipal Systems Act of 2000.

## **7. Supply Chain Management Unit**

- (1) One supply chain management unit is hereby established to implement this policy.
- (2) The supply chain management unit operates under the direct supervision of the Chief Financial Officer or an official to whom this duty has been delegated in terms of section 82 of the MFMA Act.

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

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

# **CHAPTER 2**

## **FRAMEWORK FOR SUPPLY CHAIN MANAGEMENT SYSTEM**

### **1. Format of supply chain management system**

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**

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

(2) The demand management system must :- (a) include timely development of procurement plans and management processes to ensure that all goods and services required by the municipality are quantified, budgeted for and timely and effectively

delivered at the right locations and at the critical delivery dates, and are of appropriate quality and quantity at a fair cost;

- (b) take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature;
- (c) provide for the compilation of the required specifications to ensure that its needs are met.
- (d) undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximised.

## **Part 2: Acquisition Management**

### **11. System of acquisition management**

- (1) The accounting officer must establish, through procedure manuals, an effective system of acquisition management in order to ensure –
  - (a) that goods and services, including construction works and consultant services are procured by the municipality in accordance with authorised processes only;
  - (b) that expenditure on goods and services, including construction works and consultant services is incurred in terms of an approved budget in terms of section 15 of the Act;
  - (c) that the threshold values for the different procurement processes are complied with;
  - (d) that bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; including, the Constitution of the Republic of South Africa Act, the Preferential Procurement Policy Framework Act, and any conditions of the Construction Industry Development Board Act; and
  - (e) that any Treasury guidelines on acquisition management are properly taken into account, this include the Provincial Government and National Government programmes on National Key Priorities to address socio-economic development,
- (2) 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 supply chain management system, including

-

(a) the kind of goods or services; and

(b) the name of the supplier.

(3) This policy except where provided otherwise in the policy, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –

(a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and

(b) electricity from Eskom or another public entity, another municipality or a municipal entity.

## **12. Range of procurement processes**

(1) Goods and services may only be provided by way of –

(a) direct purchases, up to a transaction value of R2000 (VAT included);

(b) written or verbal quotations for procurements of a transaction value above R2000 up to R10 000 (VAT included);

(c) formal written price quotations for procurements of a transaction value above R10 000.00 up to R30 000 (VAT included); and

(d) formal written price quotations for procurements of a transaction value above R30 000.00 up to R200 000 (VAT included); and

(e) a competitive bidding process for–

(i) procurements above a transaction value of R200 000 (VAT included); and

(ii) The procurement of long-term contract

(2) The Accounting Officer may, in writing -

(a) lower, but not increase, the different threshold values specified in paragraph 12(1); or

(b) Direct that:

(i) written or verbal quotations be obtained for any specific procurement of a transaction value above R2 000 to R 10 000;

- (ii) formal written price quotations be obtained for any specific procurement of a transaction value above R10 000; or
  - (iii) a competitive bidding process be followed for any specific procurement of a transaction value above R200 000.
- (3) Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of this 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.
- 4) Where feasible the municipality recommends sub- contracting for all procurements exceeding R 30 million at least 30% of the procurement must be allocated to advance designated groups in terms of PPPFA Regulations 2017.
- (5) For contract above R30 million, must subcontract a minimum of 30%.

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

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

- (a) Has furnished that provider's –
  - (i) full name;
  - (ii) identification number or company or other registration number;
  - (iii) the designated official should verify the bidder's tax compliance status prior to finalisation of the award of the bid or price quotation, in terms of MFMA SCM Circular no.90. where the recommended bidder is not tax compliant, the bidder should be notified of the 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 made an arrangement to meet their outstanding tax obligations.; in those cases where the quotation or bid is more than R30 000,00 (VAT included).
  - (v) Company Registration Certificate / CK.
- (b) 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 Heads, 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 Head, Manager, shareholder or stakeholder referred to in paragraph 13(b)(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 on CSD**

- (1) The Accounting Officer must –

- (a) Must use accredited prospective providers who names appear on (CSD) Central Supplier Database

#### **15. Direct purchases (value up to R2000, VAT included)**

- (1) The conditions for the procurement of goods by means of direct purchases referred to in paragraph 12(1)(a) of this policy, are that –
  - (a) minor items are purchased for up to a transaction value of R2000 (VAT included) where it is impractical, impossible or not cost-effective to obtain written or formal quotations, subject to normal internal control procedures;
  - (b) orders must be placed with providers whose names appear on the Central Supplier Database. referred to in paragraph 14(1)(a), and
  - (c) The procurement is made by the supply chain management unit.

- (2) A monthly report from the supply chain management unit must be provided to the Chief Financial Officer, including –
  - (a) the total amount of direct purchases for that month; and
  - (b) goods receipt notes and appropriate documents for each purchase.

#### **16. Informal Written Quotations (transaction value more than R2000 up to R10 000 Vat included)**

The conditions for the procurement of goods or services through written quotations are as follows: -



- (a) quotations must be obtained in writing from at least three different providers, whose names appear on the Central Supplier Database; no quotation or tender will be awarded to a service provider whose is not registered on CSD.
- (b) to the extent feasible providers must be requested to submit such quotations in writing; a
- (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and signed/approved by the delegated official and reported quarterly to the Accounting Officer or an official designated by the Accounting Officer; and
- (d) the Accounting Officer must record the names of the potential providers requested to provide such quotations with their written quoted prices.
- (e) if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.

