

**UBUNTU MUNICIPALITY  
SUPPLY CHAIN  
MANAGEMENT  
POLICY**

## **1. INTRODUCTION**

Supply chain management is an integral part of financial management and can be described as a systematic approach that ensures that goods and services are delivered to the right place, in the right quantity, at the right cost and at the right time. Supply chain management commences with demand management when, at the strategic planning phase to determine the objectives to be achieved by a municipality, the required goods and services are identified and budgeted for. Following on the demand management is acquisitioning management, at which stage a strategy is determined on how to approach the market, bids are evaluated and recommendations are made. Logistics management and disposal management form the latter parts of this integrated system.

The Municipal Finance Management Act, Act 56 of 2003, requires the introduction of supply chain management in every municipality. The express provisions on supply chain management relate to the implementation of policies within the prescribed framework that must be fair, equitable, transparent, competitive and cost-effective. The framework covers a range of matters from tender procedures and quotations to auctions and other types of competitive bidding processes. It also deals with screening processes and compulsory disclosure of conflict of interest and bars councillors from serving on tender or bidding processes.

## **2. LEGISLATIVE BACKGROUND**

### **2.1. Approach to Procurement**

- 2.1.1. Section 217 of the Constitution of the Republic of South Africa, Act 108 of 1996, deals with procurement within state institutions in the country. The Constitution stipulates, in Section 217(1) that, when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods and services, it must do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.
- 2.1.2. However, Section 217(2) of the Constitution indicates that the provision of Section 217(1), as stated above, does not prevent organs of state or institutions referred to above from implementing a procurement policy providing for -
  - (a) categories of preference in the allocation of contracts; and
  - (b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.
- 2.1.3. Section 217(3) of the Constitution notes that national legislation must be enacted to prescribe a framework within the policy provided for in Section 217(2) may be implemented. The framework referred to in Section 217(3) of the Constitution.

**Formal Tenders** are invited from potential service providers to supply goods and services to an organ of state where the cost involved is expected to be above a prescribed amount.

**Historically Disadvantaged Individuals (HDIs)** includes any person/s or categories of persons historically disadvantaged by unfair discrimination on the basis of race, gender or disability. An historically disadvantaged individual, as described in the Preferential Procurement Regulations, 2001, is defined as follows:

A South Africa citizen

- (a) who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act 110 of 1983) or the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993) (“the Interim Constitution”); and/or
- (b) who is a female; and/or
- (c) who has a disability.

Provided that a person who obtained South African citizenship on or after the coming into effect of the Interim Constitution, is deemed not to be an HDI.

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

**Contract** means the agreement that results from the acceptance of a tender by an organ of state.

**Disability** means, in respect of a person, a permanent impairment of a physical, intellectual or sensory function which results in restricted, or lack of, ability to perform an actively involved in the management and daily operations of the enterprise.

**Firm Price** is the price that is subject only 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 law or regulation is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering of any costs of any service, for the execution of the contract.

**Non-firm Prices** means all other prices other than firm prices.

**Ownership** means having all the customary incidents of ownership, including the right of acquisition and disposition, the sharing of all risks and profits commensurate with the degree of ownership interests demonstrated by the substance rather than the form of ownership arrangements.

**Local Supplier** is a local enterprise that –

- owns, operates and maintains a store, warehouse or other enterprise within the boundaries of the organ of state, in which materials required for the performance of the contract are manufactured bought, kept in stock and regularly sold to the public in the usual course of business; and

- engages as its principal business and in its own name the manufacture, purchase and sale of the products in question, or the provision of a professional service.

**Local Labourers / Labour only Sub-Contractors** are individuals employed by the contractor in the performance of the contract who permanently reside within the jurisdiction of the organ of state.

**Municipality** means the Ubuntu Municipality, an organ of state within the local sphere of government exercising legislative and executive authority within an area determined in terms of the Local Government: Municipal Demarcation Act, 1998.

**Person** includes any reference to a juristic person.

**Rand Value** means the total estimated value of a contract in Rand denomination which is calculated at the time of tender invitations and includes all applicable taxes and excise duties.

**Small, Medium and Micro Enterprises (SMMEs)** bear the same meaning assigned to this expression in the National Small Business Act, Act 102 of 1996.

**Sub-contracting** means the primary contractor's assigning or leasing or employing another person to support such primary contractor in the execution of part of a project in terms of a contract.

