

# **MKHAMBATHINI MUNICIPALITY**

## **“The Municipality”**



## **Supply Chain Management Policy**

**LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003**

**Date of review by Council: [\[30/ 11 / 2022\]](#)**

**Council** resolves in terms of section 111 of the Local Government Municipal Finance Management Act (No. 56 of 2003), to adopt the following proposal as the Supply Chain Management Policy of Mkhambathini Local Municipality.

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**Definitions**

1. 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 –

**"Cession of a right to direct payment"** refers to a service Providers election to cede their right to whole or part of their payment in favour of a Supplier

**"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;

**"in the service of the state"** means to be –

- (a) a member of –

- (i) any municipal council;
- (ii) any provincial legislature; or
- (iii) the National Assembly or the National Council of Provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) 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”** 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 Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- (b) the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
- (c) the Construction Industry Development Board Act, 2000 (Act No.38 of 2000);

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

**“proof of B-BBEE status level of contributor”** means-

- (a) the B-BBEE status level certificate issued by an authorized body or person;
- (b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
- (c) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act;

**“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

**“rural area”** means-

- (a) a sparsely populated area in which people farm or depend on natural resources,
- (b) including villages and small towns that are dispersed through the area; or an area including a large settlement which depends on migratory labour and remittances and government social grants for survival, and may have a traditional land tenure system;

**“the Act”** means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003); means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

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

**“municipality”** means Mkhambathini Local Municipality.

**“CSD”** means Central Suppliers Database.

**“SIPDM”** means Standard for Infrastructure Procurement and Delivery Management

**“youth”** has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).

**“highest acceptable tender”** means a tender that complies with all specifications and conditions of tender and that has the highest price compared to other tenders,

**“lowest acceptable tender”** means a tender that complies with all specifications and conditions of tender and that has lowest price compared to other tenders;

**“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;

**“Rand value”** means the total estimated value of a contract in Rand, calculated at the time of tender invitation;

**“specific goals”** means specific goals as contemplated in section 2(1)(d) of the Act which may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender and disability including the implementation of programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994;

**“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;

**“tender for income – generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contract through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and

## CHAPTER 1

### IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

#### Supply chain management policy

2. (1) All officials and other role players in the supply chain management system of the **Mkhambathini Municipality** must implement this Policy in a way that –

- (a) gives effect to –
  - (i) section 217 of the Constitution; and
  - (ii) Part 1 of Chapter 11 and other applicable provisions of the Act;
- (b) is fair, equitable, transparent, competitive and cost effective;
- (c) complies with –
  - (i) the Regulations; and
  - (ii) any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
- (d) is consistent with other applicable legislation;
- (e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
- (f) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.

(1) This Policy applies when the **Mkhambathini Municipality** –

- (a) procures goods or services;
- (b) disposes of goods no longer needed;
- (c) selects contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
- (d) Selects external mechanisms referred to in section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.

(2) 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.



- (c) Advertising on the Provincial Gazette/ National Gazette
- (d) Drivers Licence cards which is done by Department of Transport and the service provider is appointed at that level.

### **Amendment of the supply chain management policy**

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

(2) If the accounting officer submits proposed amendments to the council that differs from the model policy issued by the National Treasury, the accounting officer must –

- (a) ensure that such proposed amendments comply with the Regulations; and
- (b) report any deviation from the model policy to the National Treasury and the relevant provincial treasury.

(3) When amending this supply chain management policy the need for uniformity in supply chain practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.

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

- 4.** (1) The council hereby delegates all powers and duties to the accounting officer which are necessary to enable the municipal manager –
- (a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
    - (i) Chapter 8 or 10 of the Act; and
    - (ii) this Policy;
  - (b) to maximize administrative and operational efficiency in the implementation of this Policy;
  - (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favoritism and unfair and irregular practices in the implementation of this Policy; and
  - (d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.

(2) Sections 79 and 106 of the Act apply to the sub-delegation of powers and duties delegated to an accounting officer in terms of sub-paragraph (1).

(3) The municipal manager may not sub-delegate any supply chain management powers or duties to a person who is not an official of 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-delegations**

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

- (2) The power to make a final award –
  - (a) above R10 million (VAT included) may not be sub-delegated by the accounting officer.
  - (b) above R1 million (VAT included), but not exceeding R2 million (VAT included), may be sub-delegated but only to –
    - (i) Chief Financial Officer.
    - (ii) Strategic Corporate Services.
  - (c) not exceeding R1 million (VAT included) may be sub-delegated but only to –
    - (i) Chief Financial Officer; or
    - (ii) a bid adjudication committee.
  - (d) Procurement of goods and services costing R200 000 (VAT Included) and below may be sub delegated but only to Chief Financial Officer who can also sub-delegate goods and services costing R30 000 (VAT Included) and below to only Manager directly accountable to the chief financial officer.

(3) An official or bid adjudication committee to which the power to make final awards has been sub-delegated in accordance with subparagraph (2)

must within five days of the end of each month submit to the accounting officer a written report containing particulars of each final award made by such official or committee during that month, including–

- (a) the amount of the award.
- (b) the name of the person to whom the award was made; and
- (c) the reason why the award was made to that person.

(4) Sub-paragraph (3) of this paragraph does not apply to procurements out of petty cash.

(5) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub-delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.

(6) No supply chain management decision-making powers may be delegated to an advisor or consultant.

### **Oversight role of council**

6. (1) The council reserves its right to 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 this policy, to the council of Mkhambathini Municipality, and
- (b) Whenever there are serious and material problems in the implementation of this policy, immediately submit a report to the council.

(3) The municipal manager must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the mayor.

(4) The reports must be made public in accordance with section 21A of the Municipal Systems Act.

### **Supply chain management unit**

7. (1) A 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 Act.

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

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

## **CHAPTER 2 SUPPLY CHAIN MANAGEMENT SYSTEM**

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

9. 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***

#### **System of demand management**

10. (1) The municipal manager must establish and implement an appropriate demand management system in order to ensure that the resources required by Mkhambathini Municipality support its operational commitments and its strategic goals outlined in the Integrated Development Plan.

(2) The demand management system must –

- (a) include timely planning 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 the 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; and
- (c) provide for the compilation of the required specifications to ensure that its needs are met.

- (d) To undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.

## ***Part 2: Acquisition management***

### **System of acquisition management**

- 11.** (1) The accounting officer must implement the system of acquisition management set out in this Part in order to ensure –
- (a) that goods and services are procured by the municipality in accordance with authorized processes only;
  - (b) that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
  - (c) that the threshold values for the different procurement processes are complied with;
  - (d) that bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
  - (e) that any Treasury guidelines on acquisition management are properly taken into account.