**17. Formal Written Price Quotations** (transaction value more than R10 000 up to R30 000 VAT included).

- (1) The conditions for the procurement of goods or services through formal written price quotations are as follows: -
  - (a) quotations must be obtained in writing from at least three different providers whose names appear on the CSD.
  - (b ) that quotations may be obtained from suppliers who are not listed, provided that such providers meet the listing criteria of CSD.
  - (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the Chief Financial Officer or an official designated by the Chief Financial Officer; and
  - (d) the Accounting Officer must record the names of the potential providers requested to provide such quotations and their formal written price quotations.

- (2) The designated official referred to in paragraph 17(1)(b) must within three (3) working 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 paragraph.

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

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

- (a) when using Central Supplier Database, the Accounting Officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;
- (b) all requirements in excess of above R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, be advertised for at least seven days on the website and the official notice boards of the municipality;
- (c) notwithstanding clause (17) (1) (b), if quotations have been invited on the municipal's official website and in addition requests for Quotations where faxed or emailed to prospective suppliers, no additional quotes need to be obtained should the number of responses be less than three. Reasons must be recorded as per clause 17(1)(c) on the awarding document.
- (c) offers received must be evaluated on a comparative basis taking into account unconditional discounts;
- (d) the Accounting Officer must take all reasonable steps to ensure that the procurement of goods and services through formal written price quotations is not abused;
- (e) 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;
- (f) offers below R30 000 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;
- (g) offers with a value of R30 000 (VAT included) and above are subject to the preference points system ( New PPPFA regulations, 2017) and must be dealt with according to the Council's Procurement Policy; and

- (h) the Chief Financial Officer must set requirements for proper record keeping of all informal written and formal written price quotations accepted on behalf of the municipality.

## **19. Competitive bidding process**

- (1) Goods or services above a transaction value of R200 000 (VAT included) and long term contracts may only be procured through a competitive bidding process, subject to paragraphs 11(2) and 36 of this Policy.
- (2) No requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.
- (3). Preferential Points systems: The 80/20 preference points system is applicable to bids with the rand value of above R30 000.00 and up to R50 million (all applicable taxes included). This will take effect on the 01 April 2017. Preferential Points systems: The 90/10 preference points system is applicable to bids with the rand value of above R 50 million (all applicable taxes included). This will take effect on the 01 April 2017

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

B-BBEE Status Level of Contributor	Number of Points (90/10 system)	Number of Points (80/20 system)
1	10	20

2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

A bid must not be disqualified from the bidding process if the bidder does not submit a certificate / affidavit substantiating the B-BBEE status level of contribute or is a non-compliant contributor. Such a bidder will score zero (0) out of a maximum of 10 or 20 points respectively for B-BBEE.

### **Bids scoring the same number of points**

Bids must be awarded to the bidder scoring the highest number of points. In the event that two or more bidders have scored equal total points, the successful bidder must be the one scoring the highest number of points for BBEE, contract must be awarded to the tenderer that scored the highest points for functionality. Should there be equal bidders in all respects, the award shall be decided by the drawing of lots;

## **20. Process for competitive bidding**

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

- (a) Compilation of bidding documentation, detailed in paragraph 21.
- (b) Public invitation of bids, detailed in paragraph 22.
- (c) Site meetings or briefing sessions, detailed in paragraph 22.
- (d) Handling of bids submitted in response to public invitation, detailed in paragraph 23.
- (e) Evaluation of bids, detailed in paragraph 28.
- (f) Awarding of contracts, detailed in paragraph 29.
- (g) Administration of contracts –
  - (i) After approval of a bid, the Accounting Officer and the bidder must enter into a written agreement.

- (h) Proper record keeping –
- (i) Original / legal copies of written contracts and agreements must be kept in a secure place for reference purposes.

## **21. Bid documentation for competitive bids**

- (1) The criteria to which bid documentation for a competitive bidding process must comply, must –
  - (a) take into account –
    - (i) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
    - (ii) any Treasury guidelines on bid documentation; and
    - (iii)
  - (b) include the 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 – the general conditions of contract and any special conditions of contract, if specified. submit a certificate from the Department of Labour indicating compliance with the Occupational Health and Safety Act, 1993 (Act No 85 of 1993).
    - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
      - (a) for the past three years; or
      - (b) since their establishment if established during the past three years;
    - (ii) 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 is expected to be transferred out of the Republic

- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law;
  - (f) require a surety guarantee in appropriate cases;
  - (g) indicate the value or extent to which the execution of the contract should or should not be subcontracted; and
  - (h) require bidders to furnish 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 90 days.
- (2) A non-refundable charge in terms of the Council's approved tariff structure shall be raised for bid forms, plans, specifications, samples and any other bid documentation, depending on the nature, magnitude and value of technical information or samples provided by the municipality. Adverts are also available on e-Tender portal
- (3) Bid documents may allow for bidders to bid for one or more items or for a part of one or more items but the municipality reserves the right to accept part of a bid or a complete bid or quotation even if it is not the lowest, provided the interests of the municipality are best served thereby. Bid documents must be specific as certain contracts, e.g. the construction of a bridge, may require that the whole contract is to be completed by the same contractor.
- (4) Where bidders insert prices on price lists supplied by the municipality they shall delete items for which they do not bid or if the price has been included elsewhere in the price list. After bid/quotations have been opened bidders may not supplement their original offer if the original offer was incomplete.