**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.

## **4. SUPPLY CHAIN MANAGEMENT PROCESS**

### **4.1. Legislative Imperatives**

4.1.1. The Municipal Finance Management Act provides clear stipulations as to how the supply chain management process should be operated. Section 115 of the Municipal Finance Management Act indicates that the Municipal Manager of the Municipality must implement the supply chain management policy. The Section further requires that the Municipal Manager must take all reasonable steps to ensure that proper mechanisms and separation of duties in the supply chain management system are in place to minimise the likelihood of fraud, corruption, favouritism and unfair and irregular practices. Section 115 of the Act also stipulates that no person may impede the Municipal Manager in fulfilling this responsibility.

- 4.1.2. In terms of Section 116(1) of the Municipal Finance Management Act, a contract or agreement procured through the supply chain management system of the Municipality must -
- (a) be in writing;
  - (b) stipulates the terms and conditions of the contract or agreement, which must include provisions providing for –
    - (i) the termination of the contract or agreement in the case of non- or under-performance;
    - (ii) dispute resolution mechanisms to settle disputes between the parties; and
    - (iii) a periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years.
- 4.1.3. In terms of Section 116(2) of the Municipal Finance Management Act, the Municipal Manager must –
- (a) take all reasonable steps to ensure that a contract or agreement procured through the supply chain management policy of the Municipality is properly enforced;
  - (b) monitor on a monthly basis the performance of the contractor under the contract or agreement; and
  - (c) establish capacity in the administration of the Municipality to assist the Municipal Manager in carrying out the duties outlined in Subsections (a) and (b) above and to oversee the day-to-day management of the contract agreement.

## **4.2. Management of Requirements**

- All requests for the procurement of goods or services shall be submitted by the heads of department concerned to the appropriate section/official within the Budget and Treasury Office.
- All requests shall be in writing and clearly specify the nature and, where applicable, the quantity or duration, of the goods and services required.
- Requests submitted must avoid the use of brand names and further avoid the preparation of specifications aimed at procuring goods and services provided by only specific suppliers.
- All requests must reflect certification by the official responsible for financial management in the department concerned indicating that there is sufficient provision in the current annual budget of the department for the envisaged expenditure.
- Where the procurement requirements extend over more than one financial year, requests must reflect certification that provision has also been included in the draft annual budgets for the ensuing financial year(s).

- All requests must be signed by the head of department concerned or by a senior official in the department designated by the head of department for this purpose.
- No head of department in placing a requisition for goods and services to be procured by quotation or tender shall knowingly understate the requirements or the estimated value of the requirements with the intention of avoiding the more stringent process prescribed for requirements of a higher value. The Municipal Manager shall promptly institute disciplinary action against any head of department suspected of infringing this stipulation.
- No member of Council or official in the Municipality shall engage in any contact with a prospective supplier in respect of any quotation or tender which such supplier intends to submit with the purpose of influencing any aspect of such quotation or tender.

### **4.3. Quotations**

#### **4.3.1. *Calling for Quotations***

- The Manager: Finance will manage procurement requisitions for amounts estimated not to exceed R 200 000 (two hundred thousand rand) excluding VAT by calling for quotations.
- The request for such quotations will be prepared by the appropriate section or official in the Budget and Treasury Office, and shall be prominently displayed on the Municipality's main notice board, in the civic centre, on the notice board of department concerned, and on the notice board provided for this purpose in the Budget and Treasury Office.
- Notices calling for quotations shall indicate the closing date and time for the submission of quotations; such closing date shall be at least 14 (fourteen) calendar days after the date on which the request for quotations is first displayed.
- For a quotation to be considered it must be in writing and signed by a person with the necessary authority to act on behalf of the prospective supplier. The quotation must substantially comply with the specification set out in the notice calling for quotations and be received by the appropriate section or official in the Budget and Treasury Office on or before due date and time. The quotation must be accompanied by proof that all municipal rates and service charges have been paid to date, a valid tax clearance certificate issued by the South African Revenue Service, a valid tax (levy) clearance certificate issued by the relevant district municipality and the completed application form setting out details of the supplier's PDI empowerment credentials and involvement in the local or regional economy.
- For a quotation to be considered to specification in respect of services to be provided to, or works to be undertaken for the Municipality, the bidder must

provide satisfactory proof that it possesses the skills and resources to execute the bid properly.

#### **4.3.2. Adjudication of Quotations**

- All quotations shall be adjudicated by the Manager: Finance, acting on the written reports prepared by the appropriate section or official in the Budget and Treasury Office.
- The lowest quotation substantially to specification shall be accepted, taking into account the Municipality's preferential procurements and, further, provided that the Manager: Finance is satisfied that it offers acceptable value for money to the Municipality.
- If no quotation is received that substantially complies to the specification, that which is closest to specification shall be accepted, provided that the Manager: Finance is satisfied that it offers acceptable value for money to the Municipality and provided further – if the goods or services concerned are being procured for a specific department or departments – that the head(s) of such department(s) concur(s) with such acceptance.
- All approved quotations shall be listed on the Municipality's website, if applicable, and on the notice boards referred to above. Quotations approved during any particular calendar week shall be listed from the beginning of the following calendar week, and shall be displayed for the duration of that week.