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

- (a) the kind of goods or services, and
- (b) The name of the supplier

### **Range of procurement processes**

- 12.** (1) Goods and services may only be procured by way of –
- a. petty cash purchases, up to a transaction value of R1000 (VAT included);
  - b. Formal written price quotations for procurement of a transaction value over –
    - (i) R2000 up to R300 000 (VAT included), in the case of a local municipality;
    - (ii) R2000 up to R200 000 (VAT included), in the case of a district municipality;
    - (iii) R2000 up to R750 000 (VAT included), in the case of a

metropolitan municipality;

- c. A competitive bidding process for –
  - (i) Procurement above a transaction value of R300 000 (VAT included), in the case of a local municipality;
  - (ii) Procurement above a transaction value of R200 000 (VAT included), in the case of a district municipality; and
  - (iii) Procurement above a transaction value of R750 000 (VAT included), in the case of a metropolitan municipality.”;
- d. Formal written price quotations for procurement transactions valued over R 30 001 up to R300 000 (VAT included), declaration of interest and confirmation of tax matters of the service provider must be submitted along with the prescribed document; and
- e. a competitive bidding process be followed for any specific procurement of a transaction value lower than the competitive bidding thresholds specified in subregulation (1) (c)(i) to (iii).”.
- (i) The procurement of long-term contracts.

(2) Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the policy. When determining transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.

## **12.2. Planning and Stipulation of Preference Point System to be Utilized, Pre-qualification criteria for preferential procurement, Bids to be evaluated on Functionality, Preference Point System and Specific goals and objectives, Award of Contracts to Bidders not Scoring the Highest Number of Points and the Cancellation and Re-Invitation of Bids**

### **12.2.1.Planning and stipulation of preference point system to be utilized**

An organ of state must, prior to making an invitation for bids-

- (a) properly plan for, and, as far as possible, accurately estimate the costs of the provision of services, works or goods for which an invitation for bids is to be made;
- (b) determine and stipulate preference point system to be utilized in the evaluation and adjudication of the bids.

### **12.2.3 Bids to be evaluated on functionality**

- 1) An organ of state must indicate in the invitation to submit a bid if that bid will be evaluated on functionality.
- 2) The evaluation criteria for measuring functionality must be objective.

- 3) When evaluating bids on functionality, the-
- a) evaluation criteria for measuring functionality.
  - b) the points for each criteria and, if any, each sub-criterion; and
  - c) applicable values; and
  - d) minimum qualifying score for functionality.

The minimum qualifying score for functionality for a tender to be considered further-

- (a) Must be determined separately for each tender, and
  - (b) May not be so-
    - (i) Low that it may jeopardize the quality of the required goods or services; or
    - (ii) High that it is unreasonably restrictive.
- 5) Points scored for functionality must be rounded off to the nearest two decimal places.
- 6) A bid that fails to obtain the minimum qualifying score for functionality as indicated in the bid documents is not an acceptable bid.
- 7) Each bid that obtained the minimum qualifying score for functionality must be evaluated further in terms of price and the preference point system and any objective criteria envisaged in regulation 11.

### **12.2.3 80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million**

- (1) The following formula must be used to calculate the points out of 80 for price in respect of an invitation for a tender with a Rand value equal to or below R50 million, inclusive of all applicable taxes:

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

**Where-**

- P<sub>s</sub>** = Points scored for price of tender under consideration;
- P<sub>t</sub>** = Price of tender under consideration; and
- P<sub>min</sub>** = Price of lowest acceptable tender.

### **12.2.5. Award of contracts to bidders not scoring the highest number of points**

- (1) A contract may be awarded to bidder that did not score the highest total number of points, only in accordance with section 2 (1) (f) of the Act.
- (2) If an organ of state intends to apply objective criteria in terms of section 2(1)(f) of the Act, the organ of state must stipulate the objective criteria in the bid documents.

### **12.2.6. Cancellation and re-invitation of bids**

(1) (a) In the event that, in the application of the 80/20 preference point system as stipulated in the bid document, all bids received exceed the estimated Rand value of R50 000 000.00, the bid invitation must be cancelled.

(b) If one or more of the acceptable bids received are within the prescribed threshold of R50 000 000.00, all bids received must be evaluated on the 80/20 preference point system.

(2) (a) In the event that, in the application of the 90/10 preference point system as stipulated in the bid document, all bids received are equal to, or below Rand R50 000 000.00, the bid must be cancelled.

(b) If one or more of the acceptable bids received are above the prescribed threshold of R50 000 000.00, all bids received must be evaluated on the 90/10 preference point system.

(3) An organ of state which has cancelled a bid invitation as contemplated in sub-regulations (1) (a) and (2) (a) must re-invite bids and must, in the bid documents, stipulate the correct preference point system to be applied.

(4) An organ of state may, before the award of bid, cancel a bid invitation if-

(a) Due to changed circumstances, there is no longer a need for the goods or services specified in the invitation.

(b) Funds are no longer available to cover the total envisaged expenditure; or

(c) No acceptable bids are received.

(d) There is a material irregularity in the bid process.

(5) The decision to cancel a bid in terms of sub-regulation (1) must be published in the same manner in which the original bid invitation was advertised.

(6) An organ of state may only with the prior approval of the relevant treasury cancel a bid invitation for the second time.

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

**13.** A written quotation or bid may not be considered unless the provider who submitted the quotation or bid –

(a) has furnished –

(i) full name;

(ii) identification number or company or other registration number;

(iii) CSD Summary Report; and

(iv) tax reference number and VAT registration number, if any;

(b) has submitted a tax clearance from the South African Revenue Services that the provider's tax matters are in order; and



- (c) has submitted a proof of registration on Central Suppliers Database
- (d) has indicated –
  - (i) whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
  - (ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
  - (iii) whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to in subparagraph (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.
- (e) has made the following declarations, where necessary (advert and threshold to be considered);
  - (i) declaration of Interest (MBD4);
  - (ii) declaration for procurement above R10 million (all applicable taxes included) (MBD5);
  - (iii) preference points claim (MBD6.1);
  - (iv) declaration for local production and content (MBD6.2);
  - (v) declaration of bidder's past supply chain management practices (MBD8);
  - (vi) certificate of independent bid determination (MBD9);
  - (vii) declaration of municipal fees;
  - (viii) tax certificate requirements (MBD2)
- (f) Provided he or she is the resident within the Municipality boundaries, check if the rates and taxes are up to date

### **Lists of accredited prospective providers**

- 14.** (1) The accounting officer must –
- (a) To keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements of the municipality or municipal entity through formal written price quotations;”
  - (b) at least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;

- (c) ensure that municipal database is integrated with Central Suppliers Database to allow the municipality to received updates on suppliers;
- (d) specify the listing criteria for accredited prospective providers; and
- (e) Disallow the listing of any prospective provider whose name appears on the **National Treasury's database** as a person prohibited from doing business with the public sector. Implementation of the CSD requirement will be phased in gradual over multiple financial years.

(2) The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.

(3) The list must be compiled per commodity and per type of service.

(4) The function of implementation and management of the list of accredited prospective providers is delegated to the Manager Supply Chain Management or his/ her delegate.

On 1 April 2016, National Treasury initiated The Central Supplier Database (CSD) which is a database of organizations, institutions and individuals who wish to provide goods and services to the government. All prospective suppliers were urged to register on the central supplier database.

No quotations may be solicited from any supplier/service provider/contractor who is not registered and verified by the National Treasury Central Supplier Database and by the Mkhambathini Municipality Supplier Database or is in a position to be so before the award.