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

- (1) The procedure for the invitation of competitive bids is as follows: -
- (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the

website of the municipality or any other appropriate ways (which may include an advertisement in the eTender publication Portal) and;

- (b) The information contained in a public advertisement, must include –
  - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long-term nature, or not less than 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to paragraph 22(2) of this Policy;
  - (ii) a statement that bids may only be submitted on the bid documentation provided by the municipality; and
  - (iii) date, time and venue of any proposed site meetings or briefing sessions.
- (2) The Accounting Officer may determine a closure date for the submission of bids which is less than the 30 or 14 days' requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.
- (3) Bids submitted must be sealed.
- (4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

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

- (1) The procedures for the handling, opening and recording of bids, are as follows: -
  - (a) Bids –
    - (i) must be opened only in public;
    - (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
    - (iii) received after the closing time should not be considered and returned unopened immediately.

- (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price;
- (c) No information, except the provisions in paragraph 23(1)(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 on the website.

#### **24. Negotiations with preferred bidders and communication with prospective providers and bidders**

- (1) The Accounting Officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation –
  - (a) does not allow any preferred bidder a second or unfair opportunity;
  - (b) is not to the detriment of any other bidder; and
  - (c) does not lead to a higher price than the bid as submitted.
- (2) Minutes of such negotiations must be kept for record purposes and as far as practical be made part of the final contract.

#### **25. Two-stage bidding process**

- (1) A two-stage bidding process is allowed for –
  - (a) large complex projects;
  - (b) projects where it may be undesirable to prepare complete detailed technical specifications; or
  - (c) long term projects with a duration period exceeding three years.



- (2) In the first stage, technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.
- (3) In the second stage, final technical proposals and priced bids should be invited.

## **26. Committee system for competitive bids**

- (1) The following committees are hereby established -
  - (a) Bid Specification Committees;
  - (b) Bid Evaluation Committees; and
  - (c) a Bid Adjudication Committee.
- (2) The Accounting Officer is required to appoint the members of each committee, taking into account section 117 of the Act.
- (3) The Accounting Officer is required to appoint a neutral or independent observer to attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.
- (4) The committee system must be consistent with –
  - (a) paragraphs 27, 28 and 29 of this Policy; and
  - (b) any other applicable legislation.
- (4) The Accounting Officer may apply the committee system to formal written price quotations.
- (5) **FRAMEWORK AGREEMENTS /PANEL OF SERVICE PROVIDER**
  - a) Framework agreements may be entered into with contractors by:
    - inviting expression of interest to enter into a suitable framework agreement for the required work, using stringent eligibility and evaluation criteria to ensure that contracts are entered into with only those contractors who have the capability and capacity to provide the required goods, services or works; and
    - Entering into a limited number of contracts based on the projected demand and geographic location for such goods, services or works.

- b) **Panels: Service Providers Appointed on the basis of Price and Preference points only.**
- A minimum of three suppliers are selected and invited from the panel list. Awards are made on price and preference points.
  - Awarded service providers are eliminated from the next round of invites so as to ensure fairness, transparency and equal distribution of work amongst the panel.
- c) **Panels: Service providers Appointed based on a fix rate and same BEE Level.**
- An appointment is made to a single company as all service providers on the panel are restricted to fix rates and are all level 1 BBEE compliant.
  - Awards are on a rotational basis until all service providers have been provided equal share of work.
- d) **Panels: Service providers are appointed on the basis of Functionality/Eligibility, Price and Preference Points.**
- A minimum of three suppliers are selected and invited from the panel list. Awards are made on functionality, price and preference points.
  - Awarded service providers are eliminated from the next round of invites so as to ensure fairness, transparency and equal distribution of work amongst the panel.
- e) The term of a framework agreement shall not exceed three years.
- Framework agreements that are entered into shall not commit an organ of state to any vast of work beyond the first order, or bind the employer to make use of such agreements to meet its needs.

## **27. Bid Specification Committees**

- (1) The appropriate Bid Specification Committee must compile the specifications for the procurement of goods or services by the municipality, depending on the department involved.
- (2) Specifications –
- (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
  - (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised by the South African National

- Accreditation System with which the equipment or material or workmanship should comply;
- (c) where possible, must be described in terms of performance required rather than in terms of descriptive characteristics for design;
  - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification;
  - (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word “equivalent”;
  - (f) the committee must use the New Preferential Procurement Regulations 2017 and BBBEE verification certificates for preferential goals
  - (g) must be approved by the Accounting Officer prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.
- (3) A Bid Specification Committee must be composed of one or more officials of the municipality, preferably the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.
- (4) No person, advisor or corporate entity involved with the Bid Specification Committee, or Head of such a corporate entity, may bid for any resulting contracts.

## **28. Bid Evaluation Committees**

- (1) The bid evaluation committee must –
- (a) evaluate bids in accordance with –
    - (i) the specifications for a specific procurement; and
    - (ii) the points system set out in terms of paragraph 27(2)(f).
  - (b) evaluate each bidder’s ability to execute the contract;
  - (c) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears; and
  - (d) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.

- (2) The bid evaluation committee must as far as possible be composed of–
  - (a) officials from departments requiring the goods or services; and
  - (b) at least one supply chain management practitioner of the municipality.