#### **4.4. Formal Tenders**

##### **4.4.1. Calling for Tenders**

- Formal tenders must be invited by the Municipality in all cases where it is reasonably expected that the cost of the required work, goods or services will be equal to or exceed the amount of R 200 000 (two hundred thousand rand) excluding VAT.
- At least 14 days full notice of the tender shall be given by the Municipality in a newspaper circulating within its area of jurisdiction. Notices in the press inviting prospective service providers to tender shall be published in English and at least one further official language commonly spoken within the area of jurisdiction of the Municipality. Tender notices shall also be displayed on notice boards situated in prominent areas frequently by the public at the offices of the Municipality.
- The tender notice shall contain at least the following pertinent information –
  - Notification of intention to enter into such a contract;
  - The purpose of the contract;
  - Invitation to any person / organisation willing to enter into such a contract to submit a tender for that purpose;
  - Indication where tender documents can be obtained, if applicable;
  - Indication where completed tenders must be submitted; and

- Indication of when the closing date and time of the tender will be.
- The tender notice may also specify that a fee or deposit, as determined from time to time, is payable in order to obtain tender documentation. In the case of deposits, the amount concerned shall be refundable to the tenderer within 7 (seven) working days after the tenders have been opened.
- The notice of intention to tender and the notice period shall apply to all formal tenders unless the Municipal Manager is of the opinion that:
  - the proposed contract is an urgent case or a special case of necessity for which tenders need to be invited; or
  - where the proposed contract is for the sale of purchase of goods, that such goods should be bought or sold by public auction.

#### **4.4.2. Access to Tender Information**

- Tender information is to be compiled and presented in a simplified and user friendly format. The information shall be easily accessible to any individual, business entity or organisation.
- Tender documents must be standardised as far as possible in respect of layout, general and special conditions of contract, tender conditions, tender forms, contract agreements, and deeds of surety and contractor information.
- Tender documentation will be published in English only.
- At all sites where tender documents are issued, trained staff will be available to assist prospective tenderers by explaining what they must complete, the date and time when and where the document of offer is to be submitted and so forth.
- With engineering or construction contracts, prospective tenderers will be advised of compulsory attendance of site meetings where they will have the opportunity to ask questions and seek clarification. Attendance at site meetings will be recorded, the meetings minuted and copies of the minutes distributed to all parties in attendance.
- Tender results will be made available to tenderers upon request. Tenderers will be encouraged to attend the opening of the tender sessions. This opening process ensures transparency and enables each prospective tenderer to evaluate their performance and competitiveness for future tenders.
- For complete transparency in the tendering process, tender documents must provide details of the adjudication criteria. This is particularly important where price is not the only criterion in awarding a tender.

#### **4.4.3. Submission of Tenders**

- Prior to inviting tenders from prospective service providers, the Municipality must –

- properly plan for and, as far as possible, accurately estimate the costs of the provision of services or goods for which an invitation for tenders has been made;
  - determine the appropriate preference point system to be used in the evaluation of tenders; and
  - determine the deliverables or performance indicators in terms of which a service provider awarded a contract will be assessed.
- The tender specification sets out the items required (goods and services), the quantities and any other specific details relating to the items required. The applicable General Conditions of Contract, as attached to the specifications, set out clearly the contractual issues relating to the tender. The tenderer's offer is deemed to comply with these requirements in full unless any departures / variations are specifically noted in the appropriate schedule.
- Tenderers are to be advised that tender documents submitted must be complete in all respects (all the required information to ascertain the price and the nature of the offer must be supplied). The only exception is where the invitation to tender specifically indicates that the Municipality will call for specific information after the tender has been opened, or where specific information is called for once adjudication is at an advanced stage.
- Each tender shall be in writing and, where applicable, on the prescribed form.
- Each tender shall be submitted in a sealed envelope on which the designated tender number, the nature of the supply or service and the closing date and time of the tender indicated.
- Tenders are to be placed in the locked tender box, provided for this purpose, not later than the closing time on the closing date specified in the invitation to tender.
- The Manager: Finance shall ensure that tender boxes are sealed until the date and time of their official opening, and that they are properly secured at all times.
- A tender received other than by deposit in the tender box shall, as soon as it has been so received, be placed in the tender box by the official authorised to do so by the Municipal Manager.
- When a tender received other than by deposit in the tender box is found not to comply with the requirements as set out in the invitation to tender, it must be placed in a sealed cover on which is noted –
  - the date and time of receipt of the tender;
  - the condition in which the tender was received;
  - the tender number;
  - the closing date and time of the tender; and
  - the nature of the goods or work to which it relates and it shall thereafter be placed in the tender box.