### **Petty cash purchases**

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

- (a) The Chief Financial Officer may, in writing, delegate the responsibility to monitor Petty Cash purchases to the Finance Manager.
- (b) Goods and services may only be procured by way of petty cash, up to a transaction value of R1000 (VAT included) per transaction.
- (c) **A maximum of petty cash purchases totaling to R2 000 per month will be allowed for each departmental section.**
- (d) Total petty cash may not exceed R8 000.00 for each calendar month for the whole municipality.

- (e) Petty cash may only be used for the following types of expenditure: wheel repairs, car wash and other small tools items (plumbing items).
- (f) a monthly reconciliation report from the Finance Manager must be submitted to the Chief Financial Officer, including –
  - (i) the total amount of petty cash purchases for that month; and
  - (ii) Receipts and appropriate documents for each purchase.

### **Formal written quotations**

**16.** (1) The conditions for the procurement of goods or services through formal written price quotations are as follows:

- (a) quotations above **R2 000.00** must be obtained in writing from at least three different service providers whose names appear on the list of accredited prospective providers of the municipality;
- (b) quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria set out in paragraph 14(1)(b) and (c) of this Policy;
- (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer,
- (d) the accounting officer must record the names of the potential providers and their written quotations, and

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

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

**17.** The procedure for procuring goods or services through formal written price quotations”

- (a) when using the list of accredited prospective providers, the accounting officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;
- (b) Goods and services procured from the value of R10 000.00(VAT included) and above to be accompanied by the declaration of interest forms from service provider awarded (MBD 4 and MBD 8) and copy of valid tax clearance

- certificate or tax pin;
- (c) All procurement transactions must be accompanied by summary of CSD registration report of the service provider awarded excluding petty cash transactions;
  - (d) all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, be scored on price and targeted goals points designed in terms of the Preferential Procurement Points Framework Act (PPPFA) and its regulations and specific goals and objectives and be advertised for seven days on the website and an official notice board of Mkhambathini Municipality;
  - (e) offers received must be evaluated on a comparative basis taking into account unconditional discounts;
  - (f) the municipal manager 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;
  - (g) offers below R30 000 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and highest point scored;
  - (h) acceptable offers, which are subject to the preference points system (Preferential Procurement Points Framework Act (PPPFA) and its regulations PPPFA and associated regulations), must be awarded to the bidder who scored the highest points; where that bidder has been already awarded another tender
  - (i) Procuring of goods and services in excess of R100 000 and unlimited must be reported to National Treasury on the monthly basis.
  - (j) **for proper record keeping and audit purposes, the following documentation must be kept by Finance and department procuring goods or services;**
    - (i) The authorized purchase requisition produced by the department requiring goods and services.
    - (ii) formal written price quotations
    - (iii) The order authorized by the Chief Financial Officer.
    - (iv) Formal signed delivery note submitted by the successful supplier.
    - (v) Formal invoice or certificate of work performed submitted by the successful supplier.
    - (vi) Goods received voucher, as prepared by expenditure: creditors

section.

- (vii) The Cheque voucher prepared by the Accountant: Expenditure and authorized by the Chief Financial Officer.
- (viii) The authorized payment Cheque.
- (ix) Any minutes of a bid resolution by the Bid Adjudication or Awarding Committee.
- (x) Proof of authorized direct payment (cash focus) processed for each transaction

### **Competitive bids**

#### **18.**

- (2) A supply chain management policy must specify –
    - (a) That goods or services above a transaction value of –
      - (i) R300 000 (VAT included), in the case of local municipality;
      - (ii) R200 000 (VAT included), in the case of a district municipality; and
      - (iii) R750 000 (VAT included), in the case of a metropolitan municipality
- May be procured by the municipality or municipal entity only through a competitive bidding process, subject to regulation 11(2); and
- (b) That no requirement for goods or services above an estimated transaction value of –
    - (i) R300 000 (VAT included), in the case of local municipality;
    - (ii) R200 000 (VAT included), in the case of a district municipality; and
    - (iii) R750 000 (VAT included), in the case of a metropolitan municipality,

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 goods or services otherwise than through a competitive bidding process.”.

### **Process for competitive bidding**

#### **19.**

**19.1.** The procedures for the following stages of a competitive bidding process are as follows:

- (a) Compilation of bidding documentation as detailed in paragraph 21;
- (b) Public invitation of bids as detailed in paragraph 22;
- (c) Site meetings or briefing sessions as detailed in paragraph 22;

- (d) Handling of bids submitted in response to public invitation as detailed in paragraph 23;
- (e) Evaluation of bids as detailed in paragraph 28;
- (f) Award of contracts as 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 agreements should be kept in a secure place for reference purposes.

### **20.1 Administrative process for Panels**

- (a) When the panel have been finalized/ formed the municipality should appoint one service provider/ contractor for each project.
- (b) After award service providers will quote on a rotational basis.
- (c) A minimum of 3 service providers/ contractors will be invited to come to a briefing meeting for construction projects.
- (d) Price negotiation: before awarding contractors the SCM department and evaluation committee will conduct a market research and negotiate standardized prices with service providers where necessary for cost effectiveness where applicable.
- (e) On request of quotations, services providers are requested to decline in writing should they wish to decline.
- (f) If and should the service provider decline 3 consecutive times, the third time will result in disqualification.
- (g) Description on quotations should be the same as per specification submitted.
- (h) Cession agreements will be allowed for R30 000 and above transactions and will be allowed for only three times per contract/ project and financial year.

### **Bid documentation for competitive bids**

**20.** The criteria with which bid documentation for a competitive bidding process must –

- (a) take into account –
  - (i) the general conditions of contract and any special conditions of

contract, if specified;

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

#### **Public invitation for competitive bids**

- 21.** (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 Government Tender Bulletin); and

- (b) The information contained in a public advertisement, must include –
  - (i) the closure date for the submission of bids, which may not be less than **30 days** in the case of transactions over R10 million (VAT included), or which are of a long-term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to sub-paragraph (2) of this policy;
  - (ii) a statement that bids may only be submitted on the bid documentation provided by Mkhambathini Municipality, and
  - (iii) Date, time and venue of any proposed site meetings or briefing sessions;
  - (iv) Statement stating that no late bid proposal will be accepted.

(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.

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

**22.** 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 subparagraph (b), relating to the



bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and

- (d) The municipal manager 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.

### **Negotiations with preferred bidders**

**23.** (1) The municipal manager 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.

### **Two-stage bidding process**

**24.** (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.

### **Committee system for competitive bids**

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

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

(2) The municipal manager appoints the members of each committee, taking into account section 117 of the Act; and

(3) A neutral or independent observer, appointed by the municipal

manager, must attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.

- (4) The committee system must be consistent with –
  - (a) paragraph 27, 28 and 29 of this Policy; and
  - (b) Any other applicable legislation.
- (5) The municipal manager may apply the committee system to formal written price quotations.

### **Bid specification committees**

**26.** (1) A bid specification committee must compile the specifications for each procurement of goods or services by the municipality.