## **29. Bid Adjudication Committees**

- (1) The bid adjudication committee must –
  - (a) consider the report and recommendations of the bid evaluation committee; and
  - (b) either –
    - (i) depending on its delegations, make a final award or a recommendation to the Accounting Officer to make the final award; or
    - (ii) make another recommendation to the Accounting Officer how to proceed with the relevant procurement.
- (2) The bid adjudication committee must consist of at least four senior managers of the municipality which must include –
  - (a) the Chief Financial Officer 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.
- (3) The Accounting Officer must appoint the chairperson of the committee preferable the Chief Financial Officer. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.
- (4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.

- (5) (a) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –
  - (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears; and
  - (ii) notify the Accounting Officer.
- (b) The Accounting Officer may –
  - (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph 29(5)(a); and
  - (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (6) The Accounting Officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (7) The Accounting Officer must comply with section 114 of the Act within 10 working days.

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

- (1) Banking services –
  - (a) must be procured through competitive bids;
  - (b) must be consistent with section 7 or 85 of the Act; and
  - (c) may not be for a period of more than five years at a time.
- (2) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.
- (3) The closure date for the submission of bids may not be less than sixty (60) days from the date on which the advertisement is placed in a newspaper in terms of paragraph 22(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No 94 of 1990).

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

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

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

#### **( 1) The Accounting Officer may procure goods or services under a contract secured by another organ of state, but only if: –**

- (a) The contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
- (b) There is no reason to believe that such contract was not validly procured;
- (c) There are demonstrable discounts or benefits to do so; and
- (d) That the other organ of state and the service provider have consented to such procurement in writing;
- (e) The process to follow when procuring in terms of Supply Chain Management Regulation 32 of 2005:
  - I. Conform in writing that the contract has been secured through a competitive bidding process applicable to that organ of state and is valid;

- II. There are demonstratable discounts/benefits for the municipality
- III. The other organ of state and service provider have given written consent for the participation;
- IV. The goods and services that were procured by the other organ of state are the same in every respect including terms and conditions as required by Dr Nkosazana Dlamini Zuma municipality, saving on administrative effort and cost.
- V. Dr Nkosazana Dlamini Zuma municipality demand management conduct a detailed analysis of goods, services required. For infrastructure projects compare topography, etc;
- VI. Dr Nkosazana Dlamini Zuma municipality must obtain copies of the bid advisement, bid documentation, minutes of evaluation and adjudication committee meetings and it must be reviewed by the bid adjudication committee and Internal Audit with SCM to certify a competitive bidding process was used and that it complies with the Constitution, Act 108 of 1996 , principles (section 217), of a process that is fair, equitable, transparent, competitive and cost effective and due process was followed to conclude a contract;
- VII. There will be demonstrable discounts or benefits for the municipality to procure infrastructure, goods, services or works under such a contract;
- VIII. Contract terms and conditions e.g. the unit of issue or type of service delivery, delivery lead times and prices, length of remaining part of the contract ( the municipality can only use the remaining portion of the contract that hasn't been utilised) is adequate for the purpose of participation and an additional contract will not be created;
- IX. The value or price for the municipality must not exceed the value or price of the original contract;
- X. Supplier performance must be confirmed by the organ of state who initially entered into the contract, the legal status of the original contract and the value the participation will have for the municipality;
- XI. Supply Chain Management, Internal Audit and the end user must compile a detailed submission take all the above matters into consideration for the submission to the Bid Adjudication Committee for consideration and recommendation to the Accounting Officer or delegated authority for a final decision.
- XII. Other requirements;

- XIII. The existing contract can only be participating in if its valid and haven't expires, this contract concluded by Dr Nkosazana Dlamini Zuma municipality is only an addendum for the remaining period of the original contract.
  - XIV. The organ of state that concluded the contract is the only entity that can extend the contract, do variation and change terms and conditions, upon doing so they must inform Dr Nkosazana Dlamini Zuma municipality of any changes also cancelling the contract.
  - XV. Dr Nkosazana Dlamini Zuma municipality must use the same dispute resolutions that was in the original concluded contract.
  - XVI. Dr Nkosazana Dlamini Zuma municipality's contract management unit together with SCM and the end user will report quarterly to the accounting officer (and council) on the benefits incurred utilizing the contract in terms of MFMA SCM Regulation 6.
- a) Subparagraphs (1)(c) and (d) do not apply if: –
    - (a) a municipal entity procures goods or services through a contract secured by its parent municipality; or
    - (b) a municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.

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

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

### **34. Proudly SA Campaign (PROUDLY SOUTH AFRICA CAMPAIGN AND SUPPORT OF COMMUNITY BASED VENDORS, COUNCIL AND OTHER SPHERES OF GOVERNMENT SOCIO-ECONOMIC INITIATIVES Proudly SA )**



- (1) The accounting officer must determine internal operating procedures supporting the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services from:
  - (a) Firstly – suppliers and businesses within the municipality or district;
  - (b) Secondly – suppliers and businesses within the province;
  - (c) Thirdly – suppliers and businesses within the Republic of South Africa and
- (2) The accounting officer must determine internal operating procedures supporting the community based vendors to promote Small Micro Medium Enterprise development including cooperatives, through initiatives from Local Economic Development (Vukuphile, Enterprise Development, Incubation programs and any other community based initiatives).
- (3) to fulfil clause 34(2), Supply Chain Management may request quotations directly from Community Based Vendors in a specific area, or from a specific community for the procurement of goods and services for amounts less than R30 000 (including construction works), however such procurement to comply with the requirements as per this policy. Socio-Economic initiatives
- (4) This include Council, Provincial Government and National Government programmes / initiatives on National Key Priorities to address socioeconomic development (war on poverty) (a) where a successful bidder or bidders may be requested to plough back to the indigent families of Dr Nkosazana Dlamini Zuma Municipality as part of their social responsibility by selecting one or more initiatives as listed by Council.

