

**MASILONYANA LOCAL MUNICIPALITY**

**SUPPLY CHAIN MANAGEMENT POLICY**



[APPROVED]

**MASILONYNA LOCAL MUNICIPALITY**  
**MUNICIPAL SUPPLY CHAIN MANAGEMENT POLICY**  
**LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003**

The Council of the Masilonyana Local Municipality resolves in terms of Section 111 of the Local Government: Municipal Finance Management Act, No. 56 of 2003 to adopt the following as the Supply Chain Management Policy of the municipality:

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## 1. Definitions

In this policy, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, and –

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

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

**“Council”** means the Council of the Masilonyana Local Municipality;

**“emergency”** includes the existence of one or more of the following:

- the possibility of human injury or death or suffering and death of livestock and animals;
- the possibility of damage to property;
- the prevalence of human suffering or deprivation of rights;
- the interruption of essential or support services which are critical to the effective functioning of the Municipality;
- the possibility of serious damage to the natural environment;
- the possibility that the security of the state could be compromised; and
- the possibility that failure to take necessary action may result in the Municipality not being able to render an essential community service of which the prevailing situation or imminent danger should be of such a nature and scale that it could not readily be alleviated by interim measures, in order to allow time for the formal procurement process.

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

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

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

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

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

**“list of accredited prospective providers”** means the list of accredited prospective providers which a municipality or municipal entity must keep in terms of paragraph 14 of this policy;

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

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

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

**“senior manager”** shall mean a manager referred to in section 56 of the Municipal Systems Act;

**“the Regulations”** means the Regulations promulgated under the Act from time to time;

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

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

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

## CHAPTER 1

### ESTABLISHMENT AND IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

#### 2. Supply chain management policy

- (1) All officials and other role players in the supply chain management system of the **municipality** must implement this Policy in a way that –
  - (a) gives effect to –
    - (i) section 217 of the Constitution; and
    - (ii) Part 1 of Chapter 11 and other applicable provisions of the Act;
  - (b) is fair, equitable, transparent, competitive and cost effective;
  - (c) complies with –
    - (i) the regulatory framework 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;
  - (d) is consistent with other applicable legislation;
  - (e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
  - (f) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.
  
- (2) The municipality may not act otherwise than in accordance with this supply chain management policy when –
  - (a) procuring goods or services;
  - (b) disposing of goods no longer needed;
  - (c) selecting contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
  - (d) selecting external mechanisms referred to in section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.
  
- (3) This Policy, except where provided otherwise, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –
  - (a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
  - (b) electricity from Eskom or another public entity, another municipality or a municipal entity.

#### 3. Adoption and amendment of the supply chain management policy

- (1) The accounting officer must –
  - (a) at least annually review the implementation of this policy; and

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

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

- (1) The council hereby delegates all necessary powers and duties to the accounting officer 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 and 10 of the Act; and
    - (ii) the supply chain management policy;
  - (b) to maximise administrative and operational efficiency in the implementation of the supply chain management policy;
  - (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of the supply chain management 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 subparagraph (1) of this policy.
- (3) The council or accounting officer may not delegate or subdelegate any supply chain management powers or duties to a person who is not an official of the municipality or to a committee which is not exclusively composed of officials of the municipality;



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

## 5. Sub-delegations

- (1) The accounting officer may in terms of section 79 of the Act sub-delegate any supply chain management powers and duties, including those delegated to the accounting officer in terms of this policy, but any such sub-delegation must be consistent with subparagraph (2) and paragraph 4 of this policy.
- (2) The power to make a final award –
- (a) above R10 million (VAT included) may not be sub-delegated by the accounting officer;
- (b) above R2 million (VAT included), but not exceeding R10 million (VAT included), may be sub-delegated but only to –
- (i) the chief financial officer;
- (ii) a senior manager; or
- (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member;
- (c) not exceeding R2 million (VAT included) may be sub-delegated but only to –
- (i) the chief financial officer;
- (ii) a senior manager;
- (iii) a manager directly accountable to the chief financial officer or a senior manager; or
- (iv) a bid adjudication committee.
- (3) An official or bid adjudication committee to which the power to make final awards has been sub-delegated in accordance with subparagraph (2) of this policy must within five (5) working days of the end of each month submit to the official referred to in subparagraph (4) of this policy a written report containing particulars of each final award made by such official or committee during that month, including–
- (a) the amount of the award;
- (b) the name of the person/entity to whom the award was made; and
- (c) the reason why the award was made to that person/entity.
- (4) A written report referred to in subparagraph (3) of this policy must be submitted –
- (a) to the accounting officer, in the case of an award by –
- (i) the chief financial officer;
- (ii) a senior manager; or
- (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or
- (b) to the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by –