- (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 recognized by the South African National Accreditation System with which the equipment or material or workmanship should comply;
  - (c) must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
  - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labeling of conformity certification;
  - (e) may not make reference to any particular 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) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2017; and
  - (g) must be approved by the municipal manager 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:**

- (a) Three officials of the municipality who must serve as standing members and of the three officials **one must come from the Supply Chain Management Unit/ Budget and Treasury Office** who will chair committee.

- (b) an official to be co-opted from the **end user department** preferably a **manager** and a **knowledgeable official responsible for the function involved**;
- (c) **Co-opted external specialized expert.**
- (d) **All permanent members of the committee must be appointed in writing for a period of 12 months** which is in line with the financial year end of the municipality, subject to the annual review of this policy;
- (e) The quorum must be equal to 50% of the number of permanent (as opposed to co-opted) committee members, plus one member.

(4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.

#### **Bid evaluation committees**

**27.** (1) A bid evaluation committee must –

- (a) evaluate bids in accordance with –
  - (i) the specifications for a specific procurement; and
  - (ii) the points system set out in terms of paragraph 27(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 (get a statement not a receipt to prove this), and;
- (d) Submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.

**(2) A bid evaluation committee must as far as possible be composed of :-**

- (a) Five officials of the municipality who must serve as standing members and of the five members **one member from the Supply Chain Management Unit must be appointed as Chairperson of the bid evaluation committee.**
- (b) any official may be **co-opted from end-user department** preferably a **manager** and a **knowledgeable official responsible for the function involved** when the need arises expert to provide advice but do not have voting powers;
- (c) Co- opted external specialized expert to provide advice but do not have voting powers;

- (e) Must be appointed for a period of 12 months which is in line with the financial year end of the municipality, subject to the annual review of this policy
- (f) the quorum must be equal to 50% of the number of permanent (as opposed to co-opted) committee members, plus one member.

### **Bid adjudication committees**

**28.** (1) A 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 municipal manager to make the final award; or
  - (ii) Make another recommendation to the municipal manager how to proceed with the relevant procurement.

(2) A bid adjudication committee must consist of **at least four senior managers** of the municipality and **Head of Supply Chain Management unit** which must include –

- (a) Chief Financial Officer
- (b) Strategic Manager: Corporate Services
- (c) Strategic Manager: Technical Services
- (d) Strategic Manager: Community Services
- (e) Head of Supply Chain Management (SCM Manager)
- (f) Committee can invite co-opted external specialized expert to bid adjudication meeting with no voting powers.

(g) The quorum must be equal to 50% of the number of permanent (as opposed to co-opted) committee members, plus one member.

(3) The accounting officer must appoint the chairperson of the committee and **Chief Financial Officer** must be **appointed as chairperson**. 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 municipal manager.

(b) The accounting officer may –

- (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
- (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.

(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

### **Procurement of banking services**

**29.** (1) A contract for banking services –

- (a) must be procured through competitive bids;
- (b) must be consistent with section 7 or 85 of the Act; and
- (c) may not be for a period of more than five years at a time.

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

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

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

**30.** (1) The municipal manager may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.

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

(3) The accounting officer must notify SITA together with a motivation of the IT needs if –

- (a) the transaction value of IT related goods or services required in any financial year will exceed R50 million (VAT included); or
- (b) the transaction value of a contract to be procured whether for one or more years exceeds R50 million (VAT included).

(4) If SITA comments on the submission and the municipality disagrees with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the relevant provincial treasury and the Auditor General.

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

**31.** (1) The municipal manager may procure goods or services under a contract secured by another organ of state, but only if –

- (a) the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
- (b) there is no reason to believe that such contract was not validly procured;
- (c) there are demonstrable discounts or benefits to do so; and
- (d) that other organ of state and the provider have consented to such procurement in writing.

(2) 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.

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

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

(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.

### **Proudly SA Campaign**

**33.** Mkhambathini Municipality supports the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services.

### **Appointment of consultants**

**34.** (1) A supply chain management policy may allow the accounting officer to procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurement is made.

(2) A contract for the provision of consultancy services to a municipality or municipal entity must be procured through competitive bids if –

(a) The value of the contract exceeds –

- (i) R300 000 (VAT included), in the case of a local municipality;
- (ii) R200 000 (VAT included), in the case of a district municipality; or
- (iii) R750 000 (VAT included), in the case of a metropolitan municipality; or (b) the 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.

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

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

**35.** (1) The accounting officer may –

- (a) dispense with the official procurement processes established by this Policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only –
  - (i) in an emergency;
  - (ii) if such goods or services are produced or available from a single

provider only; or if such goods are procured from a local supplier.

- (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
  - (iv) acquisition of animals for zoos and/or nature and game reserves; or
  - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
- (b) Ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.

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

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

(4) All deviations must be approved in writing and a designed form for deviation must be used and attached to all transactions approved by the accounting officer giving the reasons and motivation by user department.

### **Unsolicited bids**

**36.** (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.

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

- (a) reasons as to why the bid should not be open to other competitors;
- (b) an explanation of the potential benefits if the unsolicited bid were



accepted; and

- (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.

(4) The municipal manager must submit all written comments received pursuant to subparagraph (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 municipal manager 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 Mkhambathini Local Municipality to the bid may be entered into or signed within 30 days of the submission.

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

**37.** (1) The municipal manager must–

- (a) take all reasonable steps to prevent abuse of the supply chain management system;
- (b) Investigate any allegations against an official or other role player of fraud, corruption, favoritism, unfair or irregular practices or failure to comply with this Policy, and when justified –
  - (i) Take appropriate steps against such official or other role player; or
  - (ii) Report any alleged criminal conduct to the South African Police Service;
- (c) Check the National Treasury's database prior to awarding any contract to

ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;

(d) **Reject any bid from a bidder–**

- (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality, or to any other municipality or municipal entity, **are in arrears for more than three months**; or
- (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;

(e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;

(f) cancel a contract awarded to a person if –

- (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
- (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and

(g) reject the bid of any bidder if that bidder or any of its directors –

- (i) has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;
- (ii) has been convicted for fraud or corruption during the **past five years**;
- (iii) has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the **past five years**; or
- (iv) Has been listed in the Register for **Tender Defaulters** in terms of **section 29** of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).

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

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

### **Logistics management**

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

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

### **Disposal management**

**39.** (1) The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act, are as follows:

- (i) An obsolescence plan must be determined for each asset to ensure that when the asset can no longer be maintained or used for its original purpose, that there is a plan to replace it.
- (iii) A renewal plan must be determined for assets that have reached the end of its useful life.
- (iv) Asset disposal decisions must be made within an integrated, service and financial planning framework.

(2) **Assets may be disposed of by –**

- (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
- (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
- (iii) selling the asset; or
- (iv) Destroying the asset.

(3) Mkhambathini Municipality must establish a disposal strategy to determine the best mechanism of disposal for each asset and the municipal manager must ensure that –

- (a) immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
- (b) movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
- (c) firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;
- (d) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;
- (e) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;
- (f) where assets are traded in for other assets, the highest possible trade-in price is negotiated; and
- (g) in the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment.