- Tenders received by telegram, telex, facsimile or electronic mail on or before the specified date or hour may be allowed, if it is not specially excluded in the tender document. They will only be accepted provided that the name of the tenderer, the tender number, the goods or works to which it relates, the amount of the tender and the period are clearly specified therein. However, this tender will not be considered for adjudication unless it is confirmed by a tender on the prescribed tender form which shall be in the possession of the Municipal Manager within 48 hours of the specified closing date and time of the tender concerned.
- A tender received after the specified closing date and time will not be considered and the tenderer is to be notified accordingly. However, if such tender is the only tender for the supply or service concerned and it was posted on or before the specified date and time the Municipal Manager may consider such a tender.
- Notwithstanding the provisions of the clauses reflected above, the Municipal Manager may consider a tender which has been received late if he/she are satisfied that the tender was posted in time but delayed in the post.
- It must be clearly understood that the Municipality disclaims any responsibility for seeing that tenders sent by post or delivered in any other way to its offices, are lodged in the tender box. It is therefore preferable for the tenderer to personally ensure that the tender documents is placed in the tender box by his/her own staff or, where appropriate, a courier appointed by the tenderer.
- Tenders are accepted for consideration on the condition that the tenderer has fully acquainted him / her and undertake to be fully bound by the provisions contained in this policy prescription.
- Any queries relating to the tender procedure must be addressed to the Municipal Manager and not to members of the Council of the Municipality.

#### **4.4.4. *Opening of Tenders***

- Immediately after the closing time has expired on the closing date for tender, the tender box will be opened in public by the Manager: Finance in the presence of the Municipal Manager and all tenders removed. The Manager: Finance is responsible for opening all the tenders submitted.
- As soon as a tender has been opened –
  - it shall be stamped with the official stamp of the Municipality and endorsed with the signature of the person who opened it and the signature of the person in whose presence it was opened;
  - the name of the tenderer and the amount of the tender will be recorded in a register kept for that purpose; and
  - the person who opened the tender shall place his/her initials against the total amount mentioned in the tender documents.

- If a tender consists of one single item, the amount tendered will be read out when the tender is opened, but if it consists of more than one item, the Municipal Manager, in his/her discretion, will decide whether or not one or all of the prices should be read out.
- After being recorded in the register, the tender(s) are handed over to the official responsible for the supervision of the processing thereof and he/she shall acknowledge receipt by signing the register.
- If, on opening a tender, the contents are found not to comply with the requirements of the invitation to the tender, the person opening the tenders shall declare in what respect it fails to comply and shall endorse the tender accordingly.
- Canvassing of members of the Council or officials of the Municipality shall disqualify a tender. Tenderers should note that once the tenders have been opened, they are not to contact officials or members of Council to discuss the contract or the awarding of the contract, as this will result in their tender being disqualified. This does not preclude a tenderer from when the tender will be awarded or from furnishing such other information as may be requested during the adjudication process.
- A list of all tenders received in response to a particular invitation to tender must be displayed at the offices of the Municipality.

#### **4.4.5. Adjudication of Tenders**

##### *4.4.5.1. Legislative Imperatives*

- Section 115(1)(a) of the Municipal Finance Management Act, Act 56 of 2003, specifies that the Municipal Manager of a municipality must implement the supply chain management policy of the municipality.
- Section 117 of the Municipal Finance Management Act stipulates that no councillor or any municipality may be a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend such meeting as an observer.
- Section 118 of the Municipal Finance Management Act stipulates that no person may –
  - (a) interfere with the supply chain management system of a municipality; or
  - (b) amend or tamper with any tenders, quotations, contracts or bids after their submission.

##### *4.4.5.2. Formation of the Tender Committee*

- The Municipal Manager will establish a tender committee to undertake the adjudication of tenders.

- The tender committee will consist of the Municipal Manager as the Chairperson and comprise of the heads of department of the Municipality.
- The compilation of tender information to be considered by the tender committee will be undertaken by the Manager: Finance who nonetheless remains a full member of the tender committee.
- The quorum for tender committee meetings shall be the chairperson and the full membership as indicated above.
- A head of department shall be deemed to have an official interest in a tender being considered if the tender concerned relates to the procurement of goods or services requested for that department specifically, or where that department will be the predominant user of the goods or services concerned. Such head of department is entitled to attend the relevant meetings of the tender committee and to speak on the relevant items in which the department has a direct interest but he/she may not vote when a decision on the tender is made.

