



## **DRAFT SUPPLY CHAIN MANAGEMENT POLICY**

### **UMDONI LOCAL MUNICIPALITY**

**Date of adoption: 24 January 2024**

The Council of the Umdoni Local Municipality resolves in terms of section 111 of the Local Government: Municipal Finance Management Act 56 of 2003, as amended, to adopt the following as the official Supply Chain Management Policy of the Umdoni Local Municipality.

**APPROVED:**

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**MUNICIPAL MANAGER**

## PREAMBLE

In terms of section 111 of the Municipal Finance Management Act and the Preferential Procurement Policy Framework Act each Municipality, Municipal entity and Organ of State is obliged to adopt and implement a supply chain management policy in accordance with the requirements of these Acts. This Supply Chain Management Policy implements the supply chain management practices as envisaged by the Acts and its Regulations and in order to give effect to this it will blacklist persons who have been found to have engaged in such practices. All employees of the Umdoni Local Municipality shall adhere, implement and observe the provisions and requirements of this Policy.

## PURPOSE

The purpose of this Policy is:

- 1 To implement a supply chain management system which is fair, equitable, transparent, competitive and cost effective;
- 2 To implement a supply chain management system and select service providers and suppliers in a way that is consistent with:
  - (1) Constitution of the Republic of South Africa;
  - (2) Preferential Procurement Policy Framework Act;
  - (3) Municipal Finance Management Act;
  - (4) Construction Industry Development Board Act
  - (5) Broad-based Black Economic Empowerment Act;
- 3 To ensure consistency with other applicable legislation and regulations thereto;
- 4 To enhance uniformity in supply chain management system;
- 5 to provide for procedures and processes for the efficient and uniform acquisition of goods, services, works and other products from natural and/or legal entities;
- 6 To provide for the documentation to support such decisions;
- 7 To provide for procedures and processes for the disposal of goods no longer needed;
- 8 to provide for procedures and processes for the selection of contractors to provide assistance in the provision of municipal services other than where Chapter 8 of the Municipal Systems Act applies;
- 9 To provide for provision of municipal services through a service delivery agreement with a natural or juristic person which is not an organ of state;
- 10 To give effect to the Preferential Procurement Policy objectives of the Municipality;
- 11 To ensure optimal service delivery by facilitating effective and efficient procurement;
- 12 To combat fraud, corruption favoritism and irregular practices in Supply Chain Management by blacklisting persons who have been found to have engaged in such practices;
- 13 To encourage accountability within the Municipality;
- 14 To create a Blacklisting Committee to implement the provisions of this policy;
- 15 To specify guidelines to prevent the municipality from doing business with persons who abuse the Supply Chain Management system by engaging in unlawful and/or irregular practice(s);

- 16 To specify guidelines that will prevent the municipality from doing business with persons who default on performance willfully or negligently;
- 17 To develop uniform criteria and a fair process for blacklisting such persons;
- 18 to discourage persons who are blacklisted from re-entering the procurement arena by setting up new business entities and by using existing business entities to tender for public sphere work, during the period in which they are blacklisted;
- 19 To give the municipality power to deregister blacklisted persons from its supplier's database;
- 20 To create a database of persons who are blacklisted and to publish the list on the municipality's website so as to expose and publicize the identity of the blacklisted person; and
- 21 To deal with the conduct of officials who are found to have engaged in unlawful and/or irregular practices together with such persons, to be dealt with in terms of internal disciplinary procedure.
- 22 To enable Council to conduct its oversight as effectively as possibly by creating transparency in the process and reporting to Council at appropriate stages in the process.

## REGULATORY FRAMEWORK

**This Policy is guided by the following legislative framework:**

- 1 **The Constitution of the Republic of South Africa, 108 of 1996:**
  - 1.1 Section 217 (1) provides that when an organ of state in the national, provincial or local sphere of government contracts for goods and services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.
- 2 **Local Government: Municipal Finance Management Act 56 of 2003 (and applicable Regulations):**
  - 2.1 Section 111 provides that every municipality is required to develop and implement a supply chain management policy in order to give effect to the provisions of the Act;
  - 2.2 the Municipality will comply with the requirements set out in this Act and the Supply Chain Management Regulations in establishing the Supply Chain Management Unit Blacklisting Committee and applying its policy and guidelines; and
  - 2.3 The Municipality will comply with the Supply Chain Management Regulations 11 (1) and (2) where it procures goods and services otherwise than through its supply chain management system by making public this fact, the name of the supplier and the kind of goods or services procured.
- 3 **The Preferential Procurement Policy Framework Act 5 of 2000 (and applicable Regulations)**
  - 3.1 This Act provides for the framework for a procurement policy which allows for categories of preference in the allocation of contracts, together with consideration of the provisions of the Broad-Based Black Economic Empowerment Act, 2003 (No. 53 of 2003).
- 4 **The Governments Preferential Procurement Policy**
  - 4.1 This policy provides objectives including the increased usage of local resources; redressing the skewed employment and ownership through the BBBEE Act; the creation of job opportunities and poverty alleviation; stimulation of skills development and transferring of skills and fast-tracking the growth of and ensuring the sustainability of SMME's.
- 5 **Broad-Based Black Economic Empowerment Act 53 of 2003**

- 6      **The Promotion of Administrative Justice Act 3 of 2000**
- 7      **The Promotion of Access to Information Act 2 of 2000**
- 8      **The Construction Industry Development Board Act 38 of 2000**
- 9      **The Prevention and Combating of Corrupt Activities Act 12 of 2004**
- 10     **Municipal Systems Act 32 of 2000**
- 11     **Companies Act 71 of 2008**
- 12     **Any and all SCM circulars issued by National Treasury from time to time**

## **1. Definitions**

- 1.1 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:
- (1) “Accounting Officer” means the Municipal Manager of the Umdoni Municipality as per section 60 of the Act.
  - (2) “Amendment” must mean a change made to the value of the contract beyond the contract authority and/or the duration of the contract beyond the contract authority and/or scope changes in the contract and/or contracting arrangements beyond the contracting allowances. An amendment may be a minor amendment or a major amendment;
  - (3) “Appeal Authority” must mean an independent and impartial person appointed by the Accounting Officer in terms of Regulation 50 of the Local Government Municipal Supply Chain Regulations;
  - (4) “Applicant” must mean a Department of Umdoni Local Municipality;
  - (5) “Award” must mean the acceptance of a bid or proposal;
  - (6) “B-BBEE” must mean broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
  - (7) “B-BBEE Act” means Broad-Based Black Economic Empowerment Act, 2003
  - (8) “B-BBEE Status Level of Contributor” must mean the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad Based Black Economic Empowerment Act;
  - (9) “Bid Adjudication Committee” means that it’s the committee that is composed according to Section 29 of the SCM regulations.
  - (10) “Blacklisting Authority” must mean the Blacklisting Committee;
  - (11) “Blacklisting Period” must mean the period for which the blacklisted person is barred from participation in the procuring processes of the Municipality;
  - (12) “Blacklisting” must mean the act of disqualifying a person or an entity from participating in or continuing to participate in the procurement process of the Umdoni Municipality;

- (13) "Capital Assets" are all assets with a life cycle of greater than one year and above the capitalization threshold (where applicable). For example, this would include property, plant and equipment (infrastructure network, furniture, motor vehicles, computer equipment, etc.), intangible assets, and investment property.
- (14) "Chief Financial Officer" must mean the General Manager: Financial Services of the Umdoni Municipality;
- (15) "Competitive bid" must mean a bid in terms of a competitive bidding process;
- (16) "Competitive bidding process" must mean a competitive bidding process referred to in paragraph 12 (1) (d) of this policy;
- (17) "Contingency" must mean an amount included in the contract authority to cover the cost of unforeseen circumstances. This percentage must be appropriately motivated and approved at contract approval stage via the Bid Specification Committee, or Bid Adjudication Committee (where appropriate);
- (18) "Contract" must mean a legally binding agreement between the Municipality and the Contractor for the latter to provide goods, services, engineering and construction works, or professional services in return payment by the former;
- (19) "Contract Authority" must mean the total contract award value as approved, or supported, by the Bid Adjudication Committee. This is inclusive of escalations and the normal contingency allowance for variations under the general conditions of contract, and shall be taken from the amount approved at the Bid Specification Committee, or Bid Adjudication Committee;
- (20) "Contract Manager" must mean the delegated official to manage and oversee a contract;
- (21) "Contract Participation Goal (CPG)" must mean the value of work to be subcontracted to enterprises or businesses factored according to their level of HDI/PPG Equity ownership as set and approved in the bidding documents;
- (22) "Contract Period" must mean the duration of the contract as set out in the contract;
- (23) "Contractor" must mean any person, body, or legal entity that is under contract to the Municipality for the performance of the contract. A Tenderer whose tender has been accepted becomes a Contractor;
- (24) "Control" must mean the possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous exercise of appropriate managerial authority and power in determining the policies and directing the operations of the business;
- (25) "Council" means municipal council referred to in section 157(1) of the constitution
- (26) "Days" must mean, unless otherwise specified, calendar days. Days must be calculated by excluding the first day and including the last day;
- (27) "Delisting" must mean the removal of a person from the Umdoni Municipality database of blacklisted persons after the period of blacklisting has expired;

- (28) “Disabled” must mean in respect of a natural person, a permanent impairment of a physical, intellectual, or sensory function which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being;
- (29) “Eligibility Documents” must mean:
- (a) A valid Tax Clearance certificate issued by the South African Revenue Service and Municipal Fee Declarations and certificates certifying that the bidder has no undisputed commitments for municipal fees due to any municipality or overdue for a prescribed period;
  - (b) Declarations by tenderers certifying the correctness of information and certifying validity of authority to act (Regulation 14 of the Preferential Policy Framework Act 5 of 2000);
  - (c) Certificates declaring details of Private or business interests in terms of Regulation 46(e) of the Supply Chain Management Regulations;
  - (d) Proof of registration with the CIDB (Construction Industry and Development Board), where applicable;
  - (e) Proof of Registration of a Company, close Corporation, Co-operative or any other document requiring formal registration;
  - (f) Any partnership agreement, or agreement of Joint Venture, Memorandum of Articles of A Company, Association Agreement or any other agreement establishing a business entity;
  - (g) a statement setting out details of work undertaken in the Government/public sector/ organs of state in the past five years, including particulars of persons who assessed the work and who can be contacted to verify completion/ non completion of the contract;
  - (h) Audited financial statements where applicable, or books of account; and/ or
  - (i) Any other document prescribed by law or specifically requested by the Umdoni Municipality.
- (30) “Executive Director” must mean a partner in a partnership, a director of a company established in terms of the Companies Act, 1973 (Act 61 of 1973) and the new Companies Act, 2008 (No. 66 of 2008) or a member of a close corporation registered in terms of the Close Corporation Act, 1984 (No. 69 of 1984) who, jointly and severally with their other partners, co-directors or co-members, as the case may be, bears the risk of business and takes responsibility for the management and liabilities of the partnership, company, or close corporation;
- (31) “Exempted Micro Enterprise” must mean a bidder with an annual total revenue of R5 million or less (in terms of the Broad-Based Black Economic Empowerment Act;
- (32) “Final award” must mean in relation to bids or quotations submitted for a contract, means the final decision on which bid or quote to accept;
- (33) “Formal written price quotation” must mean quotations referred to in paragraph 12 (1) (c) of this policy and shall include any offer to purchase immovable property;
- (34) “Fronting” must mean claiming preference points, status or goals of any of the target groups listed in the Umdoni Municipality’s Targeted Procurement Policy and/or tendering documents where such claim is false;
- (35) “Goods” must mean both movable and immovable property and real rights therein;