### **Risk management**

**40.** (1) The criteria for the identification, consideration and avoidance of potential risks in the supply chain management system, are as follows:

- (a) risk management aspect must be allocated to the Chief Financial Officer, the SCM practitioners, the internal audit function and the Audit Committee, each of which shall ultimately be accountable to the Municipal Manager or the Council for the discharge of their responsibilities.

- (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.

### **Performance management**

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

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

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

**42.** (1) No award above R10 000 may be made in terms of this Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order.

(2) Before making an award to a person the accounting officer or his delegate must first check with SARS whether that person's tax matters are in order.

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

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

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

- (a) who is in the service of the state;
- (b) if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or

- (c) a person who is an advisor or consultant contracted with Mkhambathini Municipality.

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

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

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

#### **Ethical standards**

**45.** (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) A breach of the code of ethics must be dealt with as follows -

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

#### **The code of conduct for Supply Chain Management Practitioners is as follows:**

- Conflict of Interest: (Declaration of business, commercial and financial interests)
- Accountability: (For decisions and actions, scrupulous usage of public property, committing government through transactions for procurement of goods and services, recording and accounting for all transactions in an appropriate financial

system) Openness: (regarding decisions and actions taken, provide reasons for such)

- Confidentiality: (protection of government and supplier information)
- Prevention of combative practices which are unethical and illegal.

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

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

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

### **Sponsorships**

**47.** 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.

### **Objections and complaints**

**48.** Persons aggrieved by decisions or actions taken in the implementation of this supply chain management system, may lodge within 14 days of the decision or action –

- (a) if the objection or 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.

### **Resolution of objections and complaints against procurement process**

**49.** (1) The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes to assist in the resolution of objections and complaints between the municipality and any other person regarding -

- (a) the implementation of the procurement process in terms of the supply chain management system; or
- (b) any matter arising from the implementation of the procurement process in terms of the supply chain management system.

(2) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.

(3) The person appointed must –

- (a) strive to resolve promptly all objections and 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 the matter to the Municipal Bid Tribunals 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 involved in the performance of the duties and functions of the Municipal Bid Appeals Tribunal shall be performed by officers of the Provincial Treasury as set out in the Rules referred to in paragraph 50A.3.

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

### **Contracts providing for compensation based on turnover**

**50.** If a service provider acts on behalf of Mkhambathini Local 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 Mkhambathini Local Municipality must stipulate –

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

## **51. Preferential Procurement**

### **Application**

These Regulations apply to organ of state as defined in section 1i of the Act.

### **Identification of preference point system**

- (1) An organ of state must, in the tender documents, stipulate –
  - (a) The applicable preference point system as envisaged in regulations 4,5,6 or 7;
  - (b) The specific goal in the invitation to submit the tender for which a point may be awarded, and the number of points that will be awarded to each goal, and proof of the claim for such goal.
- (2) If it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of –
  - (a) An invitation for tender for income -generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or

- (b) Any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system.

**80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million**

- (2) The following formula must be used to calculate the points out of 80 for price in respect of an invitation for a tender with a Rand value equal to or below R50 million, inclusive of all applicable taxes:

$$Ps = 80(1 - \frac{Pt - Pmin}{Pmin})$$

Where-

- Ps** = Points scored for price of tender under consideration;  
**Pt** = Price of tender under consideration; and  
**Pmin** = Price of lowest acceptable tender.

- (3) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.  
 (4) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.  
 (5) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

**90/10 preference point system for acquisition of goods or services with Rand value above R50 million**

- (1) The following formula must be used to calculate the points out 90 for price in respect of an invitation for tender with a Rand value above R50 million, inclusive of all applicable taxes:

$$Ps = 90(1 - \frac{Pt - Pmin}{Pmin})$$

Where-

- Ps** = Points scored for price of tender under consideration;  
**Pt** = Price of tender under consideration; and  
**Pmin** = Price of lowest acceptable tender.

- (2) A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.  
 (3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

- (4) Subject to section 2(a)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

**80/20 preference points system for tenders for income-generating contracts with Rand value equal to or below R50 million**

- (1) The following formula must be used to calculate the points for price in respect of an invitation for tender for income – generating contracts, with a Rand value equal to or below R50 million, inclusive of all applicable taxes;

$$Ps = 80(1 + \frac{Pt - Pmin}{Pmin})$$

Where-

**Ps = Points scored for price of tender under consideration;**

**Pt = Price of tender under consideration; and**

**Pmin = Price of lowest acceptable tender.**

- (2) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.
- (3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.
- (4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

**90/10 preference point system for tenders for income – generating contracts with Rand value above R50 million**

- (1) The following formula must be used to calculate the points for price in respect of a tender for income – generating contracts, with a Rand value above R50 million, inclusive of all applicable taxes:

$$Ps = 90(1 + \frac{Pt - Pmin}{Pmin})$$

Where-

**Ps = Points scored for price of tender under consideration;**

**Pt = Price of tender under consideration; and**

**Pmin = Price of lowest acceptable tender.**

- (2) A maximum of 10 points may be awarded to tenderer for the specific goal specified for the tender.
- (3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.
- (4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

### Criteria for breaking deadlock in scoring

- (1) If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest points for specific goals.
- (2) If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

### Remedies

- (1) If an organ of state is of the view that a tenderer submitted false information regarding a specific goal, it must –
  - (a) Inform the tenderer accordingly; and
  - (b) Give the tenderer an opportunity to make representations within 14 days as to why the tender may not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part.
- (2) After considering the representations referred to in subregulation (1)(b), the organ of state may, if it concludes that such information is false –
  - (a) Disqualify the tenderer or terminate the contract in whole or in part; and
  - (b) If applicable, claim damages from the tenderer.

### Specific Goals and objectives

The municipality have specific goals into 4 categories which include Ownership goals, Empowerment goals, Reconconstruction & Development Programme Goals and Other goals. The total number of points for these goals combined is 20 points.

### Overview table of specific goals and objectives

No.	Categories	Weigh	<R50 million >R50 million	
			80/20	90/10
1	Ownership Goals	50%	10	5
2	Empowerment Goals	20%	4	2
3	Reconcostruction & Development Programme Goals	20%	4	2
4	Other Goals (Specify)	10%	2	1
		100%	20	10

## 1. Ownership Goals

Gender based ownership

Women ownership / men ownership (must be South African)

No.	Categories	Weigh	80/20	90/10
1	Women ownership - 100%: African	100%	10	5
2	Men ownership - 100%: African	80%	8	4
3	Women ownership - < 100%: African	80%	4	2
4	Men ownership - < 100% : African	40%	4	2
5	Women ownership - 100%: Indian / Coloured	40%	4	2
6	Men ownership - 100%: Indian / Coloured	40%	2	1
7	Women ownership - <100%: Indian / Coloured	10%	1	0.5
8	Men ownership - <100%: Indian / Coloured	10%	1	0.5

The use of ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate to verify the information provided.

## 2. Empowerment

Local Economic Development Sub-Contracting (10%-30%)

No.	Categories	Weigh	80/20	90/10
1	Enterprise 100% owned by Youth African	100%	4	2
2	Enterprise 100% owned by MK Veteran	100%	4	2

The use of ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate will be used to verify the information.