- (i) a manager referred to in subparagraph (2)(c)(iii) of this policy; or
  - (ii) a bid adjudication committee of which the chief financial officer or a senior manager is not a member.
- (5) Subparagraphs (3) and (4) of this policy do not apply to procurements out of petty cash.
- (6) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub-delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this policy.
- (7) No supply chain management decision-making powers may be delegated to an advisor or consultant.

## **6. Oversight role of council**

- (1) The council must maintain oversight over the implementation of this supply chain management policy.
- (2) For the purposes of such oversight the accounting officer must –
- (a) (i) within 30 days of the end of each financial year, submit a report on the implementation of the supply chain management policy of the municipality and of any municipal entity under its sole or shared control, to the council of the municipality,
  - (ii) Whenever there are serious and material problems in the implementation of the supply chain management policy, immediately submit a report to the council.
- (3) The accounting officer must, within ten [10] working days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the Finance Portfolio Committee and the Mayoral Committee.
- (4) The reports must be made public in accordance with section 21A of the Municipal Systems Act.

## **7. Supply chain management unit**

- (1) The accounting officer must establish a supply chain management unit to implement this supply chain management policy.
- (2) The supply chain management unit must 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.

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

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

**CHAPTER 2**  
**FRAMEWORK FOR SUPPLY CHAIN MANAGEMENT**

**9. Format of supply chain management**

This supply chain management policy provides systems for –

- (i) demand management;
- (ii) acquisition management;
- (iii) logistics management;
- (iv) disposal management;
- (v) risk management; and
- (vi) performance management.

***Part 1: Demand management***

**10. System of demand management**

- (1) The accounting officer must establish and implement an appropriate demand management system in order to ensure that the resources required by the **municipality** support its operational commitments and its strategic goals outlined in the Integrated Development Plan.
  
- (2) The demand management system must –
  - (a) include timely planning and management processes to ensure that all goods and services required by the **municipality** are quantified, budgeted for and timely and effectively delivered at the right locations and at the critical delivery dates, and are of the appropriate quality and quantity at a fair cost;
  - (b) take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature;
  - (c) provide for the compilation of the required specifications to ensure that its needs are met; and
  - (d) undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.

***Part 2: Acquisition management***

**11. System of acquisition management**

- (1) Through operational procedures, an effective system of acquisition management is established in Part 2 of this policy in order to ensure –
  - (a) that goods and services are procured by the municipality in accordance with authorised processes only;
  - (b) that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
  - (c) that the threshold values for the different procurement processes are complied with;
  - (d) that bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and

- (e) that any Treasury guidelines on acquisition management are properly taken into account.
- (2) This supply chain management policy, except where provided otherwise in the policy, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –
  - (a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
  - (b) electricity from ESKOM or another public entity, another municipality or a municipal entity.
- (3) The following information must be made public wherever goods or services contemplated in section 110(2) of the Act are procured other than through the supply chain management system -
  - (a) the kind of goods or services; and
  - (b) the name of the supplier.

## **12. Range of procurement processes 12(1) b N/A and remove from the table**

- (1) The procurement of goods and services through this policy is provided by way of –
  - (a) Petty cash purchases, up to a transaction value of R2 000 (VAT included); **(remove) n/a**
  - (b) Written quotations for procurements of a transaction value over R2 000 (VAT included) up to R10 000 (VAT included);
  - (c) Formal written price quotations for procurements of a transaction value over R10 000 (VAT included) up to R200 000 (VAT included); and
  - (d) A competitive bidding process for–
    - (i) procurements above a transaction value of R200 000 (VAT included); and
    - (ii) the procurement of long term contracts.
- (2) The accounting officer may, in writing:-
  - (a) Lower, but not increase, the different threshold values specified in subparagraph (1); or
  - (b) Direct that – **(changed numbering)**
    - (i) Formal written price quotations be obtained for any specific procurement of a transaction value lower than R2 000; or
    - (ii) A competitive bidding process be followed for any specific procurement of a transaction value above R30 000 (VAT included) and lower than R200 000 (VAT included).
- (3) Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the policy. When determining transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.
- (4) The range of procurement processes set out in paragraph 12(1) above can graphically be set out as follows:

<b>PROCESS</b>	<b>VALUE</b>	<b>ADVERTISEMENT</b>
Petty Cash Purchases	Up to R2 000 [VAT included] (remove)	No
Written Quotations	Over R2 000 [VAT included] up to R10 000 [VAT included]	No
Formal Written Price Quotations	Over R10 000 [VAT included] up to R200 000 [VAT included]	Yes
Competitive Bidding	Over R200 000 [VAT included] or Long Term Contracts exceeding one [1] year	Yes

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

A formal written price quotation or bid may not be considered unless the provider who submitted the quotation or bid –

- (a) Has furnished that provider's –
  - (i) Full name;
  - (ii) Identification number or company or other registration number; and
  - (iii) Tax reference number and VAT registration number, if any;
  - (iv) Tax clearance certificate from the South African Revenue Services indicating that the provider's tax matters are in order; and
- (b) has indicated –
  - (i) Whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
  - (ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
  - (iii) Whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to in subparagraph (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.

### 14. Lists of accredited prospective providers

1. The Municipal Manager must
  - (a) keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements of the Municipality through verbal or written quotations and formal written price quotations; and
  - (b) at least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
  - (c) specify the listing criteria for accredited prospective providers; and
  - (d) disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.

2. The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.
3. Three categories of databases are established, namely
  - (a) professional Services which shall include amongst others, panels relating to, accounting, built, legal, environment engineering, and management support services;
  - (b) contractors for all construction projects with estimate value above R3 million determined for local beneficiation of 30% subcontracting by contractors whose head offices are the located in the area of the Masilonyana Local Municipality; and
  - (c) general Services for all supplies and services other than indicated in (a) and (b)of this section.
4. To establish the accomplishment of the said databases all providers of goods and or services should complete the relevant application forms available in hard copy or on the municipality's website [www.masilonyana.fs.gov.za](http://www.masilonyana.fs.gov.za).
  - (i) Professional Service Providers Application Form; or
  - (ii) Information required to register on the Masilonyana Local Municipality Database as a service Provider;
  - (iii) Contractor Database Application Form.
5. In order to be considered for listing on either of the databases a service provider or supplier must produce proof of compliance with the following prerequisites, which apply in order to be considered to be placed on the database:
  - (i) good standing in respect of Municipal services and VAT and Income Tax;
  - (ii) company registration in terms of the Companies Act, 2008
  - (iii) registration with a professional body, where relevant
6. The list must be compiled per commodity and per type of service.

#### **15. Petty cash purchases N/A**

- (1) The conditions for the procurement of goods by means of petty cash purchases referred to in paragraph (1) (a) of this Policy, are as follows–
  - (a) The Chief Financial Officer (CFO) shall determine the terms on which a manager may delegate responsibility for petty cash to an official reporting to the manager;
  - (b) Subject to paragraph 12 1(a), the CFO shall determine the maximum number of petty cash purchases or the maximum amounts per month for each manager;
  - (c) The CFO shall determine any types of expenditure from petty cash purchases that are excluded, where this is considered necessary; and
  - (d) a monthly reconciliation report from each manager must be provided to the chief financial officer, including –
    - (i) the total amount of petty cash purchases for that month; and
    - (ii) receipts and appropriate documents for each purchase.

## **16. Written Quotations (Verbal Quotations Prohibited)**

- (1) No orders may be placed based on verbal price quotations.
- (2) The conditions for the procurement of goods or services from R2 000 to R10 000 (VAT included) through written quotations, are as follows:
  - (a) Quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the municipality. Provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria for registration on the Municipality's Supplier Database, subject to authorization by the Accounting Officer or any other official designated by the Accounting Officer;
  - (b) to the extent feasible, providers must be requested to submit such quotations in writing;
  - (c) That if it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the accounting officer or another official designated by the accounting officer; and
  - (d) The accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices.

## **17. Formal written price quotations 17(1)b**

- (1) The conditions for the procurement of goods or services from R10 000 to R200 000 (VAT included) through formal written price quotations are as follows:
  - (a) quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the municipality;
  - (b) no quotations may be obtained from provider that are not registered on the Municipality's Supplier Database; **17(1)b**
  - (c) that if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer, and
  - (d) the accounting officer must record the names of the potential providers and their written quotations.
- (2) A designated official referred to in subparagraph (1) (c) must within three days of the end of each month report to the chief financial officer on any approvals given during that month by that official in terms of that subparagraph.