#### Subcontracting

- (5) (a) If a tender is awarded to a big contractor as determined by the tender value and complexity of the project, 25% would be allocated to local black emerging contractor(s) or local youth emerging contractor(s) inclusive of women and contractors living disabilities and co-operatives.
- (b) If a tender of R10 million and above was awarded to a well-established contractor, 25% would be sub-contracted as 34(5)(a).

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

- (1) The Accounting Officer may procure consulting services provided that any Treasury guidelines and CIDB requirements in respect of consulting services are taken into account when such procurements are made.
- (2) Consultancy services must be procured through competitive bids if-
  - (a) the value of the contract exceeds R200 000 (VAT included); or
  - (b) the duration period of the contract exceeds one year.
- (3) In addition to any requirements prescribed by this Policy for competitive bids, bidders must furnish particulars of –
  - (a) all consultancy services provided to an organ of state in the last five years; and
  - (b) any similar consultancy services provided to an organ of state in the last five years.
- (6) The Accounting Officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the municipality.
- (7) The purpose of this clause is to explain the procedures for selecting, contracting, and monitoring consultants required for projects. For the purpose of this clause, the term *consultant* includes, among others, consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, other multinational organizations, investment and merchant banks, universities, research agencies, government agencies, non-governmental organizations (NGOs) and individuals.
- (8) Accounting officers/authorities may use these organizations as *consultants* to assist in a wide range of activities such as policy advice, accounting officer's/authority's reform management, engineering services, construction supervision, financial services, procurement services, social and environmental studies and Identification, preparation and implementation of projects to complement accounting officers'/authorities' capabilities in these areas.

- (9) Consultants should only be engaged when the necessary skills and/or resources to perform a project/duty/study are not available and the accounting officer/authority cannot be reasonably expected either to train or to recruit people in the time and resource available. If the assignment includes an important component for training or transfer of knowledge and skills, the terms of reference should indicate the objectives, nature, scope and goals of the training program, including details of trainers and trainees, skills to be transferred, time frames and monitoring and evaluation arrangements. The cost for training program should be included in the consultant's contract and the budget for the assignment.

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

- (1) The Accounting Officer may –
- (a) dispense with the official procurement processes established by this Policy and 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 botanical specimens for nature and game reserves; or
    - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
  - (b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.
- (2) The Accounting Officer must record the reasons for any deviations in terms of paragraphs 36(1)(a) and (b) of this Policy and report them to the next meeting of the Council and include as a note to the annual financial statements.
- (3) Paragraph 36(2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this Policy.

### **37. Unsolicited bids**

- (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- (2) The Accounting Officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if –
  - (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
  - (b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
  - (c) the person who made the bid is the sole provider of the product or service; and
  - (d) the reasons for not going through the normal bidding processes are found to be sound by the Accounting Officer.
- (3) If the Accounting Officer decides to consider an unsolicited bid that complies with paragraph 37(2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with –
  - (a) reasons as to why the bid should not be open to other competitors;
  - (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
  - (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) The Accounting Officer must submit written comments received pursuant to paragraph 37(3), including any responses from the unsolicited bidder, to the National Treasury and the relevant provincial treasury for comment.
- (5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the Accounting Officer, depending on its delegations.
- (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.

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

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

- (1) In order to combat the abuse of the supply chain management system the Accounting Officer must –
  - (a) take all reasonable steps to prevent abuse of the supply chain management system;
  - (b) investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this 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 Heads, 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 Heads 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 Heads, 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 Heads –
    - (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 wilfully 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 Bid Defaulters In terms section 29 of the Prevention and Combating of Corrupt Activities Act (Act No 12 of 2004).
- (2) The Accounting Officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of paragraphs 38(1)(b)(ii), (e) or (f) of this policy.

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

#### **39. Logistics Management**

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 which should, where practical, incorporate the coding of items to ensure that each item has a unique number for the purposes of monitoring;
- (b) the setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;
- (c) the placing of manual or electronic orders for all acquisitions;
- (d) before payment is approved, certification by the responsible officer that the goods and services are received or rendered on time and is in accordance with the order, the general conditions of contract and specifications where applicable and that the price charged is as quoted / in terms of a contract;
- (e) appropriate standards of internal control and warehouse management to ensure that goods placed in stores are secure and only used for the purpose for which they were purchased;
- (f) regular checking to ensure that all assets, including official vehicles, are properly managed, appropriately maintained and only used for official purposes; and
- (g) monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for particular goods or services.

#### **40. Disposal Management**

- (1) The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to section 14 of the Act are as follows–
  - (a) the asset is uneconomical to repair;
  - (b) the asset is irreparable;
  - (c) the useful life of the asset has expired;
  - (d) the relevant department has no further use for the asset;
  - (e) no other department requires the asset; and
  - (f) The Municipality must have a disposal policy.
  - (g) The Accounting Officer must appoint a disposal committee in writing.
- (2) Assets must be disposed of by–
  - (a) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;

- (b) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
  - (c) selling the asset; or
  - (d) auction the asset.
- (3) The Accounting Officer must ensure that –
  - (a) immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
  - (b) movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
  - (c) in the case of the 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;
  - (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; and
  - (f) where assets are traded in for other assets, the highest possible trade-in price is negotiated.