#### *4.4.5.3. Adjudication Process*

- All tenders with an estimated value exceeding R 200 000 (two hundred thousand rand), excluding VAT, but not exceeding R 500 000 (five hundred thousand rand), excluding VAT, shall be adjudicated and approved by the Municipal Manager, acting on the written reports and recommendations of the Manager: Finance.
- All tenders with an estimated value exceeding R 500 000 (five hundred thousand rand), excluding VAT, shall be adjudicated by the tender committee and approved by the Municipal Manager, acting on the written reports and recommendations of the tender committee.
- Tenders submitted shall be classified to enable the Municipality to apply its policy of preferential procurement.
- In order to ensure that price allocations are not distorted by unrealistically low prices and to protect the integrity of the procurement process, the following criteria shall be applied in processing tenders:
  - (a) all tenders that are within 10% above and below the estimated price, shall be considered as responsive in terms of price; and
  - (b) tenders that do not meet the minimum HDI requirements shall be considered unresponsive and liable for rejection.
- The lowest tender substantially to specification shall be accepted, taking into account the Municipality's preferential procurement requirements, provided the adjudicating authority is satisfied that it offers acceptable value for money to the Municipality.
- If no tender is substantially to specification, the adjudicating authority may recommend acceptance of the lowest tender which is closest to specification,

providing the adjudicating authority is satisfied that it offers acceptable value for money to the Municipality. A further consideration here, however, is that if the goods of services are being procured for a specific department or departments, which the head(s) of such department(s) concur(s) with such acceptance.

- The Municipal Manager will not necessarily approve the only or lowest tender submitted; neither is he/she required to furnish any reasons for the acceptance or rejection of any tender. The Municipal Manager, further, has the right to approve the whole tender or part of a tender or, in the event of a number of items being tendered for, any item or part of an item.
- With reference to the clause above, however, it is noted that Section 114(1) of the Municipal Finance Management Act, Act 56 of 2003, stipulates that “if a tender other than the one recommended in the normal course of implementing the supply chain management policy of a municipality is approved, the accounting officer of the municipality must, in writing, notify the Auditor General, the relevant Provincial Treasury and the National Treasury of the reasons for deviating from such recommendation”.
- All approved tenders shall be listed as for quotations, but shall be listed for 2 (two) calendar weeks.

#### **4.4.6. Guarantees and Retentions**

- In the case of tenders for the undertaking of works on behalf of the Municipality with a value equal to or exceeding R 1 000 000 (one million rand), the successful tenderer must lodge with the Manager: Finance a guarantee, issued by an institution acceptable to the Manager: Finance, for a sum equal to 16% (sixteen per centum) of the agreed or estimated tender price. Such guarantee must be lodged within one calendar month from the date on which the tender is awarded, and shall thereafter be managed in terms of the contract entered into between the Municipality and the successful tenderer.
- In the case of tenders where a performance agreement as envisaged above is not required, the Manager: Finance shall withhold payment of an amount equal to 10% (ten per centum) of the value of the actual goods or services supplied by the appointed contractor. This retention will be held until the Manager: Finance is satisfied that the contract has been satisfactorily executed, but provided that final payment shall not be withheld for a period exceeding 6 (six) calendar months from the date on which final payment was due to the contractor.

#### **4.4.7. Appeals**

- Suppliers who are dissatisfied with the decision of the Municipality in regard to any quotation or tender may appeal in writing to the Municipal Manager, as follows –
  - for quotations, within 7 (seven) calendar days of the date on which the approved quotation is first listed; and

- for tenders, within 14 (fourteen) calendar days of the date on which the approved tender is first listed.
- The Municipal Manager shall provide written acknowledgement of such appeals to the appellant concerned, and shall endeavour to finalise such appeals within 7 (seven) calendar days of their receipt. Where this is not possible, the Municipal Manager shall promptly advise the appellant in writing of the reasons for the delay.
- If the appeal is based on a technically complex matter, the Municipal Manager may engage an impartial consultant to provide an opinion on the appeal, provided that sufficient budget exists for the expenditure to be incurred and provided, further, that the Municipal Manager shall not be bound by such opinion provided.
- The Municipal Manager shall immediately after a ruling on an appeal has been made, advise the appellant in writing of such ruling.
- The Municipal Manager will decide whether the lodging of an appeal constitutes sufficient grounds for the Municipality to delay, where possible, the procurement of the relevant goods or services in terms of the approved quotation or tender against which the appeal is lodged. If such a delay is decided upon, the Municipal Manager shall immediately advise the approved supplier, in writing, of such a delay.
- Since, in terms of the Municipal Finance Management Act, the Municipal Manager is responsible for the implementation of the supply chain management policy, service providers cannot direct their appeals to the Council of the Municipality. Should the ruling on appeal given by the Municipal Manager not satisfy the service provider, he/she must pursue other legal channels to further their cause.