- (36) “Improper Practice” must include, but not be limited to:
- (a) Fronting;
  - (b) Misrepresentation on eligibility documents or Application forms or any other returnable document which contains information which will have a material bearing on the award;
  - (c) attempting to bribe or bribing an official by monetary or non-monetary inducement or attempt to influence an official directly or indirectly involved with the procurement process, in order obtain a tender or retain a tender or withdraw from a tender;
  - (d) Deliberately omitting information, or misrepresenting information which could have a bearing on the award of a tender;
  - (e) Committing of fraud or extortion in relation to the bidding process;
  - (f) obtaining information on the contents of other bids in the same tender which one would not ordinarily be entitled to in terms of the Promotion of Access to Information Act (PAIA) No. 2 of 2000, which information is in the possession and under the control of the Municipality;
  - (g) Collusive tendering;
  - (h) Restrictive horizontal and vertical Practices as defined by the Competition Act, 1998 (No. 89 of 1998);
  - (i) Committing an exclusionary act as defined by the Competition Act, 1998 (No. 89 of 1998); and
  - (j) Any other activity which is not specifically set out in this definition, but constitutes an unlawful or unfair/ improper business practice;
- (37) “In the service of the state” must mean:
- (a) A member of any municipal council, any provincial legislature or the National Assembly of 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;
  - (e) A member of the accounting authority of any national or provincial public entity; and
  - (f) An employee of Parliament or a provincial legislature. The Minister of Finance has specifically exempted non-executive board members of a Municipal entity from the prohibition for being in the service of the state but only in relation to supply chain awards by a municipal entity that they do not serve on. An official or employee means a full time employee, and excludes any person employed on a part time basis or a person earning a stipend, provided that such person be verified and cleared in terms of conflicts of interest by the COI Task Team;
- (38) “**Long term contract**” must mean a contract with a duration period exceeding three years;
- (39) “List of accredited prospective providers” must mean the list of accredited prospective providers which a municipality or municipal entity must keep in terms of paragraph 14 of this policy;
- (40) “Local Content/Resources” must mean where preference points shall be allocated in terms of the location of the enterprise where applicable in the following order of preference: Umdoni Municipality Area (EMA); KwaZulu-Natal (KZN); South Africa (SA);

- (41) “Major Amendment” must mean an amendment to a contract which is not a minor amendment;
- (42) “Manufacturer” must mean a firm that operates or maintains a factory or establishment that produces on its premises materials or supplies required by the Prime Contractor for the performance of the Contract;
- (43) “Military Veteran”: must mean any South African Citizen who –
- (a) Rendered military service to any military organizations, statutory and non-statutory, which were involved on sides of South Africa’s Liberation war from 1960 to 1994;
  - (b) Served in the Union Defense Force before 1960;
  - (c) Became a member of the new South African National Defense Force after 1994.
- (44) “Minor Amendment” must mean a change made to the value of the contract beyond the contract authority and where the change is up to 20% of the original contract authority for construction related goods, services and/or infrastructure projects. A change of only up to 15% of the original contract authority relating to goods and/or services is allowed to be considered a minor amendment”;
- (45) “Municipality” must mean the Umdoni Municipality or any municipal entity, whichever is applicable;
- (46) “Municipal Systems Act” means to provide for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities.
- (47) “Non-Performance” must mean default on a contract in the public sector by willfully or negligently:
- (a) Failing to perform at all;
  - (b) Failing to complete work timeously without good reason;
  - (c) Delivering defective performance, i.e. poor workmanship or substandard materials;
  - (d) Being in breach of a material term of the contract;
  - (e) Failing to achieve a specified contract participation goal or performance target as set out in the tender document/s, and
  - (f) Despite being given written notice to remedy non-performance.
- (48) “Other applicable legislation” must mean any other legislation applicable to municipal supply chain management, including, but not limited to:
- (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);
- (49) “Owned” must means having all the customary incidents of ownership, including the right of disposition, and sharing all the risks and profits commensurate with the degree of ownership interests, as demonstrated by an examination of the substance, rather than the form of ownership arrangements;
- (50) “Policy” means a set of ideas or a plan of what to do in particular situations that has been agreed to officially by a group of people, a business organization, a government, or a political party



- (51) "Preferred bidder" must mean the most responsive and recommended bidder but whose tender and award has not been confirmed"
- (52) "Person" must mean a person including a juristic person and tenderer, supplier, service provider, contractor and business entity must have a corresponding meaning;
- (53) "PPPFA" means Preferential Procurement Points Framework Act to give effect to section 217 (3) of the Constitution by providing a framework for the implementation of the procurement policy contemplated in section 217 (2) of the Constitution; and to provide for matters connected therewith
- (54) "Prime Contractor" must mean a contractor who contracts with the Municipality as the principal or main contractor or as a joint venture partner to such contractors, to provide goods, services and works;
- (55) "Priority population group" must mean black individuals who fall into population groups that were not offered a franchise in the national elections before or after the introduction of the 1984 tri-cameral parliamentary system and only received a franchise during 1994.
- (56) "Project Authority" must mean the authority to incur expenditure on the project as budgeted for and approved by Council;
- (57) "Regulation" must mean the Local Government: Municipal Supply Chain Management Regulations promulgated under General Notice 868 of 2005 dated 31 May 2005, as amended from time to time;
- (58) "Reporting Officer" must mean a delegated official who monitors the performance of a contractor;
- (59) "Restrictive Horizontal Practice" must have the same meaning as set out in the Competitions Act 89 of 1998;
- (60) "Restrictive vertical Practice" must have the same meaning as set out in the Competitions Act 89 of 1998;
- (61) "Senior manager" must mean any official of the Umdoni Municipality with the title Head of Department or who in either of these positions in an official acting capacity or the designated office which may supersede the title of "senior manager";
- (62) "Service Provider" must mean a contractor;
- (63) "Sole Supplier" must mean that there exists one service provider or supplier manufacturer in the market, with sole distribution rights and/or patent rights.
- (64) "SMMes" must mean Small, Medium and Micro Enterprises as defined in the National Small Business Act 102 of 1996;
- (65) "Supplier" must mean a firm that:
  - (a) owns, operates or maintains a store, warehouse or other establishment in which materials or supplies are bought, kept in stock and regularly sold to the public in the usual course of business and
  - (b) Engages as its principal business, and in its own name, in the purchase and sale of the products;
- (66) "Supply Chain Management Unit Head" means Manager SCM.
- (67) "The Act" must mean the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

- (68) “Treasury guidelines” must mean any guidelines on supply chain management issued by the Minister in terms of section 168 of the Act;
- (69) “Unsolicited Bid” must mean any proposal/concept received by an institution outside its normal procurement process that has not been a solicited bid (a submission that must be innovative, unique and provided by a sole supplier).
- (70) “Variation” must mean a change to a provision/s in a contract, excluding the changes referred to in amendments in the definition of this policy;
- (71) “Works” must mean engineering and construction works;
- (72) “Youth” must mean South African citizens between the ages of 18 and 35;

## 2. Supply Chain Management Policy

All officials and other role players in the supply chain management system of the Municipality must implement this Policy in a way that:

- a) Gives effect to:
  - I. Section 217 of the Constitution; and
  - II. Part 1 of Chapter 11 and other applicable provisions of the Act.
- (b) **Is fair, equitable, transparent, competitive and cost effective?**
- (c) Complies with:
  - I. The regulations prescribed in Chapter 2 of the Regulations; and
  - II. Any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
- (4) Is consistent with other applicable legislation;
- (5) Does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
- (6) Is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.

The Municipality may not act otherwise than in accordance with this Policy when:

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

This Policy, except where specifically provided otherwise, does not apply in respect of the procurement of goods and services contemplated in section 110 (2) of the Act, including but not limited to –

- a) Water from the Department of Water Affairs or a public entity, another municipal or municipal entity;
- b) Electricity from Eskom or another public entity, another municipality or a municipal entity; and

- c) Telecommunication services from Telkom, or another public entity, another municipality or a municipal entity.

### **3. Adoption and Amendment of the Supply Chain Management Policy**

#### **1. The Accounting Officer must:**

- a) At least annually review the implementation of this Policy, by way of a revised policy document and
- b) annually report on the implementation of the policy; and
- c) When the Accounting Officer considers it necessary, submit proposals for the amendment of this Policy to the Council.

#### **2. If the Accounting Officer submits a draft policy to the Council that differs from the model policy issued by the National Treasury:**

(a) The Accounting Officer must ensure that such draft policy complies with the Regulations.

(b) The Accounting Officer must report any deviation from the model policy to the National Treasury and the relevant provincial treasury.

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

4. The Accounting Officer must in terms of section 62(1) (f) (IV) of the Act take all reasonable steps to ensure that the Municipality has and implements this Policy.

All Circulars in terms of the Act issued by National Treasury from time-to-time are applicable within this Policy where practical.

### **4. Delegation of Supply Chain Management Powers and Duties**

#### **1. The Council hereby delegates all powers and duties to the Accounting Officer necessary so as to enable the Accounting Officer:**

- a) To discharge the supply chain management responsibilities conferred on Accounting Officers in terms of:
  - I. Chapter 8 or 10 of the Act; and
  - II. This Policy;
- b) To maximize administrative and operational efficiency in the implementation of Policy;
- c) To enforce reasonable cost-effective measures for the prevention of fraud, corruption, favoritism and unfair and irregular practices in the implementation of 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 this Policy.**

- a. The Council or Accounting Officer may not delegate or sub-delegate any supply chain management powers or duties to a person who is not an official of the Municipality or to a committee which is not exclusively composed of officials of the Municipality; and

- b. This section (delegation of supply chain powers and duties) 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.

## **5. Sub-delegations**

- c. The Accounting Officer may in terms of section 79 or 106 of the Act sub-delegate any supply chain management powers and duties, including those delegated to the Accounting Officer in terms of this Policy, but any such sub-delegation must be consistent with subparagraph 5.2 and paragraph 4 of this Policy.
- d. The power to make a final award:
  - i. Above R10 million (VAT included) may not be sub-delegated by the Accounting Officer;
  - ii. Exceeding R2 million (VAT included), but not exceeding R10 million (VAT included), may be sub-delegated only to:
    - 1. The Chief Financial Officer; or
    - 2. The Bid Adjudication Committee;
  - iii. Not exceeding R2 million (VAT included), may be sub-delegated only to:
    - 1. The Chief Financial Officer
    - 2. Manager: Supply Chain Management; or
    - 3. Any other Delegated official.
- e. An official or Bid Adjudication Committee to which the power to make final awards has been sub-delegated in accordance with subparagraph 5.2 of this paragraph must ensure that, within five days of the end of each month, a written report containing particulars of each final award made by such official or committee during that month is submitted to the Accounting Officer, including:
  - i. The amount of the award;
  - ii. The name of the person to whom the award was made;
  - iii. The BEE status of the company; and
  - iv. The reason why the award was made to that person.
- f. All contract awards with a value exceeding R100 000 (VAT included) must be captured on National Treasury's Contracts Database via the Supply Chain Management Unit.
- g. Subparagraph 5.3 of this Policy does not apply to procurements out of petty cash.
- h. 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.
- i. No supply chain management decision-making powers may be delegated to an advisor or consultant.
- j. All other delegations must be made in terms of the supply chain management code of delegations as amended from time-to-time.

## **6. Oversight Role of Council**

- a. The Council reserves its right and must maintain oversight over the implementation of this Policy.
- b. For the purposes of such oversight the Accounting Officer must: Report to EXCO and the AC on a monthly basis, the deliberations and results of the BSC, BEC and BAC, particularly any serious and material problems in the implementation of the policy.
- c. The Accounting Officer must, within 10 days of the end of each quarter, submit a report on the implementation of the Policy to the mayor.
- d. The reports must be made public in accordance with section 21A of the Municipal Systems Act.

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

- a. The Accounting Officer must establish a supply chain management unit to implement this Policy.
- b. The supply chain management unit must, where possible, operate 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.
- c. Wherever possible, all supply chain management functions and activities are to be performed by the supply chain management unit under the Supply Chain Management Unit Head.

## **8. Training of Supply Chain Management Officials**

- a. The training of officials involved in implementing the Policy shall be in accordance with any Treasury guidelines on supply chain management training.