#### **41. Risk Management**

- (1) The criteria for the identification, consideration and avoidance of potential risks in the supply chain management system, are as follows –
  - (a) non-compliance by the supplier to deliver within the agreed timeframes;
  - (b) supply of inferior goods or services by the supplier;
  - (c) inability of the supplier to provide goods or services as ordered;
  - (d) non-adherence to the municipality's Policy with regards to utilisation of preferred suppliers; and
  - (e) procurement of goods or services at prices or of a quality not in the best interest of the municipality.
- (2) Risk management must include –
  - (a) the identification of risks on a case-by-case basis;
  - (b) the allocation of risks to the party best suited to manage such risks;



- (c) acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
- (d) the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
- (e) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

#### **42. Performance Management**

The Accounting Officer must ensure that an effective internal monitoring system is implemented in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes were followed and whether the measurable performance objectives linked to and approved with the budget and the service delivery and budget implementation plan were achieved.

### **Part 4: Other Matters**

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

- (1) The Accounting Officer must ensure that, irrespective of the procurement process followed, no award above R 30 000 (VAT included) is given to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (2) Before making an award to a provider or bidder, 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 SCM circular N0.90. 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 days, written proof from SARS of their compliance status or proof from SARS that they made an arrangement to meet their outstanding tax obligations.

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

The Accounting Officer must ensure that irrespective of the procurement process followed, no award may be made to a person –

- (a) who is in the service of the state; or

- (b) if that person is not a natural person, of which any Head, manager, principal shareholder or stakeholder is a person in the service of the state; or
- (c) who is an advisor or consultant contracted with the municipality in respect of a contract that would cause a conflict of interest.

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

The notes to the annual financial statements must disclose particulars of any award of more than R2 000 (VAT included) to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –

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

#### **46. Ethical standards**

- (1) A code of ethical standards as set out in 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.
- (2) An official or other role player involved in the implementation of this Supply Chain Management Policy –
  - (a) must treat all providers and potential providers equitably;
  - (b) may not use his or her position for private gain or to improperly benefit another person;
  - (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;

- (d) notwithstanding paragraph 46(2)(c), must declare to the Accounting Officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
  - (e) must declare to the Accounting Officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the municipality;
  - (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
  - (g) must be scrupulous in his or her use of property belonging to the municipality;
  - (h) must assist the Accounting Officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
  - (i) must report to the Accounting Officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –
    - (i) any alleged fraud, corruption, favouritism or unfair conduct;
    - (ii) any alleged contravention of paragraph 47(1) of this Policy; or
    - (iii) any alleged breach of this code of ethical standards.
- (3) Declarations in terms of paragraphs 46(2)(d) and (e) -
- (a) must be recorded in a register which the Accounting Officer must keep for this purpose;
  - (b) by the Accounting Officer must be made to the Mayor of the municipality who must ensure that such declarations are recorded in the register.
- (4) The National Treasury's code of conduct must also be taken into account by supply chain management practitioners and other role players involved in supply chain management.

- (5) A breach of the code of ethics adopted by the municipality must be dealt with in accordance with schedule 2 of the Local Government: Municipal Systems Act, 2000.

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

- (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
- (a) Any inducement or reward to the municipality for or in connection with the award of a contract; or
  - (b) Any reward, gift, favour or hospitality to –
    - (i) any official; or
    - (ii) any other role player involved in the implementation of this Policy.
- (2) The Accounting Officer must promptly report any alleged contravention of paragraph 47(1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
- (3) Paragraph 47(1) does not apply to gifts less than R350 in value.

**48. Sponsorships**

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

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

**ANNEXURE A**

**SUPPLY CHAIN MANAGEMENT POLICY: AMENDMENT**

The Council of DR Nkosazana Dlamini Zuma has in terms of the Regulation 3 of the Municipal Supply Chain Management Regulation published on 30 May 2005 in Government Gazette No 27636 under Notice no 868 of 2005, amended its draft Supply Chain Management Policy by:

- (a) The substitution for paragraphs 49 and 50 of the following paragraphs:

#### **“49 Objections and Complaints”**

Persons aggrieved by decisions or actions taken in the implementation of this supply chain management system may, within 14 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 24 hours refer the written objection or complaint to the independent and impartial person referred to in paragraph 50 for resolution; or
- b. If such complaint or objection is against the award of a bid, lodge a written appeal with the Municipal bid Appeals Tribunal in accordance with the provisions of paragraph 50A

#### **50. RESOLUTION OF OBJECTION AND COMPLAINTS AGAINST PROCUREMENT PROCESS**

- (1) The Accounting Officer must appoint an independent and impartial person, not directly involved in the supply chain management process 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 implementation of the procurement process in terms of the supply chain management system.
- (2) The accounting officer, or another designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.

- (3) The person appointed must:
  - (a) Strive to resolve promptly all objections or complaints received; and
  - (b) Submit monthly reports to the accounting officer on all such objections and Complaints received, attended to or resolved.
- (4) If the independent and impartial person referred to in paragraph 50. 1, is of the view that a matter which should be dealt with in terms of paragraph 50A, he or she shall forthwith refer to the Municipal Bid Appeals tribunal and that Tribunal shall then hear and determine the matter in accordance with the provisions of paragraph 50A.
- (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.
- (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.