#### ***4.4.8. Withdrawal of Tender and Failure to Execute a Contract***

Should a tenderer amend or withdraw his/her tender after the specified date and time, but prior to his/her being notified of the acceptance thereof, or should a tenderer after having been given notice that his/her tender has been accepted –

- (a) give notice of his/her inability to execute the contract in accordance with the tender; or
- (b) fail to sign a contract within the period stipulated in the tender requirements; or
- (c) fail to execute the contract.

He/she shall then pay all the additional expenses which the Municipality may have to incur in inviting fresh tenders and further pay the difference between his/her original tender and any less favourable tender accepted as well as any consequential loss which may arise from the non-fulfilment of his/her contractual obligations. However, the Municipal Manager has the right to

exempt the defaulting tenderer from the provisions of this clause if he/she is of the opinion that circumstances exist to justify such an exemption.

#### **4.4.9. Sanctions available to the Municipality**

- If the Municipal Manager is satisfied that any person, firm or company engaged by the Municipality –
  - (a) is executing a contract with the Municipality in an unsatisfactory manner;
  - (b) has offered, promised or given a bribe or other remuneration to a member of Council or an official employed by the Municipality in connection with the obtaining or execution of a contract;
  - (c) has acted in a fraudulent manner or in bad faith or in any other unsatisfactory manner in obtaining or executing a contract;
  - (d) has approached a member of the Council or an official of the Municipality before or after tenders have been invited for the purpose of influencing the award of the contract in his/her favour;
  - (e) has withdrawn or amended his/her
  - (f) r tender after the specified date and time; and
  - (g) when advised that his/her tender has been accepted, has given notice of his/her inability to execute the contract or fails to execute or sign the contract.

The Municipality may, in addition to the claim it has in terms of 4.4.8 above and addition to any other legal recourse, decide that any contract between the Municipality and such person, firm or company shall be cancelled. Further, no tender from such person, firm or company shall be considered for a specific future period.

- If the Municipal Manager is satisfied that any person, firm or company is or was a shareholder or that any person is or was a director of a firm or company which is one from which no tender shall be considered for a specific period, the Municipal Manager may also decide that no tender from such firm or company shall be considered for a specific future period.
- Any restriction placed, for the purpose of these policy regulations, upon any person, firm or company shall be applicable to any other undertaking with which such person, firm or company is actively associated and any authorised employee or agent of such a person, firm or company.

#### **4.4.10. Sales of Goods**

- In seeking to dispose of any fixed assets, the Manager: Finance shall adhere to the Municipality's policy on the management of and accounting for fixed assets.
- The Manager: Finance shall determine in each instance having regard to the nature and estimated resale value of the assets whether it is more advantageous for the Municipality to dispose of the assets in question by means of the invitation of tenders or by public auction. Notification of such intended sales shall follow the communication processes prescribed for tenders as outlined

above, with the various notices and advertisements stating the date and time on which tenders close for acceptance or the date, time and venue of the auction, as the case may be, as well as the date(s) and venue(s) where prospective tenderers may view the assets.

- All tenders for sale of fixed assets shall be adjudicated by the tender committee and approved by the Municipal Manager. The highest tender substantially to specification shall be accepted, except if the adjudicating authority believes that no tender is satisfactory in terms of value for money offered.
- In seeking to dispose of any stores or other items other than fixed assets, the Manager: Finance shall adhere to the communication requirements prescribed for quotations. The Manager: Finance shall further determine whether it is more advantageous for the Municipality to dispose of the items by means of quotations or public auction, and shall in either case publish the notification of such sales in terms of communication process prescribed. If the Manager: Finance considers it necessary, such notification may also be made by means of advertisements in the local press.
- Where stores or other items are sold by means of quotations, the Manager: Finance shall adjudicate and approve the quotations received. The highest quotation substantially to specification shall be approved, except if the Manager: Finance believes that no quotation is satisfactory in terms of the value for money offered.