## **9. Format of Supply Chain Management policy**

- a. This Policy prescribes that the following systems must be in place:
  - i. Demand management;
  - ii. Acquisition management;
  - iii. Logistics management;
  - iv. Disposal management;
- (5) Risk management; and
- (6) Performance management.

## **10. System of Demand Management**

- a. The aim of demand management is to ensure that the resources required to support the strategic and operational commitments are quantified, budgeted for and timely and effectively delivered at the right time, at the right price and at the right location, and that the quantity and quality satisfy the need of the Municipality.
- b. The demand management system must:
  - i. Take into account any benefits of economies of scale that may be derived in the case of acquisitions of repetitive nature;
  - ii. Provide for the compilation of the required specifications to ensure that its needs are met; and

- iii. Undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.
  - c. Heads of Departments (HOD) must submit as part of the budget approval process a procurement plan containing all planned procurement. This procurement plan must be approved by the HOD or his/her delegate prior to its submission. Furthermore, a central contracts register is to be maintained for all contracts within the municipality. Items will only be permitted onto the register if contained within an approved procurement plan. Emergencies are excluded, but must be added to the approved procurement plan within 30 days.
- i. The relevant information must be furnished in the format contained a standardized Procurement Plan Template to be issued by the Manager: Supply Chain Management.
- ii. The appropriate method of procurement of goods, services and engineering & construction works for all contracts greater than the quotation threshold shall be approved by the Bid Specification Committee. Further, all contracts exceeding R10 million (VAT inclusive) must be accompanied by project-specific procurement and BEE strategies when presented to the Bid Specification Committee. These should be discussed and agreed between multi-disciplinary teams beforehand.

## **11. System of Acquisition Management**

- a. The Accounting Officer or an official or Bid Adjudication Committee to which the power to make final awards has been sub-delegated] must ensure that:
  - i. Goods and services are procured by the Municipality in accordance with authorized processes only;
  - ii. Expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
  - iii. The threshold values for the different procurement processes are complied with;
  - iv. Bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
  - v. Any Treasury guidelines on acquisition management are properly taken into account.

## **12. Range of Procurement Processes**

- a. The procurement of goods and services through this Policy can only be undertaken by way of:
  - i. Petty cash purchases, up to a transaction value of R500 (VAT included);
  - ii. Formal written price quotations for procurements of a transaction value over:
    - (i) R2 000 up to R300 000 (VAT included), in the case of a Local Municipality

A competitive bidding process for:

- 1. Procurements above a transaction value of R300 000 (VAT included); in the case of a Local Municipality
- b. 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, unless otherwise directed in writing by the Manager of departments of the user department.

- c. The Accounting Officer may, in writing –
  - i. Lower, but not increase, the different threshold values specified in paragraph 12.1; or
  - ii. Direct that –
    - 1. Formal written price quotations be obtained for any specific procurement below a transaction value of R2 000; or
    - 2. A competitive bidding process be followed for any specific procurement below a transaction value lower than the competitive bidding thresholds specified in sub regulation (1)(c)(i) to (iii).

### **13. General Preconditions for Consideration of Written Quotations or Bids**

- a. A written quotation or bid may not be considered unless the provider who submitted the quotation or bid –
  - i. Has furnished that provider's:
    - 1. Full name;
    - 2. Identification number or company or other registration number;
    - 3. Tax reference number and VAT registration number, if any;
    - 4. Tax clearance from the South African Revenue Service that the provider's tax matters are in order and
  - ii. Has made the following declarations, where necessary:
    - 1. Declaration of Interest (MBD4);
    - 2. Declaration for procurement above R10 million (all applicable taxes included) (MBD5);
    - 3. Preference points claim (MBD6.1);
    - 4. Declaration for local production and content (MBD6.2);
    - 5. Declaration of bidder's past supply chain management practices (MBD8);
    - 6. Certificate of independent bid determination (MBD9);
    - 7. Declaration of municipal fees;
    - 8. Tax certificate requirements (MBD2)

### **14. Lists of Accredited Prospective Providers**

- a. The Accounting Officer must:
  - i. 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; and
  - ii. 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;
  - iii. Specify the listing criteria for accredited prospective providers; and

- iv. disallow the listing of any prospective provider whose name appears on the National Treasury databases as a person/company prohibited from doing business with the public sector, or **who is prohibited in terms of section 44 of this Policy**, or is blacklisted/restricted in terms of this Policy.
  - b. 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.
  - c. The list must be compiled per commodity and per type of service. No supplier may be concurrently registered for more than two (2) categories at any given time.
  - d. No quotations may be solicited from any supplier/service provider/contractor who is not registered and verified by the appropriate branch on the Supply Chain Management Unit's Central Supplier Database, or is in a position to be so before the award.
  - e. The function of implementation and management of the list of accredited prospective providers is delegated to the Head: Supply Chain Management or delegate.

## **15. Petty Cash Purchases**

- a. The conditions for the procurement of goods by means of petty cash purchases referred to in paragraph 12 (1) (1) of this Policy are as follows:
  - i. The Chief Financial Officer hereby delegates the responsibility to monitor petty cash purchases to the Manager: Expenditure.
  - ii. Goods and services may only be procured by way of petty cash, up to a transaction value of R500 (VAT included)
  - iii. All petty cash purchases must be approved by the respective heads of departments or delegated official
  - iv. Petty cash may only be used for the following types of expenditure: refreshments, catering, gifts, wheel repairs and other small items.
  - v. A reconciliation accompanying each request to restore the impress amount must be submitted to the Chief Financial Officer, including:
    - 1. The value of the request;
    - 2. Receipts and appropriate documents for each purchase.

## **17. Formal Written Price Quotations**

- a. A supply Chain management Policy must stipulate the conditions for the procurement of goods or services through formal written price quotations , which must include conditions stating:
  - i. That quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the Municipality or Municipal entity;
  - ii. That quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria in the supply chain management policy required by paragraph 14.1(b) and (c);
  - iii. That if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer ,
  - iv. That the Accounting Officer must record the names of the potential providers and their written quotations.



- b. An electronic quotes management system is deemed to meet the supply chain management regulatory requirements. If it is not possible to obtain at least three quotations, the quotations must be re-advertised for a further period, after which the reasons must be recorded and approved by the Accounting Officer or an official designated by the Accounting Officer.

#### **18. Procedures for Procuring Goods or Services through Formal Written Price Quotations**

- c. The operational procedure for the procurement of goods or services through written or verbal quotations or formal written price quotations are:
- d. All requirements in excess of R2 000 but below R30 000 (vat Inclusive) that are to be procured by means of a formal written price quotation, must be opened in the market for at least a minimum of 3 – 4 days to allow for enough time to respond to the requirement or to the request;
- i. 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 PPPFA and its regulations and B-BBEE Act and be advertised for at least seven days (7) on the website and an official notice board of the Municipality or Municipal Entity;
- ii. When using the list of accredited prospective providers, the Accounting Officer must promote ongoing competition amongst providers, including by inviting providers to submit quotations on a rotation basis;
- iii. Offers received must be evaluated on a competitive basis taking into account unconditional discounts;
- iv. the Accounting 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;
- v. Offers below R30 000 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods or services and the lowest price;
- vi. Acceptable offers, which are subjected the preference points system of PPPFA and its regulations, and any other relevant regulations, must be awarded to the bidder who scored the highest points;
- vii. The Accounting Officer must take all reasonable steps to ensure that the procurement of goods and services through written or verbal quotations or formal written price quotations is not abused;
- viii. Municipal requirements of proper record keeping must always be maintained and the following documentation must be kept by the Municipality, in particular:
  - 1. The authorized purchase requisition produced by the department requiring goods and services;
  - 2. Formal written price quotations;
  - 3. The order authorized by the Manager: Supply Chain Management;
  - 4. Formal invoice or certificate of work performed submitted by the successful supplier;
  - 5. Payment voucher, as prepared by Expenditure: Creditors Section
  - 6. Letter of award by the Accounting Officer;
  - 7. Proof of payment.

## **19. Competitive Bidding Process**

(a) A supply chain management policy must specify Goods or services above a transaction value of:

a. R300 000 (VAT included), in the case of a Local Municipality;

May be procured by the Municipality or Municipal entity only through a competitive bidding process, subject to paragraph 11(2) of this Policy., and

(b) That no requirement for Goods or services above an estimated transaction value of:

R300 000 (VAT included), in case of a Local 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 competitive bidding process.

## **20. Process for Competitive Bidding: -**

A supply chain management policy must provide procedures for a competitive bidding process for each of the following:

- i. The compilation of bidding documentation as detailed in paragraph 21;
- ii. The public invitation of bids as detailed in paragraph 22;
- iii. Site meetings or briefing sessions, if applicable, as detailed in paragraph 22;
- iv. The handling of bids submitted in response to public invitation as detailed in paragraph 23;
- v. The evaluation of bids as detailed in paragraph 28;
- vi. The award of contracts as detailed in paragraph 29;
- vii. The administration of contracts, which should include a written agreement between the Municipality and the bidder after approval of the bid; and
- viii. Proper record keeping in that original and/or certified copies of documents are kept in a secure place for reference purposes.

## **21. Bid Documentation for Competitive Bids –**

A supply chain management policy must determine the criteria to which bid documentation for a competitive bidding process must comply and state that in addition to regulation 13, the bid documentation must:

(a) Take into account:

1. The general conditions of contract,
2. Any Treasury guidelines on bid documentation; and
3. The requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;

(b) Include the preference points system to be used in accordance with this Policy, contract participation goals, 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:

4. If the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements:
    - a. For the past three years; or
    - b. Since their establishment if established during the past three years;
  5. 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;
  6. Particulars of any contracts awarded to the bidder by an organ of state during the past 5 years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
  7. a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the Municipality or Municipal Entity is expected to be transferred out of the Republic; and
- ix. Stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), adjudication, arbitration, or, when unsuccessful, in a South African court of law.

## **22. Public Invitation for Competitive Bids**

A Supply chain management must determine the procedure for the invitation of competitive bids is as follows:

- i. Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers circulating locally, the website of the Municipality or Municipal Entity or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and
- ii. The information contained in a public advertisement, must include:
  1. the closure date, time and venue 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 subparagraph 22.2 of this Policy;
  2. A statement that bids may only be submitted on the bid documentation provided by the Municipality or Municipal Entity;
  3. The date, time and venue of any proposed site meetings or briefing sessions;
  4. A statement that no late bid will be accepted.
- b. 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.
- c. Bids submitted must be sealed and appropriately labelled.

- d. Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

## **23. Procedure for Handling, Opening and Recording of Bids**

- a. The procedures for the handling, opening and recording of bids, are as follows:
  - i. Bids:
    - 1. Must be opened only in public;
    - 2. Must be opened at the same time and as soon as possible after the period for the submission of bids has expired;
    - 3. Received after the closing time should not be considered and returned unopened immediately; and
    - 4. To ensure segregation of duties, the opening of bids shall be coordinated by Corporate Services.
  - ii. 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; and
  - iii. No other information, except that allowed in paragraph 23.1(2), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
  - iv. The Accounting Officer must:
    - 1. Record in a register all bids received in time;
    - 2. Make the register available for public inspection; and
    - 3. Publish the entries in the register and the bid results a notice board or on the website.

## **24. Negotiations with Preferred Bidders**

- a. The Accounting Officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation:
  - i. Does not allow any preferred bidder a second or unfair opportunity;
  - ii. Is not to the detriment of any other bidder; and
  - iii. Does not lead to a higher price than the bid as submitted.
- b. Minutes of such negotiations must be kept for record purposes.
- c. The multi-disciplinary team undertaking the negotiations must include a representative from the Supply Chain Management Unit and Support Services. The Supply Chain Management practitioner must preside over the negotiations.
- d. Authority to negotiate price and any conditions of tender with preferred bidder(s) must be approved by the Bid Adjudication Committee and the outcome of the negotiations must be reported back to the Bid Adjudication Committee for final approval or support.
- e. Authority to negotiate price and any conditions of written or verbal quotations and formal written price quotations must be approved by an official who is sub-delegated in terms of supply chain management code of delegations approved by the Accounting Officer. The outcome of the negotiations must be reported back to the duly delegated official for final approval.