NB: kindly note that suppliers can only be scored in 1 category even if you qualify for more than 1 category.

## 3. Reconstruction & Development Programme Goals

Promotion of Local Business(s)

No.	Categories	Weigh	80/20	90/10
1	Enterprise Located within the Local Municipality	100%	4	2
2	Enterprise Located within the District Municipality	50%	2	1
3	Enterprise Located within the Province	25%	1	0.5

The use of Utilities : Directors or Co. | Affidavit | Existing Lease Agreement will be used

to verify the information.

#### 4. Other –

People leaving with disability.

<b>No.</b>	<b>Categories</b>	<b>Weigh</b>	<b>80/20</b>	<b>90/10</b>
1	Enterprise 100% owned by Disabled People.	100%	2	1
2.	Enterprise partially owned by a person living with disability	50%	1	0.5

The use of ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate will be used to verify the information provided and doctor's note to verify disability.

## EVALUATION OF BIDS THAT SCORED EQUAL POINTS

In the event that two or more bids have scored equal total points, the successful bid must be the one that scored the highest points for specific goals and objectives.

If two or more bids have equal points, including equal preference points for specific goals and objectives, the successful bid must be the one scoring the highest score for functionality, if functionality is part of the evaluation process.

In the event that two or more bids are equal in all respects, the award must be decided by the drawing of lots.

## CANCELLATION AND RE-INVITATION OF BIDS

- (a) In the application of **the 80/20 preference point system**, if **all** bids received exceed R50 000 000, the bid must be cancelled. If one or more of the acceptable bid(s) received are within the R50 000 000 threshold, **all bids received must be evaluated on the 80/20 preference point system**.
- (b) In the application of **the 90/10 preference point system**, if **all** bids received are equal to or below R50 000 000, the bid must be cancelled. If one or more of the acceptable bid(s) received are above the R50 000 000 threshold, **all bids received must be evaluated on the 90/10 preference point system**.
- (c) If a bid was cancelled in terms of paragraph (a) or (b), the correct preference point system must be stipulated in the bid documents of the re- invited bid.

An AO may, prior to the award of a bid, cancel the bid if:

- (a) Due to changed circumstances, there is no longer a need for the services, works or goods requested. [AOs / AAs must ensure that only goods, services or works that are required to fulfill the needs of the institution are procured]; or
- (b) Funds are no longer available to cover the total envisaged expenditure. [AO has to ensure that the budgetary provisions exist]; or
- (c) No acceptable bids are received. [If all bids received are rejected, the institution must review the reasons justifying the rejection and consider making revisions to the specific conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids].



## **AWARD OF CONTRACTS**

- (a) A contract must be awarded to the bidder who scored the highest total number of points in terms of the preference point systems.
- (b) In exceptional circumstances a contract may, on reasonable and justifiable grounds, be awarded to a bidder that did not score the highest number of points. The reasons for such a decision must be approved and recorded for audit purposes.

### **53. Performance Monitoring of Service Providers**

- (a) 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 Systems 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.
- (b) 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.
- (c) Section 53 of this policy apply to contracts that have been awarded or reviewed, before or after the adoption of this policy. Furthermore this policy applies to all tenders with a contract value greater than R10million VAT included.
- (d) The objectives of the Performance Monitoring of Service Providers is to:-
  - (i) Ensure a high quality of service is maintained
  - (ii) Detect underperformance early, thereby reducing the risks to projects
  - (iii) Create mechanisms to improve performance where targets are not being achieved
  - (iv) Provide data to municipal officials so that informed decisions can be made
  - (v) Assist in government's developmental objectives in the form of structuring appropriate business
  - (vi) support strategies/interventions to targeted enterprises
  - (vii) Assess the suitability of a service provider for pre-qualification, selective tender lists or expressions of interest

**While departments have mechanisms in place to monitor the work done by service providers, the following is the minimum standard set.**

- 1) All service providers or prospective service providers must be made aware of:
  - (a) the requirement for the assessment and reporting of a service provider's performance;
  - (b) the use of the service provider performance reports when evaluating service

- providers for registration, pre-qualification, selective tender list, expressions of interest or awarding of a contract; and
- (c) the exchange of information on service provider performance reports between government units and/or departments.
  - 2) The appointed service provider must be given the opportunity to discuss the performance criteria with the Implementing Department before commencement of the contract.
  - 3) Any changes to the performance criteria must be agreed to by the Municipality and the service provider.
  - 4) The decision to change a performance criteria after commencement of a contract is the responsibility of the Reporting Officer.
  - 5) These amendments must be signed by the service provider and the client and implementing department and attached to the contract or service delivery agreement.
  - 6) A service provider's performance must be assessed in the context of the project as a whole. The respective roles and obligations of the Municipality and service provider under the contract must be taken into account.
  - 7) The delegated official preparing or reviewing the performance of a service provider must consider whether satisfactory progress or completion of a project has been affected by any matters which are:
    - (a) outside the service provider's control, or
    - (b) the result of some action by the Municipality; and
    - (c) Measure the service provider's performance after taking into account subparagraphs (a) and (b).
  - 8) If there is evidence that the underperformance or non-performance of the service provider is due to factors caused by the Municipality then:
    - (a) there will be no penalization of the service provider
    - (b) the Accounting Officer, or delegated official, must take corrective action where necessary.
  - 9) The performance assessment reports will be made available to inter-departmental, inter-governmental departments and the CIDB (where applicable) only:
    - (a) on completion of a contract; and
    - (b) if there are no pending disputes.
  - 10) The Service Provider must be notified of the assessment.
  - 11) The Service Provider may respond on the assessment, in writing, and this must be filed with the assessment.
  - 12) The conditions of appointment set in the contract will determine what action will be taken against the service provider if underperformance or non-performance is detected.
  - 13) Appropriate key performance indicators for the contract must be set by the

Municipality as a yardstick for measuring performance.

- 14) Measurable targets must be set for each key performance indicator.
- 15) The SMART principle as laid out in the Municipality's Organizational Performance Framework must be followed in developing key performance indicators. (Specific, Measurable, Achievable, Realistic, Time-framed)
- 16) The management of the contract and the performance of the service provider must be reported quarterly to the Council of the Municipality in the format set by the SCM Unit.
- 17) The performance information will be audited:
  - (a) as part of the Municipality's internal auditing process; and/or
  - (b) Annually by the Auditor-General.
- 18) The Municipality will endeavor to facilitate support interventions to service providers in the identified areas of underperformance.
- 19) Service providers who have been identified as under-performing in identified areas must be informed of these support interventions.
- 20) The support interventions may be:
  - (a) sponsored by the Municipality,
  - (b) subsidized by the Municipality; or
  - (c) Paid for by the attending service provider.
- 21) Records of support interventions and attendance registers must be signed by all parties and filed.
- 22) The impact of the support interventions provided by the Municipality to the service provider must be monitored.
- 23) The table below outlines the roles and responsibilities of municipal officials in the management of service provider performance.