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

- (1) The Council shall establish a municipal Bid Appeals Tribunal for its area of jurisdiction to hear and determine an appeal against the award of a bid.
- (2) The accounting officer of the municipality, in consultation with the Provincial Treasury shall appoint the Chairperson, Deputy Chairperson and members of the Municipal Bid appeals Tribunal.
- (3) The powers, duties and functions of the Municipal Bid Appeals Tribunal, and matters Incidental thereto, are set out in the rules which are appended to this Supply Chain Management Policy and marked Appendix A.
- (4) The administrative and secretarial work involve 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 50A.3.
- (5) There shall be no further appeal against a decision of the Municipal Bid Appeals Tribunal”.

## **CHAPTER 3**

### **51. THE PURPOSE OF THE MUNICIPAL BID APPEALS TRIBUNALS**

- (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) The Tribunal must act impartially and independently
- (3) The Tribunal is intended to assist in maintaining the good reputation 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.
- (4) The office of the Secretariat must be open for the filling of documents from 14:00 to 16:00 everyday other than a Saturday, Sunday or public holiday
- (5) Documents may only be filled with the secretariat at the address, telefax number or email address given in the rule 4.3 and during the hours referred to in Rule 4.2. Notwithstanding rule 4.2, documents may be faxed or emailed to the Secretariat at any time.

## **CHAPTER 4:**

### **51. WHO MAY APPEAL?**

- (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.
- (2) An interested party may lodge an appeal where the municipality (or any committee or person acting under delegated power) has-
  - 2.1 committed misconduct in relation to their duties concerning the awarding of bids;
  - 2.2 committed a gross irregularity;
  - 2.3 exceeded its or their power;
  - 2.4 awarded a contract in an improper manner; or
  - 2.5 awarded a bid in a manner which contravenes the Municipality's Supply Chain Management Policy or any applicable law.

## **CHAPTER 5**

### **53. PROCESSING AN APPEAL**

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.
2. The Municipal Manager must maintain a register in which all appeals, and the outcome thereof, are recorded.
3. On receiving the notice of the appeal, the Municipal Manager must, within 24 hours, send the appeal to the Secretariat.
4. On receiving the notice of the appeal, the Secretariat shall –
  - 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
  - 4.2 request the Municipality to, within three days:
    - 4.2.1 confirm in writing the names and contact details of all interested parties affected by the appeal;
    - 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
    - 4.2.3 serve on the Secretariat all the documentation relevant to the decision relating to the award.
5. After receiving the information from the Municipality, the Secretariat shall:
  - 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
  - 5.2 provide the appellant with copies of the information supplied by the Municipality; and
  - 5.3 require the appellant to provide written representations amplifying (if necessary) its grounds of appeal within a further five days.
6. Upon receiving 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.

6.1 Any response to an appeal must include:

- 6.1.1 a concise statement of the grounds on which the matter is supported or opposed;
- 6.1.2 facts or allegations contained in the appellant's representations that the interested party affected by the appeal admits;
- 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
- 6.1.4 the material facts or points of law on which the interested party affected by the appeal relies.

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

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

8.1 Is frivolous, vexatious or without any merit; or

8.2 Should be determined on the basis of the documents alone; or

8.3 should be referred to an oral hearing xxx

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:

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

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

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.

## **10. Withdrawals 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.

## **CHAPTER 6**

### **54. HEARING**

#### **1. Informality:**

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.

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

#### **2. Access**

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

#### **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.

#### **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

#### **5. Recording and Hearing**

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

- 5.1 the application documents.
- 5.2 notices;
- 5.3 the Chairperson's record of pre-hearing procedures;
- 5.4 all documentary evidence;
- 5.5 the transcript, if any, of the oral evidence given at the hearing; and
- 5.6 a written record of the Tribunal's final decision with reasons.

#### **6. Non-Appearance**

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

6.1 The appellant, the Tribunal may dismiss the matter by issuing a written ruling; or

6.2 Is not the appellant, the Tribunal may –

6.2.1 continue with the proceedings in the absence of that party; or

6.2.2 adjourn the hearing to a later date

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.

6.4 If a matter is dismissed, the Secretariat must send a copy of the ruling to the parties.

## **7. Hearing Procedure**

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

### **7.1 Commencement**

The Chairperson shall:

7.1.1 introduce the members of the Tribunal;

7.1.2 request any other parties present to introduce themselves;

7.1.3 explain the procedure of the hearing; and

7.1.4 provide a brief introduction to the subject matter of the appeal.

### **7.2 The Municipality's case**

The Municipality shall –

7.2.1 explain the background to the bid;

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

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

### **7.3 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:

7.3.1 the appellant;

7.3.2 any interested party affected by the appeal

### **7.4 The appellant's case**

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

## **7.5 Closing Statements**

### **7.5.1 The Tribunal-**

7.5.1.1 must hear and finalize an appeal within five days of the date of the hearing;

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

7.5.2 if any of 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.

7.5.3 The Tribunal may make a default order –

7.5.4 After it has considered or heard any necessary evidence; and

7.5.5 If it is satisfied that the notice of set down was adequately served.

## **CHAPTER 9:**

### **1. GENERAL RULES**

#### **1. Delivery of documents**

1.1 Where a document is required to be delivered to the Secretariat, it may be delivered-

1.1.1 At the Secretariat's physical address;

1.1.1.1 By registered mail to the Secretariat;

1.1.1.2 By fax;

1.1.1.3 By email;

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

1.1.2.1 The name, address and telephone number of the sender;

1.1.2.2 the date and time of transmission;

1.1.2.3 the total number of pages sent;

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

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

## **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 a request in any manner that he/she deems fit.

## **3. Representation of parties**

- 3.1 A party to a matter may act in person or appoint a representative;
- 3.2 A person appointed as representative must notify the Secretariat and provide it with the following particulars:
  - 3.2.1 Name;
  - 3.2.2 postal address and address for the service of documents;
  - 3.2.3 telephone and fax numbers;
  - 3.2.4 email address;
  - 3.2.5 The unique reference number of the matter; and
  - 3.2.6 Name of the person represented.
- 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.