- f. The negotiations may include price and or final terms and conditions of tender, project plan and service level agreement.
- g. Discount offers or alternate offers must be considered for negotiation after the Bid Adjudication Committee has granted authority to consider any alternate or discount offers. Outcome of the negotiation together with the minutes of the negotiation meeting must be reported back to the Bid Adjudication Committee for final approval or support.
- h. Bid validity must be monitored and where applicable be extended by the Line Department at all times during the process of negotiations.
- i. The framework or terms of reference for negotiations shall be determined by the Bid Adjudication Committee.

## **25. Two-stage Bidding Process**

- a. A two-stage bidding process is allowed for:
  - i. Large complex projects;
  - ii. Projects where it may be undesirable to prepare complete detailed technical specifications; or
  - iii. Long term projects with a duration period exceeding three years.
- b. 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.
- c. In the second stage final technical proposals and priced bids should be invited.
- d. At each of the stages, proposal/bidding documents above the quotation threshold must be approved by the Bid Specification Committee.

## **26. Committee System for Competitive Bids**

- a. The Accounting Officer is required to –
  - i. Establish a committee system for competitive bids consisting of at least:
    - 1. A Bid Specification Committee;
    - 2. A Bid Evaluation Committee; and
    - 3. A Bid Adjudication Committee;
  - ii. Appoint the members of each committee, taking into account section 117 of the Act; and
  - iii. Provide for an attendance or oversight process by a neutral or independent observer, appointed by the Accounting Officer, when this is appropriate for ensuring fairness and promoting transparency.
- b. The committee system must be consistent with:
  - i. Paragraphs 27, 28 and 29 of this Policy; and
  - ii. Any other applicable legislation.
- c. The Accounting Officer may apply the committee system to formal written price quotations.

## **27. Bid Specification Committee**

- a. The Bid Specification Committee must approve the compilation of the specifications for each public invitation for competitive bids, and where authority has been sought to invite bids, by the Municipality.
- b. Specifications:
  - i. Must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
  - ii. must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organization, or an authority accredited or recognized by the South African National Accreditation System with which the equipment or material or workmanship should comply;
  - iii. Where possible, must be described in terms of performance required rather than in terms of descriptive characteristics for design;
  - iv. may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification;
  - v. may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the words "equivalent";
  - vi. must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations; and
  - vii. Must be approved by the Accounting Officer prior to publication of the invitation for bids in accordance with paragraph 22 of this Policy.
- c. The Bid Specification Committee must be composed of:
  - i. A minimum of three officials of the Municipality or Municipal Entity who must serve as standing members, preferably the manager responsible for the function involved;
  - ii. An official to be co-opted from the end user department preferably a manager and a knowledgeable official responsible for the function involved;
  - iii. Co-opted external specialist expert;
  - iv. A SCM Practitioner;
- d. The Bid Specification Committee must:
  - i. 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 period of the Policy;
  - ii. Have a quorum equal to 50% of the number of permanent (as opposed to co-opted) committee members, plus one member.
- e. Notwithstanding the above, the committee shall be appointed at the discretion of the Accounting Officer.
- f. 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.
- g. No item may be considered at the Bid Specification Committee unless the appropriate Supply Chain Management compliance check process has been undertaken and the item has been cleared for acceptance onto the agenda.
- h. The appropriate method of procurement of goods, services and engineering and construction works for all contracts greater than the quotation threshold shall be approved by the Bid Specification Committee. Further, all contracts exceeding R10 million (VAT inclusive) must be

accompanied by project-specific procurement and BEE strategies when presented to the Bid Specification Committee. These should be discussed and agreed between multi-disciplinary teams beforehand, and where possible limit the number of awards to a singular company.

## **28. Bid Evaluation Committee**

- a. The Bid Evaluation Committee must:
  - i. Approve the evaluation of bids in accordance with:
    1. The specifications for a specific procurement; and
    2. The points system set out in terms of paragraph 27.2(6).
  - ii. Ensure that an appropriate assessment of eligible bidder's ability to execute the contract has been undertaken by the department presenting the item;
  - iii. Ensure that in respect of the recommended bidder it is checked that municipal rates and taxes and municipal service charges are not in arrears;
  - iv. Ensure in respect of the recommended bidder, that their tax clearance certificate or SARS electronic tax clearance certificate, CIDB certificate, if applicable, and B-BBEE certificates are in order;
  - v. In bids where Consortia / Joint Ventures are involved, each party must submit a separate tax clearance certificate.
  - vi. in instances where a tax clearance certificate is valid at the time of tender, but expires during the evaluation period, the preferred bidder must furnish the Municipality within a period of seven (7) days as stipulated by the Bid Committees with a valid tax clearance certificate;
  - vii. A designated line department shall communicate in writing with the preferred bidder about the applicability of the suspensive condition by latest the following day of the Bid Adjudications Committee meeting.
  - viii. The CIDB status, if applicable, must be valid and active at the time of consideration by Bid Evaluation Committee and before final award;
  - ix. When the B-BBEE certificate is valid at the time of tender and then it expires during evaluation or the level contribution changes, then it is the level at the time of tender that shall be considered. The MBD 6.1. Document requires the bidder to fill in a claim for empowerment points. The B-BBEE certificate shall be taken as the substantiation of the claim and accordingly submission of a B-BBEE certificate is mandatory. If the bidder does not complete MBD 6.1 document in full but provides a valid B-BBEE certificate, the Municipality must award preference points in line with the PPPFA.
  - x. If a municipality is in possession of a bidder's original valid tax clearance and B-BBEE certificate through the Municipality's central database, it is not necessary to obtain a new tax clearance certificate or B-BBEE certificate each time a price quotation or bid is submitted from that specific bidder. This provision may be applied only if at the closing date of the price quotation or bid falls within the expiry date of the tax clearance and B-BBEE certificate that is in the municipality's possession. Whenever this ruling is applied, cross-reference must be made to the original tax clearance and BB-BEE certificate for audit purposes.
  - xi. Health and safety plans must be submitted at the time of tender where applicable.
  - xii. Submit to the Bid Adjudication Committee a report and recommendations regarding the award of the bid or any other related matter.

- b. The Bid Evaluation Committee must as far as possible be composed of:
  - i. A minimum of three managers of the Municipality or Municipal Entity who must serve as standing members, preferably the manager responsible for the function involved;
  - ii. At least one supply chain management official of the Municipality or Municipal Entity.
- c. The Bid Evaluation Committee must:
  - i. 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 period of the Policy;
  - ii. Have a quorum equal to 50% of the number of permanent (as opposed to co-opted) committee members, plus one member.
- d. Notwithstanding the above, the committee shall be appointed at the discretion of the Accounting Officer.
- e. No item may be considered at the Bid Evaluation Committee unless the appropriate Supply Chain Management compliance check process has been undertaken and the item has been cleared for acceptance onto the agenda unless otherwise approved by the Chairperson.

## **29. Bid Adjudication Committee**

- a. The bid adjudication committee must:
  - i. Consider the report and recommendations of the Bid Evaluation Committee; and
  - ii. Either:
    - 1. Depending on its delegations, make a final award or a recommendation to the Accounting Officer to make the final award; or
    - 2. Make another recommendation to the Accounting Officer how to proceed with the relevant procurement.
- b. The Bid Adjudication Committee must consist of at least four senior managers of the Municipality that must include:
  - i. the Chief Financial Officer or, in the absence of Chief Financial Officer, Manager: Budget & Compliance, Treasury Office, reporting directly to the Chief Financial Officer and designated by the Chief Financial Officer; and
  - ii. At least one senior supply chain management practitioner who is an official of the Municipality; and
  - iii. a technical expert in the relevant field who is an official, if such an expert exists, and may when appropriate, appoint an external specialists' advisor; and
  - iv. A quorum equal to 50% of the number of permanent (as opposed to co-opted) committee members, plus one member.
- c. The Accounting Officer must appoint the chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.
- d. Neither a member of a Bid Evaluation Committee, nor an advisor or person assisting the Bid Evaluation Committee, may be a member of a Bid Adjudication Committee.
- i. 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:



1. check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears; and
  2. Notify the Accounting Officer.
- ii. The Accounting Officer may:
1. After due consideration of the reasons for the deviation, ratify or reject the decision of the Bid Adjudication Committee referred to in paragraph 29.4(1); and
  2. If the decision of the Bid Adjudication Committee is rejected, refer the decision of the Bid Adjudication Committee back to that committee for reconsideration.
- e. The Accounting Officer may at any stage of a bidding process, refer any recommendation made by the Bid Evaluation Committee or the Bid Adjudication Committee back to that committee for reconsideration of the recommendation.
  - f. The Accounting Officer must comply with section 114 of the Act within 10 working days if the decision is to award a bid other than that recommended.
  - g. The Bid Adjudication Committee must at all times adhere to the requirements of the circular 34 in terms of the Act issued by the National Treasury.
  - h. No item may be considered at the Bid Adjudication Committee unless the appropriate Supply Chain Management compliance check has been undertaken and the item has been cleared for acceptance onto the agenda except where otherwise approved by the Chairperson.
  - i. The Municipality shall consider the holding period of the validity of B-BBEE certificate and Tax clearance certificate to be at the close of tender.
  - i. The Supply Chain Management practitioners of the Municipality are expected to make all means possible to notify the bidder as soon as the award is made to furnish the Municipality with required documents within the suspensive period of twenty one (21) days.
  - ii. If a bidder is in arrears with utilities and has an arrangement with the Municipality to offset the arrears this arrangement is acceptable and the bidder may not be disqualified. The bidder must furnish the proof of agreement. This agreement must have been in place at the time of submission and cannot be ex post facto.

### **30. Procurement of Banking Services**

1. A Contract for the provision of Banking services to a Municipality or Municipal Entity:
  - (1) Must be procured through competitive bids;
  - (2) Must be consistent with section 7 or 85 of the Act; and
  - (3) 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).

### **31. Procurement of IT Related Goods or Services**

1. The Accounting Officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.
2. Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.
3. The Accounting Officer must notify SITA together with a motivation of the IT needs if –
  - (1) The transaction value of IT related goods or services required in any financial year will exceed R50 million (VAT included); or
  - (2) 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.
5. Any arrangement or agreement with SITA must be approved by the Bid Adjudication Committee.

### **32. Procurement of Goods and Services Under Contracts Secured by Other Organs of State**

- a. The Accounting Officer may procure goods or services under a contract secured by another organ of state, but only if:
  - i. The contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
  - ii. There is no reason to believe that such contract was not validly procured;
  - iii. There are demonstrable discounts or benefits to do so; and
  - iv. That other organ of state and the provider have consented to such procurement in writing.
  - v. The contractor must be presently in the service of the organ of state
- b. Subparagraphs 32.1(3) and (4) do not apply if –
  - i. A municipal entity procures goods or services through a contract secured by its parent municipality; or
  - ii. A municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.
- c. Any procurement of goods and services under contracts secured by other organs of state must be approved by the Bid Adjudication Committee.

### **32. Procurement of Goods Necessitating Special Safety Arrangements**

- a. 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.
- b. Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership, cost advantages and environmental impact and must be approved by the Accounting Officer.

### **34. Proudly SA Campaign**

- a. Wherever possible, the Proudly SA Campaign should be supported to the extent that, all things being equal, preference is given to procuring local goods and services from:
  - i. **Firstly** –suppliers and businesses within Umdoni Municipality;
  - ii. **Secondly** - suppliers and businesses within UGU district Municipality
  - iii. **Thirdly**– suppliers and businesses within the relevant province of KwaZulu Natal ,
  - iv. **Fourthly** – suppliers and businesses within the Republic of South Africa
- b. In considering this paragraph, the requirements of the designated sectors for Local Production and Content as issued by the Department of Trade and Industry must be taken into account.