ROLES	RESPONSIBILITY
Reporting Officer	<ul style="list-style-type: none"> <li>▪ Line Departments</li> <li>▪ Monitor and assess work done or service provided as per the service delivery agreement or contract</li> <li>▪ Report on the performance of the service provider</li> </ul>
Reviewing Officer	<ul style="list-style-type: none"> <li>▪ Review the assessment made by the reporting officer</li> </ul>
Supply Chain Management	<ul style="list-style-type: none"> <li>▪ Manage the performance monitoring process</li> <li>▪ Report on contract management and service provider performance to council quarterly</li> <li>▪ Report to Council annually on the performance of service providers</li> <li>▪ Investigate and report on the impact of the interventions on areas of underperformance as part of the quarterly and annually report.</li> <li>▪ Review the policy and process annually.</li> <li>▪ Liaise with Business Support Unit on interventions for underperforming areas.</li> </ul>
Accounting Officer: Delegated to Performance Management Unit	<ul style="list-style-type: none"> <li>▪ Ensure that KPI's are included in the appropriate Individual Performance Plan of the Municipal Official</li> <li>▪ Review the policy and process annually.</li> <li>▪ Facilitate the quarterly and annual report to internal audit</li> </ul>
Internal Audit	<ul style="list-style-type: none"> <li>▪ Audit the performance information</li> </ul>
Business Support Unit	<ul style="list-style-type: none"> <li>▪ Facilitate support interventions to address the underperforming areas</li> </ul>

24) The requirements of this policy must be included in the contract of the service provider.

25) The performance of the contractor under the contract or must be assessed monthly by the Reporting Officer.

26) The assessment must be filed in the contract file or captured onto the database.

27) The Reporting Officer must complete the Service Provider Assessment Form on the database at the end of each quarter and on completion or termination of the contract in the prescribed format.

28) The Reviewing Officer must review the assessment on the database for each quarter.

29) The quarterly assessment must be completed within 15 working days after the end of each quarter.

30) The Reporting Officer must provide a copy of the assessment to the Service Provider at the end of each quarterly assessment period.

31) Supply Chain Management Unit will review the quarterly Service Provider Assessments within 20 days after the end of each quarter. This process will include verification and may require a site visit.

#### **54. Amendments to contracts – MFMA Section 116(3)**

- 1) This section is applicable to all contracts and Circular 62 and Section 116(3) of the Act must be complied with in respect of amendments to contracts.

Section 116(3) of the Act states:

“A contract or agreement procured through the supply chain management policy of the municipality or municipal entity may be amended by the parties, but only after-

- (a) The reasons for the proposed amendment have been tabled in the council of the municipality or, in the case of a municipal entity, in the council of its parent.
- (b) The local community-
  - (i) has been given reasonable notice of the intention to amend the contract or agreement; and
  - (ii) has been invited to submit representations to the municipality or municipal entity”

#### **The Policy and Process for Major Amendments to Contracts:**

- 1) **Step 1** of the process is for the Line Department to submit an Executive Committee (EXCO) Report to SCM Policy and Support Services Department recommending approval of Major Amendments to a Contract before submission to Executive Committee.
  - (a) The contents of the report must contain:
    - (i) proof that the contract or agreement procured was through the supply chain management policy;
    - (ii) proof that there a written contract in place;
    - (iii) proof that the contract been monitored on a monthly basis in terms of Section 116(2)(b) of the Act;
    - (iv) proof that the contract been reported on in terms of Section 116(2)(d) of the Act;
    - (v) proof and motivation that the reasons for the proposed amendments are valid
    - (vi) proof that draft for EXCO has appropriate content;
    - (vii) Draft advert for the proposed amendments in terms of Section 116(3) (b) (i) & (ii) of the MFMA.
- 2) There must be a consideration of Section 33 of the MFMA for contracts exceeding three years.
- 3) **Step 2** of the process is the submission of a Report to Bid Adjudication Committee recommending approval of Major Amendments to a Contract
  - (a) The contents of the report must contain:
    - i. proof that Steps 1 for Major Amendments have been followed, together with associated documentation; and
    - ii. Results of advertising in terms of Section 116(3) (b) (i) & (ii) of the MFMA, and the results thereof showing representations received and the materiality and impact of these representations.
  - (b) Consideration must be made of Section 33 of the MFMA for contracts exceeding three years.
  - (c) Where the contract authority exceeds R10 million, or is a long-term contract, then final authority rests with the Accounting Officer.

### **The Policy and Process for Minor Amendments to Contracts**

- 1) Step 1 is the submission of a Report to the Bid Adjudication Committee recommending approval of Minor Amendments to a Contract
  - (a) The contents of the Report must contain:
    - (i) proof that the contract was procured through the supply chain management policy;
    - (ii) proof that there is a written contract in place;
    - (iii) proof that the contract been monitored on a monthly basis in terms of Section 116(2)(b) of the Act;
    - (iv) proof that the contract been reported on in terms of Section 116(2)(d) of the Act;
    - (v) proof and motivation that the reasons for the proposed amendments are valid and do not exceed the thresholds for minor amendments.
  - (b) Consideration must be made of Section 33 of the MFMA for contracts exceeding three years.
  - (c) Minor amendments can only be considered if the total amended value does not exceed 20% of its original contract authority for construction related goods, services and/or infrastructure projects and 15% for all other goods and/or services of the original value of the contract.
  - (d) Where the contract authority exceeds R10 million, or is a long-term contract, then final authority rests with the Accounting Officer.
- 2) Step 2 of the process is the submission of a Report to Council on the Minor Amendments to contracts, including reasons for the amendments.
  - (a) The report to be included as a separate annexure in the standard monthly reports on tender awards made, which are produced by the SCM Manager.
  - (b) The Departmental Heads overseeing the projects have the responsibility of ensuring that all applicable information is made available to SCM to adequately prepare these reports.

## **56. Blacklisting**

### **Application of Policy to Blacklisted Persons**

- 1) Any blacklisting imposed on any person by the Blacklisting Committee will, at the discretion of the Municipality, also be applicable to any partner, manager, director or any other person who wholly or partly exercised, exercises or may exercise control over the business entity.
- 2) If blacklisted persons attempt to re-organize themselves into new business entities, such new business entities will be precluded from tendering for work put out to tender by eThekweni Municipality.
- 3) The onus is on the blacklisted person to advise their business associates that they have been blacklisted.

- 4) The Blacklisting Committee may at its discretion, blacklist such entity that may have a business relationship with the blacklisted person, depending on the level of complicity involved.

#### 5) Grounds for Blacklisting

The following are grounds for blacklisting, including but not limited to:-

- (a) committing an irregular practice/s as defined;
- (b) failing to achieve a specified goal as stipulated in the tender document in terms of Regulation 15(1) of the Preferential Procurement Regulations;
- (c) committing any offence as set out in Section 12 and 13 of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004;
- (d) persistent non-performance as defined, and as monitored in terms of the Performance Management Policy of the Municipality; and
- (e) a conviction in respect of criminal related activity, by a competent Court of Law, for which the sentence is a term of imprisonment of not less than 6 months.

#### 6) Procedures

- (a) A Department within the Mkhambathini Municipality must be regarded as the Applicant.
- (b) All external complaints must be lodged with the Mkhambathini Municipality's Integrity and Investigation Unit.