#### ***4.4.11. Payments and Invoicing***

- All invoices for goods and services received by the Municipality or works executed on behalf of the Municipality shall be dated the 30<sup>th</sup> of the month in which the invoice is submitted to the appropriate section or official in the Budget and Treasury Office, and all such invoices shall be paid on or before the 30<sup>th</sup> of the ensuing month.
- Where it is possible, in terms of the Municipality's banking and investment policy, the Municipal Manager may, if satisfied that the financial hardship may otherwise be suffered by a supplier, direct that such supplier's invoice be paid by means of a special earlier payment.
- All invoices pertaining to contracts managed by departments other than the Budget and Treasury Office, shall be certified as in order for payment by the head of department concerned before being submitted to the appropriate section or official in the Budget and Treasury Office for processing.

#### ***4.4.12. Stores and Materials Management***

- All goods procured by the Municipality shall be delivered to and receipted by the stores official in the Budget and Treasury Office, except if the Manager: Finance, with the concurrence of the Head of Department concerned, directs

that such goods shall be delivered to a specified site maintained by the department concerned.

- The procedures and charges for requisitioning goods from stores shall be determined from time to time by the Manager: Finance and shall be notified to all departments by means of departmental circulars.
- Stock levels shall be determined by the Manager: Finance, in compliance with the Municipality's cash management policy and, where applicable, with the Head of Department concerned.

#### **4.4.13. Municipal By-Laws**

The Municipality is required to publish the appropriate By-laws necessary to give effect to its supply chain management policy.

## **5. IMPLEMENTING PREFERENTIAL PROCUREMENT**

### **5.1. Practical Implementation of Preferential Procurement**

- 5.1.1. Giving preference to suppliers/contractors located within the area of jurisdiction of the Municipality.
- 5.1.2. Waiving or reducing of sureties to ensure that emerging contractors/suppliers are not excluded. In this regard it is noted that performance guarantees are not required for contracts of a works nature where the estimated value is not expected to exceed R 100 000 (one hundred thousand rand). This condition will remain applicable even if the actual tender exceeds R 100 000 (one hundred thousand rand). To reduce the risk to the Municipality in this regard, no more than 2 (two) contracts will be awarded to the same contractor simultaneously if surety has been waived in both cases.
- 5.1.3. Giving preference to SMMEs with particular reference on the previously disadvantaged part of the community.
- 5.1.4. Giving preferential treatment to contractors/suppliers that are actively contributing (all contributions whether financial or otherwise through for example capacity building programmes) to local economic development through, for example:
  - (a) utilising local SMMEs with particular reference to the previously disadvantaged part of the communities of the service area of the Municipality; or
  - (b) utilising local labour; or
  - (c) contributing to capacity building and skills development of the communities within the Municipality.
- 5.1.5. Giving preferential treatment to suppliers/contractors that are owned by previously disadvantaged individuals.

- 5.1.6. Using break-out procurement where the purchases of goods and services can be broken down in the smallest possible quantities without causing a negative impact on the quality, time and cost parameters of such goods and services. In as far as is technically, contractually and commercially possible and consistent with project, programme and budgetary limits, contracts will be split into the smallest components so as to enable emerging contractors to compete for the work, be it supply of goods and services or works of a construction nature. Appropriate standards, specifications, delivery dates and related contractual obligations must be specified to ensure that SMMEs and emerging contractors can reasonably be expected to complete such contracts.
- 5.1.7. Reducing payment cycles for emerging contractors from the standard 30 day to a fortnightly payment in order to improve their cash flow.
- 5.1.8. Supplying materials out of the contract price up-front where necessary or requested.
- 5.1.9. Providing information sessions in cases where tenders are technical in nature, where all prospective tenderers will be informed and afforded the opportunity to give inputs, thereby empowering emerging contractors/suppliers to participate in the procurement process of the Municipality.

## **5.2. Adjudication of a Points Basis**

- 5.2.1. Section 2 of the Preferential Procurement Policy Act, Act 5 of 2000, stipulates that the Municipality must determine its preferential procurement policy and implement it within a framework that allocates preferential points.
- 5.2.2. The Preferential Procurement Policy Act (and the preference point system it enforces) places the emphasis on smaller contracts where SMMEs are best placed to be competitive in terms of skills and resources.
- 5.2.3. The Municipality may, in the adjudication of tenders, give particular consideration to procuring locally manufactured products. Preferences in this regard may be accommodated within the ambit of the Act's 80/20/ or 90/10 point systems. For specific industries (identified by the Department of Trade and Industry) where the award of tenders to local manufacturers is of critical importance, such tenders may be advertised with a specific tendering condition that only locally manufactured products will be considered. In this case, preference points will be awarded for local manufacturing and/or content.
- 5.2.4. The preference point system that will be applied in the adjudication of tenders will be indicated in all tender documents.
- 5.2.5. Only a tenderer who has completed and signed the declaration part of the tender documentation may be considered for preference points.
- 5.2.6. The Municipality may, before a tender is adjudicated or at any time, require a tenderer to substantiate claims it has made with regard to preference.