### **35. Appointment of Consultants**

1. The Accounting Officer may procure consulting services if any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.
2. A contract for the Consultancy services to a Municipality or Municipal Entity must be procured through competitive bids if the value of the contract exceeds:
  - i. R300 000 (VAT included), in the case of a Local Municipality,
  - ii. The duration period of the contract exceeds one year.
3. In addition to any requirements prescribed by this Policy for competitive bids, bidders must furnish particulars of:
  - i. All consultancy services provided to an organ of state in the last five years; and
  - ii. 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, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the Municipality.

### **36. Deviation from, and Ratification of Minor Breaches of, Procurement Processes**

1. The Accounting Officer may:
  - a) Dispense with the official procurement processes established by this Policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only:
    - I. In an emergency;
    - II. If such goods or services are produced or available from a single provider only;
    - III. For the acquisition of special works of art or historical objects where specifications are difficult to compile;
    - IV. Acquisition of animals for zoos and/or nature and game reserves; and
    - V. In any other exceptional case where it is impractical or impossible to follow the official procurement processes;

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 36.1(1) and (2) of this Policy and report them to the next meeting of the Council and include as a note to the annual financial statements.
3. The Chief Financial Officer, Manager: Supply Chain Management or appropriate senior official is delegated authority to make a final recommendation for awards on deviations below R200 000 to the accounting officer.
4. The Executive Committee shall consider if the criteria for a deviation, other than an emergency, have been met.
5. In the case of emergencies greater than R200 000 (VAT included), where practicable, prior authority must be sought via the Accounting Officer to deviate from the official processes and the Chairperson of the relevant Committee shall be notified of such emergency situation. All emergency procurement must be formalized in a report to the Accounting Officer within 1 working day, and to the next possible Executive Committee meeting.
6. Emergency procurement should not be used to evade the use of standard procurement procedures:
  - a) As a consequence of insufficient stock-levels for items that are used on a daily basis;
  - b) As a result of working programs not adequately planned for; or
  - c) As a result of no or insufficient communication between warehouses and buying offices.
7. The circumstances which may give rise to an emergency which may not have been foreseeable, or where it is impractical or impossible to follow official procurement processes or may have been the result of negligent conduct a motivation for the use of this section must show one or more of the following:
  - a) The imminent threat to health, injury or death to persons;
  - b) The imminent threat of damage to property, or suffering and death of livestock and animals;
  - c) The unforeseeable interruption of essential services whose provision is within the municipal competency, including transportation and communication facilities or support services critical to the effective functioning of the Municipality as a whole;
  - d) The imminent and or unforeseeable of serious damage occurring to the natural environment;
  - e) The imminent threat and or damage of the municipal assets.
8. The Municipality is still required to comply with Section 217(1) of the Constitution in the event of an emergency situation with specific reference to obtaining goods and services on the best possible terms.
9. In an emergency situation, and where possible, at least three quotations must be obtained.
10. The value of and duration of contracts which have been concluded as a result of the emergency situation must be in accordance with the goods and services required in order to address and/or remedy the immediate emergency. Any other goods and services which may be required subsequent to the emergency and relating to such emergency must wherever possible follow the normal tendering process and procedures.
11. Procuring goods and services from sole supplier occur in instances where:-
  - a) Only one supplier manufactures or renders goods and services due to unique nature of the requirements;

- b) Goods and services already in the municipality's value chain/employ are only supplied by an Original Equipment Manufacturer (OEM) or by a licensed agent thereof and there is a requirement for compatibility, continuity and alignment.
- (3) The process for approved list of sole supplier(s) will be as follows:
- (a) Department requiring the use of sole supplier must issue a circular calling for the of sole supplier(s) who wish to be on the list or database of sole suppliers.
  - (b) response to the circular must contain appropriate motivation in terms of constitutional pillars of fair, equitable, transparent, cost effective and competitive.
  - (c) The response to the circular and compilation of the list of sole suppliers must be categorized, screened and supported by a relevant appointed team. In instances where there is no consensus among the team members such be escalated to Manager: SCM for decision and support.
  - (d) The supported list of sole suppliers be advertised for public comments and or objections.
  - (e) In instances where there are objections, such objections be referred to the Manager SCM for decision and support.
  - (f) The list of sole suppliers must be reviewed and reported annually to Manager: SCM. (g) The report must outline how value for money will be achieved and managed.
12. Unit or Department invoking the use of section 36 (1) (a) (v) must in all reports to BAC demonstrate that the use of this provision: -
- a) Is not as a result of poor planning for it being impractical or impossible to follow the official procurement processes. Where there is a risk of poor planning proof that remedies and actions including disciplinary processes have been taken to avoid recurrence.
  - b) Has taken into account that it does not prejudice other potential tenderers and meets the requirements of section 217 of the Constitution of the Republic of South Africa.
13. The respective HOD must sign off a report to BAC invoking section 36 (1) (a) (v) that is accepting full responsibility, accountability for the report and its contents.

### **37. Unsolicited Bids**

- 1. In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- 2. The Accounting Officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if:
  - a) The product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
  - b) The product or service will be exceptionally beneficial to, or have exceptional cost advantages;
  - c) The person who made the bid is the sole provider of the product or service; and
- 3. If the Accounting Officer decides to consider an unsolicited bid that complies with subparagraph 37.2 of this Policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with:
  - a) Reasons as to why the bid should not be open to other competitors;

- (2) An explanation of the potential benefits if the unsolicited bid were accepted; and
  - (3) An invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
4. All written comments received pursuant to subparagraph 37.3, including any responses from the unsolicited bidder, must be submitted to the National Treasury and the relevant provincial treasury for comment.
  5. The Bid 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 Bid Adjudication Committee to consider an unsolicited bid must be open to the public.
  7. When considering the matter, the Bid Adjudication Committee must take into account:
    - a) Any comments submitted by the public; and
    - b) Any written comments and recommendations of the National Treasury or the relevant provincial treasury.
  8. If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the Accounting Officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.
  9. Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the Municipality to the bid may be entered into or signed within 30 days of the submission.

### **38. Combating of Abuse of Supply Chain Management System**

1. The Accounting Officer must establish measures for the combating of abuse of the supply chain management system as follows:
  - a) The Accounting Officer must:
    - (a) Take all reasonable steps to prevent abuse of the supply chain management system;
    - (b) Investigate any allegations against an official or other role player of fraud, corruption, favoritism, unfair or irregular practices or failure to comply with this Policy, and when justified:
      - (i) Take appropriate steps against such official or other role player; or
      - (ii) Report any alleged criminal conduct to the South African Police Service.
    - (c) prior to awarding any contract, take all reasonable steps, such as *inter alia* checking the National Treasury's database, to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector and/or blacklisted by the Municipality;
    - (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.
  - (g) Cancellation or termination of contract must be subject to the provisions of Promotion of Administrative Justice Act 3 of 2000;
  - (h) 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;
    - (iv) Has been listed in the Register for Tender Defaulters in terms section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004); and
    - (v) Has been blacklisted by the Municipality in terms of this Policy.
2. The Accounting Officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subparagraphs 38.1(1)(b)(ii) (1)(b)(ii), 38.1(1)(e) or 38.1(1)(f) of this Policy.

### **39. Logistics Management**

1. Logistics management must provide for an effective system in order to provide for the monitoring of spending patterns on types or classes of goods and services, setting of inventory levels that includes minimum and maximum levels and lead times, placing of orders, receiving and distribution of goods, stores and warehouse management, expediting orders, transport management, vendor performance, maintenance and contract administration.
2. General Logistics:
  - a) Purchase orders:
    - (a) Will be created for bids and quotations;
    - (b) Will be captured on the appropriate financial management system exclusive of VAT; and
    - (c) Approvals will be systems based and shall be authorized by the Supply Chain Management Unit only.
3. Goods received will be captured on the appropriate financial management system via a “Goods Received Note” with reference to the relevant purchase order.
4. The Treasury Department’s Assets Section (for asset creation) and Insurance Section (for claims) will be informed of the purchase via the appropriate financial management system at the end of the procurement process and in terms of other applicable policies.

5. Deliveries of goods may not exceed the order quantity. Short deliveries will keep the purchase order open until the balance of the order is received or cancelled.
6. Certification of the receipt of goods and/ or services and/or works by the Municipality means that the Municipality acknowledges those goods and/ or services and/or works:
  - a) Have been received or rendered on time;
  - b) Are in accordance with the quality and standard required in terms of *inter alia* the purchase order, the general conditions of contract and specifications where applicable.
  - c) Are priced in accordance with the quotation in terms of the contract.
7. The acknowledgement by the Municipality also serves to confirm that payment for received goods and/or services and/or works can be effected.
8. A designated official is required to monitor and expedite outstanding purchase orders.
9. Reminder letters may be sent to contractors based on the reminder levels (days before delivery due date) that are set out in the purchase order.
10. The Municipality's Fleet Management policy must be adhered to at all times including *inter alia* regular checking too ensure that all assets including official vehicles are properly managed, appropriately maintained and only used for official purposes.
11. The performance monitoring of a contractor will be in accordance with the service provider performance management element of this Policy.
12. A contract manager:
  - a) Will be a designated official of the Municipality who will attend to the administration of the contract from inception thereof;
  - b) Will derive his/her duties and powers from the conditions of contract and any other applicable law;
  - c) Must be fair to the parties to the contract when required to make decisions or form an opinion in respect of the contract, whilst always acting in the best interests of the Municipality;
  - d) Ensure that all the necessary formalities in the signing up of the contract and/or issuing the purchase order(s) are adhered to;
  - e) Ensure that contracts related to the procurement of goods and/or services and/or works are captured on the appropriate financial management system;
  - f) Ensure that all original contract documentation is lodged with the Supply Chain Management Unit for record purposes;
  - g) must where appropriate, authorize payments due in terms of the contract by processing payment certificates (if applicable), and ensuring that the necessary Service Entry Sheets or Goods Received Notes are captured on the appropriate financial management system;
  - h) Manage amendments, variations and procedures in terms of the contract;
  - i) Administer disputes where necessary, in terms of this Policy and the applicable Conditions of Contract;
  - j) Conduct a post contract review;
  - k) Maintain accurate and detailed records to create an audit trail;
  - l) Must act with care and diligence;
  - m) Must observe all accounting and legal requirements;



n) Must ensure that payments are processed within 30 calendar days, or 14 calendar days in the case of Exempted Micro Enterprises.

13. Departmental Heads shall be responsible for ensuring that contract managers:

a) Are assigned to all contracts within the Department Head's area of responsibility; and

b) Are adequately trained so that they can exercise the necessary level of responsibility in the performance of their duties.

14. All HOD must submit as part of the budget approval process a procurement plan containing all planned procurement. This procurement plan must be approved by the HOD or his/her delegate prior to its submission.

15. A central contracts register is to be maintained for all contracts within the Municipality. Items will only be permitted onto the register if contained within an approved procurement plan.

16. Stock is valued on the weighted average/standard costing method per plant and is VAT exclusive. Input VAT is claimed upon purchase and output VAT is accounted for at the time of issue according to the accounting policy.

17. Stock items must be systematically replenished using the re-order point planning strategy and open reservations must be taken into account during the replenishment run.

18. Goods will be issued from stock with reference to reservations. Goods can be issued for consumption against internal orders, cost centers, projects and assets under construction.

19. Purchase orders will be created, where applicable, with reference to replenishment requisitions in respect of term supply contracts for goods and:

a) Replenishment requisition approvals will be systems based.

b) All replenishments will be effected via the Acquisition Management System.

20. The registered stores function shall be decentralized but will operate under the jurisdiction of the Supply Chain Management Unit.

a) The Supply Chain Management Unit must ensure proper financial and budgetary control; uphold the principle of effective administration, proper stock holding and control, product standardization, quality of products and a high standard of service levels.