#### 7) The Application

- (a) the Applicant must apply on the prescribed forms which can be collected from the duly authorized department;
- (b) the application form must make provision for the reasons for the application, which if not stated must render the application null and void and such application must not be considered; and
- (c) The Applicant's application must be signed by the Head of that Department.

#### 8) Application Processes

- (a) In the case of Applications for blacklisting pertaining to construction or works, and where non-performance (excluding failure to achieve specified goals) is claimed, the application is to be accompanied by proof that the contractor has been advised in writing of his non-performance and been given an opportunity to remedy his non-performance. A certificate issued by a registered Engineer or an internal report from a suitably qualified official confirming the non-performance must also be lodged;

- (b) a final demand must be issued by the Accounting Office or duly authorized official requesting the contractor to perform not later than 14 days from the Notice;
- (c) in the case of applications in respect of contracts, other than contracts mentioned in (4)(a), and applications alleging failure to achieve specified goals, a copy of all Notices served on the Contractor to perform must be attached to the Application; and
- (d) the completed application form must be lodged with the authorized department.

#### 9) Notification

- (a) The Blacklisting Committee must send out a notice to the person against whom the application is made.
- (b) the notice must be sent by registered post or delivered by hand to the person concerned.
- (c) the notice must set out the following:
  - (i) that an application for blacklisting of the respondent has been received by the Blacklisting Committee;
  - (ii) the basis of the blacklisting application, including any supporting documentation available at the time of writing;
  - (iii) that the respondent has a right to make written representations opposing the application for blacklisting against them furnishing reasons as to why he/she should not be blacklisted;
  - (iv) the time period within which the respondent is to respond in terms of subsection (c), must be at least 14 calendar days from the date of delivery of the notice; and
  - (v) the place for the delivery of the response.

#### 10) Response

- (a) The Respondent must be expected in his response to indicate:
  - (i) whether or not he admits or denies the allegations; and
  - (ii) the reasons for denial, if applicable, and the reasons why he should not be blacklisted.
- (b) The Respondent may attach supporting documentation to his or her response.

#### 11) Decision

- (a) The Blacklisting Committee must make its determination based on the application and response received.

#### 12) Factors

- (a) If the Blacklisting Committee is satisfied that there are grounds to blacklist a person, the blacklisting committee must decide on the blacklisting period based on the merits of each matter.



(b) The Blacklisting Committee may take into account the following:

- (i) the seriousness of the offence;
- (ii) previous similar conduct in bidding processes with eThekweni Municipality; other municipalities, other government departments or organs of state;
- (iii) the hardship and/or inconvenience that has been occasioned by the persons conduct; and
- (iv) other remedies which the Municipality may invoke.

### 13) Notification of Decision

(a) The Blacklisting Committee must advise the parties of its decision in writing within 5 days of the decision being made, by enclosing together with such notice, a copy of the Decision and reasons.

(b) The notification must contain the following information:

- (i) the decision of the Blacklisting Committee;
- (ii) the effective date of the blacklisting and the date of expiration of the blacklisting;
- (iii) the reasons for the decision; and
- (iv) that the respondent has a right to request a review of the decision taken by the blacklisting authority to the appropriate Municipal committee.

### 14) Register of Blacklisted Persons

(a) The Supply Chain Management Unit must keep a register of all blacklisted persons.

(b) The Register of Blacklisted Persons must be made available on the Municipality's website and updated on a monthly basis.

(c) The National Treasury must be sent updated copies of the Blacklisting Register of the municipality on a monthly basis.

### 15) Uplifting of sanction

(a) The Blacklisting Committee, may amend or uplift any blacklisting which is imposed on a person if it is shown that there has been a material change in the circumstances giving rise to the decision to blacklist or where the decision was based on a material error.

(b) An application for the uplifting of the blacklisting must be made by the blacklisted person.

(c) An application for uplifting may only be made after the blacklisted person has been blacklisted for at least two years from the effective date of the decision unless it can be shown that a material error occurred in the decision making process of the Blacklisting Committee.

(d) If an application to uplift a blacklisting is refused, the applicant is precluded from bringing a further application for a period of two years from the date of the refusal.

#### 16) Onus

- (a) The onus is on the blacklisted person to ensure they are removed from the Mkhambathini Municipality Website once the blacklisting period has expired or where the sanction is uplifted.

#### 17) Evaluation and review

- (a) The Supply Chain Management Unit must together with the Accounting Officer undertake to evaluate and review this policy as least once a year, and recommend amendments to be made as they are deemed to be necessary. All amendments to this policy must be approved by the Council prior to the amendments being made.

## **57. STANDARD FOR INFRASTRUCTURE PROCUREMENT AND DELIVERY MANAGEMENT**

The municipality will subscribe to the requirement of the Standard for Infrastructure Procurement and Delivery Management when implementing the infrastructure projects. The controls framework and stages follows when implementing the standard is as follows:

### **CONTROL FRAMEWORKS**

Control framework for infrastructure delivery management

1. General
  - 1.1. The control framework for the management of infrastructure delivery shall comprise the applicable stages and gates as set out in Figure 1 and the key deliverables described in Table 1. Stages 3 to 9 may be omitted where the required work does not involve the provision of new infrastructure or the rehabilitation, refurbishment or alteration of existing infrastructure. Stages 5 and 6 may be omitted if sufficient information to proceed to stage 7 is contained in the stage 4 deliverable. Decisions to proceed to the next stage shall at each gate, subject to the provisions of 1.2, be based on the acceptability or approval of the end-of-stage deliverable.
  - 1.2. A stage shall only be complete when the deliverable has been approved or accepted by the person or persons designated in the institutional arrangements to do so. Activities associated with stages 5 to 9 may be undertaken in parallel or series, provided that each stage is completed in sequence.

- 1.3. The level of detail contained in a deliverable associated with the end of each stage shall be sufficient to enable informed decisions to be made to proceed to the next stage. In the case of stages 3 to 6, such detail shall, in addition, be sufficient to form the basis of the scope of work for taking the package forward in terms of the selected contracting strategy.
- 1.4. Prefeasibility and feasibility reports shall be required as end-of-stage deliverables for stages 3 and 4, respectively, where one or more of the following applies.
  - 1.4.1. the major capital project is required for:
    - 1.4.1.1. a major public enterprise where the total project capital expenditure exceeds R1,5 billion; or
    - 1.4.1.2. an organ of state subject to the Public Finance Management Act other than a major public enterprise where the total project capital expenditure exceeds R1,0 billion including VAT, or where the expenditure per year for a minimum of three years exceeds R250 million per annum including VAT;
  - 1.4.2. the project is not:
    - 1.4.2.1. A building project with or without related site works; or
    - 1.4.2.2. A process-based, somewhat repetitive or relatively standardized project where the risk of failing to achieve time, cost and quality objectives is relatively low; or
    - 1.4.2.3. The organ of state's infrastructure procurement and delivery supply chain management policy requires that prefeasibility and feasibility reports be produced during stages 3 and 4 respectively. 4.1.1.5 Stages 3 and 4 shall be repeated for each package if the acceptance at stage 4 is for the acceptance of a project comprising a number of packages which are to be delivered over time.