## **2. CONTRACTS PROVIDING FOR COMPENSATION BASED TURN OVER**

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 the service provider and the municipality must stipulate—

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

## **3. PERFORMANCE MONITORING OF SERVICE PROVIDERS**

A municipal service can be provided by the Municipality by entering into a Service Delivery Agreement in terms of Section 76(b) of the Municipal System Act 32 of 2000 with an external service provider. The Municipality is responsible for monitoring and assessing the implementation of the agreement, including the performance of the service provider in accordance with section 41 of the Municipal Systems Act 32 of 2000.

The performance of service providers that have been selected to provide assistance in the provision of a municipal service, otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies, is required, by Section 116 of the Municipal Finance Management Act, to be monitored and reported on.

All departments must ensure that there are mechanisms in place to monitor the work done by service providers and that minimum standards in terms of service levels required are fulfilled at all time.

#### **4. SUB CONTRACTING TO CONTRACTS**

1. The tenderer must sub-contract a minimum of 30% of the value the contract to EMEs or QSEs or EMEs which are 51% owned by either of the following: Blacks, Black youth; Black women; black people with disabilities; black people living in rural or underdeveloped area or townships; cooperatives owned by black people, black who are military veterans
2. Sub-contracting: If feasible the subcontract for a contract above R30 Million, organ of state must apply subcontracting to advance designated groups. If the organ of the state applies subcontracting as contemplated in sub regulation the organ of the state must advertise the tender with a specific tendering condition that the successful tenderer must subcontract a minimum of 30% of the value of the contract to:
  - (a). an EME or QSE
  - (b). an EME or QSE which is at least 51% owned by black people
  - (c). an EME or QSE which is at least 51% owned black people who are youth
  - (d). an EME or QSE which is at least 51% owned black people who are women
  - (e). an EME or QSE which is at least 51% owned black people with disabilities
  - (f). an EME or QSE which is at least 51% owned black people living in rural or underdeveloped areas or towns
  - (g). a co-operative which is at least 51% owned by black people

- (h). an EME or QSE which is at least 51% owned by black people who are military veterans; or
- (i). more than one of categories referred to in paragraphs

The organ of state must make available the list of all supplier registered on a database approved by National Treasury to provide the required goods or services in respect of the applicable designated groups mentioned above.

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

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

- a) a tenderer having a stipulated minimum B-BBEE status level of contributor;
  - b) an EME or QSE;
    - (i) an EME or QSE which is at least 51% owned by black people
    - (ii) an EME or QSE which is at least 51% owned black people who are youth
    - (iii) an EME or QSE which is at least 51% owned black people who are women
    - (iv) an EME or QSE which is at least 51% owned black people with disabilities
  - (c) a tenderer subcontracting a minimum of 30% to-
    - (i) an EME or QSE which is at least 51% owned by black people;
    - (ii) an EME or QSE which is at least 51% owned by black people who are youth;
    - (iii) an EME or QSE which is at least 51% owned by black people who are women;
    - (iv) an EME or QSE which is at least 51% owned by black people with disabilities;
    - (v) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
    - (vi) a cooperative which is at least 51% owned by black people;
    - (vii) an EME or QSE which is at least 51% owned by black people who are military veterans;
    - (viii) an EME or QSE.
- (2) A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender.

**Dr Nkosazana Dlamini Zuma Municipality will apply the above set aside on the following projects:**

- **Renovation projects**
- **Fencing projects**

- All other projects up to the value of R1000 000 when feasible.

### **SUBCONTRACTING AFTER AWARD OF TENDER**

1. A person awarded a contract may only enter into a subcontracting arrangement with the approval of the organ state
2. A person awarded a contract in relation to a designated sector may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold
3. A person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher BBBEE status level of contributor than the person concerned, unless the contract is subcontracted to an EME that has the capability to execute the subcontract.
4. Sub- Contracting For all CIDB grade 3 Projects at least 20% of the Procurement must be allocated to local sub-contractors.
- (6) For contract above R30 million, must subcontract a minimum of 30%.

### **5. PAYMENT OF SUB-CONTRACTORS OR JOINT VENTURE PARTNERS**

The Chief Financial Officer or an official designated by the Chief Financial Officer may consent to the direct payment of sub-contractors or joint venture partners by way of -

- (a) an approved cession; or
- (b) an agreement for direct payment.

### **6. OBJECTIVE CRITERIA**

Dr Nkosazana Dlamini Zuma Municipality will apply objective criteria in terms of section 2 (1) of the PPPFA where necessary to support objective of this policy.

The objective criteria will be stated in the bid advert and bid document.

### **60.SHORT TITLE AND COMMENCEMENT**

This Policy is called the “*Supply Chain Management Policy for Dr Nkosazana Dlamini Zuma Municipality*” and takes effect on 1<sup>st</sup> July 2020



**ADOPTED BY COUNCIL ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021**

\_\_\_\_\_  
**MUNICIPAL MANAGER**

\_\_\_\_\_  
**DATE**