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

1. The system of disposal management for the disposal or alienation of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act, is as follows:

a) 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.

b) The disposal or alienation of assets must be made within an integrated, service and financial planning framework by one of the following methods:

(a) Transferring the asset to another organ of state in terms of a provision of the Act for the transfer of assets;

(b) Transferring the asset to another organ of state at market related value or, when appropriate, free of charge;

(c) The alienation of the asset; or

- (d) Destroying the asset, after taking into account re-cycling;

c) Provided that:

- (a) Immovable property may be sold only through a competitive bidding process except when the public interest or the plight of the poor demands otherwise;
- (b) Immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
- (c) movable assets are sold either by way of a written price quotations, a competitive bidding process, auction or at a market related price, whichever is the most advantageous;
- (d) Firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Convention Arms Control Committee;
- (e) Immovable property is let at market related rates except when the public interest of the plight of the poor demands otherwise;
- (f) All fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;
- (g) Where assets are traded in for other assets, the highest possible trade-in price is negotiated; and
- (h) 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.

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

1. The Accounting Officer must ensure an effective system of risk management for the identification, consideration and avoidance of potential risks in the supply chain management system.
2. The risk management system must be allocated to the Chief Financial Officer, the Supply Chain Management practitioners, the internal audit function and the Audit Committee, each of which shall ultimately be accountable to the Accounting Officer or the Council for the discharge of their responsibilities.
3. Risk management must include:
  - a) The identification of risks on a case-by-case basis;
  - b) The allocation of risks to the party best suited to manage such risks;
  - c) Acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
  - d) The management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
  - e) The assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

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

1. The Accounting Officer must ensure an effective planning, implementation and monitoring system and include the planning in the SDIP. The AO must determine, on the basis of a retrospective analysis,

whether the authorized supply chain management processes were followed and whether the desired objectives and objective of this Policy were achieved.

2. The performance management system shall be a process of monitoring and retrospective analysis to determine whether:
  - a) There was value for money;
  - b) Proper processes had been followed;
  - c) Desired objectives have been achieved;
  - d) There is an opportunity to improve the process;
  - e) Suppliers have been assessed and what that assessment is; and
  - f) If there has been deviation from procedures and, if so, what the reasons for that deviation are.
3. The performance management system shall accordingly focus on, *inter alia*:
  - a) Achievement of goals;
  - b) Compliance to norms and standards;
  - c) Savings generated;
  - d) Cost variances per item;
  - e) Non-compliance with contractual conditions and requirements; and
  - f) The cost efficiency of the procurement process itself.
4. For all contracts, a close-out report is required on completion of the contract, which includes the points raised in subparagraphs 42.2 and 42.3 above.
5. For all annual supply, period, or term contracts, the report to the Bid Specification Committee for the new or replacement contract, must include the points raised in subparagraphs 42.2 and 42.3 above as at a particular point in the contract it replaces.
6. For monitoring performance on individual contracts see also the service provider performance management section of this Policy.

#### **43. Prohibition on Awards to Persons whose Tax Matters are not in Order**

1. Irrespective of the procurement process followed, no award above R15 000 may be made to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
2. It is the Accounting Officer's responsibility to ensure that this does not happen and hence, before making an award, the Accounting Officer must first check with SARS whether that person's tax matter are in order. If SARS does not respond within 7 days, then such person's tax matters may for purposes of paragraph 43.1 be presumed to be in order.
3. If a municipality / municipal entity is in possession of a supplier's original valid tax clearance certificate, it is not necessary to obtain a new tax clearance certificate each time a price quotation or bid is submitted from that specific supplier. This provision may be applied only if the closing date

of the price quotation or bid falls within the expiry date of the tax clearance certificate that is in the municipality's / municipal entity's possession. Cross-reference must be made to the original tax clearance certificate for audit purposes.

#### **44. Prohibition on Awards to Persons in the Service of the State**

1. Irrespective of the procurement process followed, no award may be given to a person in terms of this Policy:
  - a) Who is in the service of the state; or
  - b) If that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
  - c) A person who is an advisor or consultant contracted with the Municipality or Municipal Entity.
2. It is the Accounting Officer's responsibility to ensure that this does not happen.
3. The Municipality further reserves its rights to immediately cancel any contract if such conflicts are discovered after the award of a contract.

#### **45. Awards to Close Family Members of Persons in the Service of the State**

1. The Accounting Officer must ensure that the notes to the annual financial statements must disclose particulars of any award of more than R2000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including:
  - a) The name of that person;
  - b) The capacity in which that person is in the service of the state; and
  - c) The amount of the award.

#### **46. Ethical Standards**

1. A code of ethical standards is hereby established, in accordance with subparagraph 46.2, for officials and other role players in the supply chain management system in order to promote:
  1. Mutual trust and respect; and
  2. An environment where business can be conducted with integrity and in a fair and reasonable manner.
2. An official or other role player involved in the implementation of the Policy:
  1. Must treat all providers and potential providers equitably;
  2. May not use his or her position for private gain or to improperly benefit another person;
  3. May not accept any reward, gift, favor, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;

4. must declare to the Accounting Officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the Municipality;
  5. Must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
  6. Must be scrupulous in his or her use of property belonging to the Municipality or Municipal Entity;
  7. Must assist the Accounting Officer in combating fraud, corruption, favoritism and unfair and irregular practices in the supply chain management system; and
  8. Must report to the Accounting Officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including:
    - (i) Any alleged fraud, corruption, favoritism or unfair conduct;
    - (ii) Any alleged contravention of paragraph 47.1 of this Policy; or
    - (iii) Any alleged breach of this code of ethical standards.
3. Declarations in terms of subparagraphs 46.2(4) and (5):
- a) Must be recorded in a register which the Accounting Officer must keep for this purpose;
  - b) By the Accounting Officer must be made to the mayor of the Municipality who must ensure that such declarations are recorded in the register.
4. The National Treasury's code of conduct must also be taken into account by supply chain management practitioners and other role players involved in supply chain management.
5. The municipality adopts the "*National Treasury's code of conduct for supply chain management practitioners and other role players involved in supply chain management*". When adopted, such code of conduct becomes binding on all officials and other role players involved in the implementation of the Policy. A copy of the National Treasury code of conduct is available on the website [www.treasury.gov.za/mfma](http://www.treasury.gov.za/mfma) located under "legislation".
6. A breach of the code of conduct adopted by the municipality must be dealt with in accordance with Schedule 2 of the Systems Act.
- 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 of a role player who is not an employee, through other appropriate means in recognition of the severity of the breach;
  - c) In all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act.

#### **47. Inducements, Rewards, Gifts and Favors to Municipalities or Municipal Entities, Officials and Other Role Players**

1. No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –

- a) Any inducement or reward to the Municipality for or in connection with the award of a contract; or
- b) Any reward, gift, favor or hospitality to:
  - (a) Any official; or
  - (b) Any other role player involved in the implementation of the Policy.
- 2. The Accounting Officer must promptly report any alleged contravention of subparagraph 47.1 to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
- 3. Subparagraph 47.1 does not apply to gifts less than R350 in value.

#### **48. Sponsorships**

- 1. 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.

#### **49. Objections and Complaints**

- 1. 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 written objection or complaint against the decision or action to the Municipal Manager.
  - 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, who shall, in turn, within 72 hours refer the written objection or complaint to the independent and impartial person referred to in paragraph 50 for resolution; or
  - b) If such complaint or objection is against the award of a bid, lodge a written appeal with the Municipal Bid Appeals Tribunal in accordance with the provisions of paragraph 50A.

#### **50. Resolution of Disputes, Objections, Complaints and Queries**

- 1. The Accounting Officer must appoint an independent and impartial person, not directly involved in the supply chain management processes:
  - a) To assist in the resolution of objections, complaints or disputes between the Municipality and other persons regarding:
    - (a) Any decisions or actions taken in the implementation of the supply chain management system; or
    - (b) Any matter arising from a contract awarded in the course of the supply chain management system; or
  - b) To deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.
- 2. The Accounting Officer, or another official designated by the Accounting Officer, is responsible for assisting the appointed person to perform his or her functions effectively.
- 3. The person appointed must:

- a) Strive to resolve promptly all disputes, objections, complaints or queries received; and
  - b) Submit monthly reports to the Accounting Officer on all disputes, objections, complaints or queries received, attended to or resolved.
4. A dispute, objection, complaint or query may be referred to the relevant provincial treasury if:
- a) The dispute, objection, complaint or query is not resolved within 60 days; or
  - b) No response is forthcoming within 60 days.
5. If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.
6. This paragraph must not be read as affecting a person's rights to approach a court at any time.
7. Reports on appeals are to be included in the normal Supply Chain Management monthly, quarterly and annual reports.

#### **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. The cost of these listed members as well as any other individuals/experts co-opted by the "MBAT" shall be borne by Provincial Treasury.
- (3) The powers, duties and functions of the Municipal Bid Appeals Tribunal, and matters incidental thereto, are to be set out in a Policy governing the "MBAT".
- (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.

#### **51. Contracts Providing for Compensation Based on Turnover**

- 1. If a service provider acts on behalf of the Municipality to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for the service or the amount collected, the contract between the service provider and the Municipality must stipulate:
  - a) A cap on the compensation payable to the service provider; and
  - b) That such compensation must be performance based.
- 2. The specifications for all such contracts must also be approved by the Bid Specification Committee.

#### **52. Preferential Procurement**

- 52.1 All procurement of goods, services and works are to be in compliance with this Policy.

- 52.2 The unit responsible for the management of this policy is the Supply Chain Management Unit.
- 52.3 Departmental Heads are responsible for the procurement of goods, services and/or works are, however, responsible for compliance with this Policy within their areas of control, and will be held accountable where transgressions to policy are encountered.
- 52.4 The formula for the 80/20 preference point system is as follows:

- (1) The price in respect of bids (including quotations) with an estimated Rand value equal to or greater than R30 000 and up to a Rand value of **R50 million** (all applicable taxes included):

$$Ps = 80 [1 - (Pt - PMin)]$$

PMin

- (2) Institutions may apply the 80/20 preference point system to price quotation with a value less than R30 000 if and when appropriate.
- (3) Points scored must be round off to the nearest 2 decimal places.

52.5 The formula for the 90/10 preference point system is as follows:

- (1) The price in respect of bids (including price quotations) with an estimated Rand value of greater than **R50 million** (all applicable taxes included):

$$Ps = 90 [1 - (Pt - PMin)]$$

PMin

- (2) Points scored must be round off to the nearest 2 decimal places.

Where:

Ps = Points scored for comparative price of the bid or offer under consideration;

Pt = Comparative price of the bid or offer under consideration; and

PMing = Comparative price of the lowest responsive bid.

52.6 Cancellation and re-invitation of tenders:

- (1) 80/20 preference point system
- (a) in the event that, in the application of 80/20 preference point system as stipulated in the tender documents, all tenders received exceed the estimated Rand value of R50 million, the tender must be cancelled.
- (b) If one or more of the acceptable tenders received are within the prescribed threshold of R50 million, all tenders received must be evaluated on the 80/20 preference point system.
- (2) 90/10 preference point system
- (a) in the event that, in the application of the 90/10 preference point system as stipulated in the tender documents, all tenders received are equal to, or below R50 million, the tender must be cancelled.