- 5.2.7. In the event that different prices are tendered for different periods of a contract, the price for each period must be regarded as a firm price.
- 5.2.8. Preference points stipulated in respect of every tender must include preference points for equity ownership by historically disadvantaged individuals. This equity ownership must be equated to the percentage of an enterprise or business owned by individuals or, in respect of a company, the percentage of the company's shares that are owned by individuals who are actively involved in the management of the enterprise and exercise control over the enterprise commensurate with their degree of ownership changes after the closing date of the tender, the tenderer must notify the Municipality accordingly and such tenderer will not be eligible for any preference points.
- 5.2.9. Preference points may not be claimed in respect of individuals who are not actively involved in the management of an enterprise or business and who do not exercise control over an enterprise or business commensurate with their degree of ownership.
- 5.2.10. Equity claims for a Trust may only be allowed in respect of those persons who are both trustees and beneficiaries and who are actively involved in the management of the Trust. Documentation to substantiate the validity of the credentials of the trustees must be submitted to the Municipality.
- 5.2.11. A person awarded a contract as a result of preference for contracting with, or providing equity ownership to an HDI, may not subcontract more than 25% of the value of the contract to a person who is not an HDI or does not qualify for such preference.
- 5.2.12. The points scored in terms of the preferential goals are added to the points scored for price in order to establish the total number of points scored.
- 5.2.13. In all instances, only the tender with the highest number of points scored may be selected.
- 5.2.14. In the event that two or more tenders have scored equal total points, the successful tender must be the one scoring the highest number of preference points.

## **ANNEXURE A**

### **SUPPLY CHAIN MANAGEMENT FRAMEWORK**

#### **Section 112 of the Municipal Finance Management Act, Act 56 of 2003**

Section 112(1) of the Municipal Finance Management Act stipulates that the supply chain management policy of a municipality must be fair, equitable, transparent, competitive and cost-effective and comply with a prescribed regulatory framework for municipal supply chain management, which cover at least the following:

- (a) the range of supply chain management processes that municipalities may use, including tenders, quotations, auctions and other types of competitive bidding;
- (b) when a municipality may or must use a particular type of process;
- (c) procedures and mechanisms for each process;
- (d) procedures and mechanisms for more flexible processes where the value of a contract is below a prescribed amount;
- (e) open and transparent pre-qualification processes for tenders and other bids;
- (f) competitive bidding processes in which only pre-qualified persons may participate;
- (g) bid documentation, advertising of and invitation for contracts;
- (h) procedures and mechanisms for –
  - (i) the opening, registering and recording of bids in the presence of interested persons;
  - (ii) the evaluation of bids to ensure best value of money;
  - (iii) negotiating the final terms of contracts; and
  - (iv) the approval of bids.
- (i) screening processes and security clearances for prospective contractors on tenders or other bids above prescribed value;
- (j) compulsory disclosure of any conflicts of interests prospective contractors may have in specific tenders and the exclusion of such prospective contractors from those tenders or bids;
- (k) participation in the supply chain management system of persons who are not officials of the municipality, subject to Section 117;
- (l) the barring of persons from participating in tendering or other bidding processes, including persons –
  - (i) who were convicted for fraud or corruption during the past five years;
  - (ii) who wilfully neglected, reneged on or failed to comply with a government contract during the past five years; or

- (iii) whose tax matters are not cleared by the South African Revenue Service.
- (m) measures for –
  - (i) combating fraud, corruption, favouritism and unfair and irregular practices in municipal supply chain management; and
  - (ii) promoting ethics of officials and other role players involved in municipal supply chain management.
- (n) the invalidation of recommendations or decisions that were unlawfully or improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by –
  - (i) councillors in contravention of item 5 or item 6 of the Code of Conduct for Councillors set out in Schedule 1 to the Municipal Systems Act, as amended; or
  - (ii) municipal officials in contravention of item 4 or item 5 of the Code of Conduct for municipal staff members set out in Schedule 2 to that Act.
- (o) the procurement of goods and services by municipalities through contracts procured by other organs of state;
- (p) contract management and dispute settling procedures; and
- (q) the delegation of municipal supply chain management powers and duties, including to officials.

Section 112(2) requires that the regulatory framework for municipal supply chain management must be fair, equitable, transparent, competitive and cost-effective.