- (b) If one or more of the acceptable tenders received are above the prescribed threshold of R50 million, all tenders received must be evaluated on the 90/10 preference point system.
- (3) An organ of state which has cancelled a tender invitation as contemplated in sub-regulation 52.6(1) and (2) must re-invite tenders and must in the tender documents, stipulate the correct preference points system to be applied.
- (4) An organ of state may, prior to the award of tender, cancel a tender if –
  - (a) Due to the changed circumstances, there is no longer a need for the services, works or goods requested; or
  - (b) Funds are no longer available to cover the total envisaged expenditure; or
  - (c) No acceptance of tenders received.
- (5) The decision to cancel a tender in terms of sub-regulation (4) must be published in the Government Tender Bulletin or the media in which the original tender invitation was advertised.
- (6) If the tender estimate is close to the Rand value of a prescribed threshold than both 80/20 and 90/10 preference point system be stipulated in the Bid document.
- (7) Bidders will score up to 20 or 10 preference points for their B-BBEE status level of contribution as per the table below:

52.7 All bidders will have to submit BEE rating certificates, issued by either verification agency accredited by the South African Accreditation System (SANAS) or by registered auditors approved by the Independent Regulatory Board for Auditors (IRBA) or in respect to EME a sworn affidavit or certificate issued by CIPC.

52.8 Any enterprise with an annual Total Revenue of R 5million or less qualifies as an Exempted Microenterprise.

52.9 Exempted Micro-Enterprises are deemed to have B-BBEE Status of "Level Four Contributor" having a B-BBEE procurement recognition of 100%.

52.10 In an instance where the Exempted Micro Enterprise (EME) is more than 50% owned by black people, the enterprise qualifies for a promotion to a B-BBEE Status of "Level Three Contributor" having a BBBEE procurement recognition of 110%

52.11 An auditor's certificate and/or certificate issued by an Accounting Officer and/or a certificate issued by a Verification Agency must be submitted to prove that an enterprise qualifies as an Exempted Microenterprise for purposes of this policy.

52.12 A Trust, consortium or joint venture:

- (1) Must submit a B-BBEE status level certificate in order to qualify for points;
- (2) Will qualify for points as an unincorporated entity provided, that they submit their consolidated scorecard is prepared for separate tender; and
- (3) Where no consolidated scorecard exists, the weighted average (in accordance with participation percentages) will be used and rounded off to the nearest status level.

52.13 If a service is provided by only tertiary institutions, such services must be procured from the tertiary institutions identified by means of bidding process. Tertiary institutions must submit their B-BBEE status in terms of the B-BBEE Codes of Good Practice Specialized Scorecard.

52.14. Gazette Sector Codes supersede Generic Codes and they are legally binding and enforceable. The current list is as follows:

(1) Gazette in terms of section 9 (1):

- (a) Tourism;
- (b) Construction;
- (c) Forest;
- (d) Integrated Transport;
- (e) Chartered Accountancy

(2) Gazette in terms of Section 9 (5):

- (a) Property
- (b) Financial Services Charter
- (c) ICT

(3) The following is submitted for consideration for gazette in terms of section 9 (5):

- (a) Argive Charter

(4) The following is gazette in terms of Section 12:

- (a) MAC

And Where:

- (i) A gazette under Section 12 means that the Charter is merely a statement of intent by stakeholders;
- (ii) A gazette under Section 9 (5) means the Charter is gazette for 60 days to give members of the public an opportunity to make comments and inputs;
- (iii) A gazette under Section 9 (1) means the Charter is legally binding and enforceable within the sector, and it supersedes the Generic Codes.

(5) Sub-Contracting:

- (a) B-BBEE points must not be awarded to a tenderer who intends sub-contracting more than 35% of the value of the contract to an enterprise that does not qualify for at least the points that such contractor qualifies for, unless the intended sub-contractor is an EME who has the ability and capability to execute the contract.
- (b) The municipality will allocate 40% of the 35% of sub-contracted work to youth owned companies where disabled and woman owned companies will be given first priority.

- (c) person awarded a contract may not sub-contract more than 35% of the value of the contract to an enterprise that does not have an equal or higher B-BBEE status level, unless the intended sub-contractor is an EME who has the ability and capability to execute the contract.
  - (d) A person awarded a contract in relation to a designated sector may not sub contract in such a manner that the local production and content of the overall value of the contract is reduced to below the prescribed minimum threshold.
- (6) In addition, the revised Regulations address the objectives of Industrial Policy Action Plan, especially those aimed at promoting the procurement of domestically produced goods and services.
- (7) The Regulations empower the Department of Trade and Industry to designate specific industries of critical and / or strategic importance where such tenders should prescribe that only locally manufactured products will be considered or that only locally manufactured products with a prescribed minimum threshold for local content will be considered. The current list regarding designated sectors is as follows:
  - (a) Textile, clothing, leather and footwear;
  - (b) Buses (bus body);
  - (c) Steel power pylons;
  - (d) Canned / processed vegetables;
  - (e) Rail rolling stock;
  - (f) Set top boxes;
  - (g) Furniture; and
  - (h) Electrical and telecom cable products.
- (8) The Bid Specification Committee shall set appropriate Local Economic Development targets in the form of Contract Participation Goals, set as performance criteria within contracts, where appropriate, for the following target groups:
  - (a) Priority population groups
  - (b) Women
  - (c) Youth
  - (d) Disabled
  - (e) Co-operatives
  - (f) Military Veterans
- (9) The preference points system is still to be used on the sale or letting of assets and in accordance with the disposals management section of this policy.

52.15 A contract must be awarded to the bidder who scored the highest total number of points in terms of the preference point systems.

52.16 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 decision must be approved and recorded for audit purposes and must be defensible in a Court of law.

52.17 Unbundling Strategies:

52.17.1 In order to encourage increased participation and the sustainable growth of the small business sector, the unbundling of larger projects into smaller, more manageable, contracts is encouraged.

52.17.2 Unbundling must however be considered in the context of:

- (a) Economies of scale being lost
- (b) Abortive work becoming necessary;
- (c) Additional demands (not only financial) being placed on the Town's resources; and
- (d) The risk of later phases not being completed as a result of budget cuts becoming necessary in the future.

## **53. UNBUNDLING**

Unbundling, and all of its associated implications, must therefore be carefully considered at the planning stage of any project and the budgets for, and design thereof, should be structured accordingly.

## **54. INSTITUTIONAL PREFERENTIAL PROCUREMENT POINT SYSTEM**

### **54.1 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.

### **54.2 Ownership**

- ✓ The equity ownership equates to the percentage of an enterprise or business owned by individuals or, in respect of a company, the percentage of a company's shares that are owned by individuals, who are actively involved in the management of the enterprise or business and exercise control over the enterprise, commensurate with their degree of ownership at the closing date of the tender. Preference points stipulated in respect of a tender must include preference points for equity ownership by HDIs.

### **54.3 Empowerment**

- ✓ "Empowerment is a practice of sharing information, rewards, and power to empower local contractors in order to build their capacity and also to create jobs. To empower and develop SMMEs, Rural and Township Business will help small businesses compete with larger brands."

#### 54.4 Reconstruction & Development Programme (RDP) Goals

- ✓ RDP attempted to combine measures to boost the economy such as contained fiscal spending, sustained or lowered taxes, reduction of government debt and trade liberalisation with socially minded social service provisions and infrastructural projects.

#### 54.5 Other Specified Goals

- ✓ "To empower contractors in order to build their capacity and to address unemployment by giving opportunities to Enterprises 100% owned by Youth, Women, Disabled and Military Veterans.

The tender/ quotation invitation shall stipulate the specific goals and the points that will be allocated to each goal and proof for verification must be submitted to claim for such a goal. **Point System A** (Table Below) will be used where it is feasible to Sub-Contract.

##### 54.1.1 Specific Goals Point System: A

	Categories	Weight	80 20	90 10	Supporting Documentation
1	Ownership	50%	10	5	
2	Empowerment	20%	4	2	
3	Reconstruction & Development Programme	20%	4	2	
4	Other (Specify)	10%	2	1	
		100%	20	10	
#	Specific Goal(s)	Weight	80 20 PP	90 10 PP	
1	<b>Ownership Categories :</b>				
	1. an EME or QSE which is at least 100% owned by black people; youth , woman and Disabled.	100%	14	5	CIPC DOCUMENT AND ID COPY and Sworn Affidavit
	2. an EME or QSE which is at least 51% owned by black people;	80%	8	4	CIPC DOCUMENT AND ID COPY and Sworn Affidavit
	3. an EME or QSE which is at 25% - 50% owned by black people;	20%	2	1	CIPC DOCUMENT AND ID COPY and Sworn Affidavit
2.	<b>Empowerment</b>				
	1. Enterprise Located within the District Municipality - Rural	100%	4	4	Utilities: POR*: SAPS Affidavit
	2. Enterprise Located within the District Municipality - Urban	50%	2	1	Utilities: POR*: SAPS Affidavit
	3. Enterprise Located within the Province	25%	1	0.5	Utilities: POR*: SAPS Affidavit
3	<b>-- Other Specific Goals</b>				
	1. Enterprise 100% owned by Military Veterans and Enterprises located within Umdoni Local Municipality area.	100%	2	1	CIPC Reg. and Directors ID

**POR\*: Proof of Residence**

Businesses who are situated in the rural area and are not liable for any Municipal Payment for Services **MUST** submit an **Affidavit from the South African Police Station. (SAPS) as proof.**

The tender/ quotation invitation shall stipulate the specific goals and the points that will be awarded to each goal and of that must be submitted to claim for such a goal. **Point System B** (Table Below) will be used where it is **NOT FEASIBLE** to Sub-Contract.

**54.2.2 Specific Goals Point System: B**

Categories	Weight	80 20	90 10	Supporting Documentation
Ownership	50%	10	5	
Empowerment	20%	4	2	
Reconstruction & Development Programme	20%	4	2	
Other (Specify)	10%	2	1	
Specific Goal(s)	Weight	80 20 PP	90 10 PP	
<b>Ownership Categories :</b>				
1. an EME or QSE which is at least 100% owned by black people; youth , woman and Disabled.	100%	14	5	CIPC AND ID COPY and Sworn Affidavit.
2. an EME or QSE which is at least 51% owned by black people;	80%	8	4	CIPC AND ID COPY and Sworn Affidavit.
3. an EME or QSE which is at 25% - 50% owned by black people;	20%	2	1	CIPC AND ID COPY and Sworn Affidavit.
<b>Empowerment</b>				
1. Enterprise Located within the District Municipality - Rural	100%	4	4	Utilities: POR*: SAPS Affidavit
2. Enterprise Located within the District Municipality - Urban	50%	2	1	Utilities: POR*: SAPS Affidavit
3. Enterprise Located within the Province	25%	1	0.5	Utilities: POR*: SAPS Affidavit
<b>-- Other Specific Goals</b>				
1. Enterprise 100% owned by Military Veterans and Enterprises located within Umdoni Local Municipality area.	100%	2	1	CIPC Reg. and Directors ID

**POR\*: Proof of Residence (Business)**

Businesses that are situated in the rural area and are not liable for any Municipal Payment for Services **MUST** submit an **Affidavit from the South African Police Station (SAPS)**

**55. APPLICATION OF GOALS AS PROVIDED FOR BY THIS PREFERENTIAL PROCUREMENT POLICY**

**55.1** Section 2 (1) of the Act requires that an organ of state to determine its preferential procurement policy and implement it within the following framework:

(a) the specific goals may include:

- i. contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability.
  - ii. implementing the programmes of the Reconstruction and Development Programme as published in *Government Gazette No. 16085 dated 23 November 1994*;
- (b) Institutions must at procurement and tender planning stage identify procurement opportunities to advance designated groups and apply the goals accordingly.
- (c) Where procurement opportunities for designated groups have been identified, the invitation to tender must clearly indicate the specific goals for which a point may be awarded.

### **Preference Goal Category 1**

#### **Ownership as specific goal**

A maximum of 20 points (80/20 preference points system) or 10 (90/10) preference points system), may be allocated. Bidder may score preference points based on company ownership. If an organ of state applies ownership as specific goal, the organ of state must advertise the tender with a specific tendering preferential procurement requirement that in order for a tenderer to claim 10 / 20 points for specific goals, a tendering company must have the following ownership:

- race, (HDP) or
- gender (HDP) or.
- disability (HDP).

Ownership verification may be conducted through the Companies and Intellectual Property Commission (CIPC).

### **1. Preference Goal Category 2**

#### **RDP Goals**

Over and above the awarding of preference points in favour of HDIs, the following activities may be regarded as a contribution towards achieving the goals of the RDP (published in *Government Gazette No. 16085 dated 23 November 1994*):

- a. The promotion of South African owned enterprises;
- b. The promotion of SMMEs;
- c. The promotion of enterprises located in a specific province for work to be done or services to be rendered in that province;
- d. The promotion of enterprises located in a specific region for work to be done or services to be rendered in that region;
- e. The promotion of enterprises located in a specific municipal area for work to be done or services to be rendered.
- f. The promotion of enterprises located in rural areas;

### **2. Preference Goal Category 3**

#### **Empowerment Goals**

Organs of state may also combine any specific goals above in a manner that will help them evaluate and apply preference points to tenders.

Empowerment is a practice of sharing information, rewards, and power to empower local contractors in order to build their capacity and to create jobs. To empower and develop SMMEs, Rural and Township Business will help small businesses compete with larger brands through Sub-Contracting and Upliftment.

## **55.2 APPLICABILITY OF THE FUNCTIONALITY CRITERIA**

55.2.1 The Umdoni Local Municipality shall stipulate in the quotation/tender document if the functionality criteria including a sub-criterion where applicable shall be applied during the evaluation process. The functionality criteria must be objective. The tender/ quotation document must specify:

a) Evaluation criteria for measuring functionality:

The evaluation criteria may include experience for the assignment, the quality of methodology, qualifications of key personnel, transfer of knowledge or any other functionality requirement that would yield the required outcomes.

b) Points for each criterion:

Points allocated to each criterion should not be generic but should be determined separately for each bid/ quotation on a case-by-case basis.

c) Points for each sub- criterion:

Points that shall be used when scoring each sub-criterion must be objective and applicable weighting must be stipulated in the bid/ quotation invitation document.

55.2.2 The minimum qualifying score for functionality criteria for a quotation/bid must be determined separately for each quotation/bid and must not be so low that it may jeopardise the quality of the required goods or services or so high that it may be unreasonably restrictive.

55.2.3 Points scored for the functionality criteria must be rounded off to the nearest two decimal places. The offer that fails to obtain the minimum qualifying score on the functionality criteria shall be considered as not responsive. Each quotation/ bid that obtains the minimum qualifying score for functionality criteria must be evaluated further in terms of price and specific goals.

55.2.4 A contract must be awarded to the bidder who scored the highest total number of points in terms of the preference point systems.

55.2.5 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 decision must be approved and recorded for audit purposes and must be defensible in a Court of law.

55.2.6 It is important to note that while it is the Municipal's policy to procure goods, services or construction works in the smallest practicable quantities, the practice of parceling such procurement in order to avoid complying with the requirements of the different range of procurement processes described in this policy is not permitted.



## **56. Increasing Employment Opportunities**

One of the municipal key socio-economic objectives is to facilitate the creation of employment for the people of Umdoni.

- (a) Increasing employment opportunities through procurement may be achieved by specifying labor intensive technologies and/or methods of construction in the bid documents.
- (b) It is up to Responsible Agents to thoroughly investigate the options available in the above regard, to evaluate the positive versus negative impact of any proposals, and to specify labor intensive technologies and/or methods where appropriate.
- (c) All labor earning less than a threshold wage, determined in accordance with National Guidelines, that is employed for the provision of services or construction works for the Town, shall be reported in the prescribed format, on a monthly basis, to the Corporate EPWP<sup>1</sup> Unit.

### **Targeted Labor and/or Targeted Enterprises**

56.2.1 The targeting of labor and/or enterprises from specific areas within the boundaries of the Umdoni Municipal area may be achieved, where appropriate, by specifying in the bid documents, a minimum level of participation (a contract participation goal) that must be achieved in respect of targeted labor and/or targeted enterprises in the performance of the contract.

56.2.2 Specified contract participation goals must be measurable and achievable, and the performance in respect of which must be monitored by the Responsible Agents during the execution of the contract.

56.2.3 Where a minimum contract participation goal has been specified in respect of targeted labor and/or enterprises, the contractor is obliged to meet that goal, and must be penalized if he or she does not.

56.2.4 Contract participation goals in respect of targeted labor and/or enterprises may not be introduced into the preference point system used for the evaluation of bids.

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

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

57.2 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.

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:

1. The requirement for the assessment and reporting of a service provider's performance;
2. 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
3. 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 criterion 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:
  - 7.1 Outside the service provider's control, or
  - 7.2 The result of some action by the Municipality; and
  - 7.3 Measure the service provider's performance after taking into account subparagraphs (7.1)
8. If there is evidence that the underperformance or non-performance of the service provider is due to factors caused by the Municipality then:
  - 8.1 There will be no penalization of the service provider
  - 8.2 The Accounting Officer, or delegated official, must take corrective action where necessary.
9. The performance assessment reports will be made available to inter-departmental, intergovernmental 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.

ROLE	RESPONSIBILITY
<b>Project Management Unit (PMU )</b>	<input type="checkbox"/> Line Departments <input type="checkbox"/> Monitor and assess work done or service provided as per the service delivery agreement or contract <input type="checkbox"/> Report on the performance of the service provider
<b>Reviewing Official</b>	<input type="checkbox"/> Review the assessment made by the PMU
<b>Supply Chain Management</b>	<input type="checkbox"/> Manage the performance monitoring process <input type="checkbox"/> Report on contract management and service provider performance to council quarterly <input type="checkbox"/> Report to Council annually on the performance of service providers <input type="checkbox"/> Investigate and report on the impact of the interventions on areas of

	<p>underperformance as part of the quarterly and annually report.</p> <p>☐ Review the policy and process annually.</p> <p>☐ Liaise with LED unit on interventions for underperforming areas.</p>
<b>Accounting Officer: Delegated to Performance Management Unit</b>	<p>☐ Ensure that KPI's are included in the appropriate Individual Performance Plan of the Municipal Official</p> <p>☐ Review the policy and process annually.</p> <p>☐ Facilitate the quarterly and annual report to internal audit</p>
<b>Internal Audit</b>	<p>☐ Audit the performance information</p>
<b>LED Unit</b>	<p>☐ Facilitate support interventions to address the underperforming areas</p>

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

#### **58. 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.
2. 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-

(1) 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 municipality; and

(2) The local community-

(A) has been given reasonable notice of the intention to amend the contract or agreement; and

(b) Has been invited to submit representations to the municipality or municipal entity”

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

1. Step 1 of the process is the submission of a Report to the Bid Specification Committee recommending approval of Major Amendments to a Contract

(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 report for EXCO has appropriate content;
- (vii) Draft advert for the proposed amendments in terms of Section 116(3) (b) (i) & (ii) of the MFMA.

(b) There must be a consideration of Section 33 of the MFMA for contracts exceeding three years.

2. Step 2 of the process is the submission of a Report to Council via the Finance and Procurement Committee on the Major Amendments to contracts recommending approval to advertise the proposed amendments.

(c) The contents of the report must contain:

- (i) Proof that Step 1 for Major Amendments has been followed, together with associated documentation;
- (ii) Reasons for the proposed amendments; and
- (iii) The report is to be signed off by Treasury and SCM delegates.

3. Step 3 of the process is the submission of a Report to Bid Adjudication Committee recommending approval of Major Amendments to a Contract

(d) The contents of the report must contain:

- (i) proof that Steps 1 and 2 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.
  - (e) Consideration must be made of Section 33 of the MFMA for contracts exceeding three years.
  - (f) Where the contract authority exceeds R10 million, or is a long-term contract, then final authority rests with the Accounting Officer.
4. Step 4 of the process is the submission of a Report to Council on the Major Amendments to contracts approved by the Bid Adjudication Committee:
- (i) The Report is to be included as a separate annexure in the standard monthly reports on tender awards made, which are produced by the Manager SCM.
  - (ii) 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.

## 58.2 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 Manager: SCM.
  - (b) The HOD's overseeing the projects have the responsibility of ensuring that all applicable information is made available to SCM to adequately prepare these reports.

## **59. 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 Umdoni 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.

#### **59.1 Procedures**

- (a) A Department within Umdoni Municipality must be regarded as the Applicant.
- (b) All external complaints must be lodged with the Umdoni Municipality Office of the impartial person.

#### **59.2 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 General Manager of that Department.

#### **59.3 Application Processes**

- (a) In the case of Applications for blacklisting pertaining to construction or works, and where nonperformance (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 nonperformance 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.

#### **59.4 Notification**

- (a) The authorized department 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.

#### **59.5 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.

#### **59.6 Decision**

The Blacklisting Committee must make its determination based on the application and response received.

#### **59.7 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 Umdoni 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
- (iii) Other remedies which the Municipality may invoke.

#### **59.8 Notification of Decision**

- (a) The authorized department 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.

#### **59.9 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.

#### **59.10 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.

#### **59.11 Onus**

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

#### **59.12 Evaluation and review**

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.

## 60. Special Deviations from SCM Policy

- 63.1 Certain procurements are to be treated as special deviations from the SCM process. This covers areas previously treated as 'Finance Payments' and the approved list is included as per the table below.
- 63.2 It is still necessary, however, to ensure effective controls. Therefore, prior approval must be sought from the CFO, Manager: SCM or designated official. Without evidence of such prior approval payments will not be authorized and be treated as irregular expenditure.
- 63.3 Monthly reports are to be produced for the Accounting Officer on expenditure incurred, and/or to be incurred through a central register to be maintained by the SCM Unit.

No.	Special Deviations	Remarks	Authority
1	<b>Seminars, Conferences, Accommodation and Flights (MFMA Circular 82 shall be applied )</b>	Staff members attending function relating to their field of expertise and continued Professional development.	International to be approved by Municipal Manager. Others by Delegated official.
2	<b>IT Software Licenses</b>	Licenses for approved Software	Requires prior authority from Manager: SCM/ CFO /MM.
3	<b>Subscriptions - Newspapers, magazines etc.</b>	Newspaper and magazine requirements for libraries and Departments.	Requires prior authority from Manager : SCM/ CFO /MM
4	<b>Advertising and Marketing</b>	All Advertising and Marketing is done via the Communications Unit.	MM /CFO/Manager SCM / Manager Communications or Delegated Official. ***A report must be approved by EXCO
5	<b>Special Events</b>	Co-Coordinating normal and special events is done via the Communications Unit.	Requires prior authority from Head: SCM/ CFO /MM ***A report must be approved by EXCO
6	<b>Sponsorship and Partnering</b>	Co-Coordinating all forms of Sponsorship and Partnering is done via the Communications Unit. This is in addition to Section 48 of this policy.	Requires prior authority from Head: SCM/ CFO /MM or Delegated Official. ***A report must be approved by EXCO
7	<b>Hire of Venue</b>	Staff members making use of specific venues relating to their field of Operations that involves the Communications Unit.	Requires prior authority from Manager: SCM/ CFO /MM Or Manager Communications or Delegated Official. ***A report must be approved by EXCO

**NB:**

Prior approval must be sought from the CFO, Manager SCM or designated official, where applicable. Without evidence of such prior approval, payments will not be authorized and be treated as irregular expenditure. Monthly reports are to be produced for the Accounting Officer on expenditure incurred, and/or to be incurred through a central register to be maintained by the SCM Unit

**61. Tender Validity**

- 64.1 The bid offer(s) received at the close of tender are to be accepted within the period of tender validity as stipulated in the bid document.
- 64.2 In an event, where, the evaluation of bids received are not concluded within the validity period, the municipality must arrange to extend period of validity to all bidders before expiry date.
- 64.3 Prior approval for the extension of bid validity period must be sought from Manager: Supply Chain Management or designated official.
- 64.4 In an event, where, validity period of the bids received have expired with no extension of the period of tender validity being arranged with all bidders before the expiry of the validity period, then the tender is null and void and of no force and effect.

**62. Effective / Commencement Date**

The Umdoni Local Municipality Supply Chain Management Policy is effective from the date of adoption by Council.