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

- (1) The procedure for the procurement of goods or services through written quotations and formal written price quotations is as follows:
  - (a) When using the list of accredited prospective providers the accounting officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;
  - (b) all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, be advertised for at least seven days on the website and an official notice board of the municipality;
  - (c) Offers received must be evaluated on a comparative basis taking into account unconditional discounts;
  - (d) The accounting officer or chief financial officer must on a monthly basis be notified in writing of all written or verbal quotations and formal written price quotations accepted by an official acting in terms of a sub-delegation;
  - (e) Offers below R30 000 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;
  - (f) Acceptable offers, which are subject to the BEE points system (PPPFA and associated regulations), must be awarded to the bidder who scored the highest points; and
  - (g) The CFO shall determine the requirements for proper record keeping.



## **19. Competitive bids**

- (1) Goods or services above a transaction value of R200 000 (VAT included) and long term contracts may only be procured through a competitive bidding process, subject to paragraphs 11(2) and 36 of this policy; and
- (2) No requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

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

- (1) The procedures for the following stages of a competitive bidding process are as follows:
  - (a) Compilation of bidding documentation;
  - (b) Public invitation of bids;
  - (c) Site meetings or briefing sessions, if applicable;
  - (d) Handling of bids submitted in response to public invitation;
  - (e) Evaluation of bids as detailed in paragraph 28;
  - (f) Award of contracts;
  - (g) Administration of contracts;
  - (h) After approval of a bid, the accounting officer and the bidder must enter into a written agreement;
  - (i) Proper record keeping; and
  - (j) Original / legal copies of written contracts agreements should be kept in a secure place for reference and auditing purposes.

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

- (1) The criteria to which bid documentation for a competitive bidding process must comply, must –
  - (a) take into account –
    - (i) the general conditions of contract;
    - (ii) any Treasury guidelines on bid documentation;
    - (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure; and
    - (iv) the Guidelines on Specifications for Procurement of Private Valuers issued by the Department of Provincial and Local Government for the procurement of the services of private valuers to make valuations as contemplated in the Local Government: Municipal Property Rates Act, No. 6 of 2004;
  - (b) include evaluation and adjudication criteria, including any criteria required by other applicable legislation;
  - (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;

- (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish–
  - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
    - (aa) for the past three years; or
    - (bb) since their establishment if established during the past three years;
  - (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
  - (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
  - (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic;
- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

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

- (1) The procedure for the invitation of competitive bids, are as follows:
  - (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the municipality or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and
  - (b) the information contained in a public advertisement, must include –
    - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or may not be less than 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2) of this policy;
    - (ii) a statement that bids may only be submitted on the bid documentation provided by the municipality; and
    - (iii) date, time and venue of any proposed site meetings or briefing sessions.
- (2) The accounting officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.
- (3) Bids submitted must be sealed.

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

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

- (1) The procedures for the handling, opening and recording of bids, are as follows:

(a) Bids–

- (i) must be opened only in public;
- (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
- (iii) received after the closing time should not be considered and returned unopened immediately.

- (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price; except where the two envelope system has been used, only the bidders name will be read out; and

(c) The accounting officer must –

- (i) record in a register all bids received in time;
- (ii) on written request make the register available for public inspection; and
- (ii) publish the entries in the register and the bid results on the website.

(2) Opening of bids and quotations

- (a) All competitive bids shall be opened in public by the Supply Chain Management Unit as soon as possible after the expiry of the advertised closing date and time. At such public bid openings the names of the bidders and the prices are read out. All responses received in terms of procurement mechanisms below the value of R200 000 (VAT included), with the exclusion of competitive bids below R 200 000 are excluded from public bid openings. When such quotations are opened, the names of bidders who responded are therefore not read out.

- (b) All bids and quotations, addressed to the Municipality, shall be opened by a senior employee in the presence of the delegated official of the Manager of the Supply Chain Management Unit, or a nominee.

- (c) Bids and quotations, which fall within the jurisdiction of Managers, shall be opened in the presence of at least two employees, one of which should be a senior employee and neither of them shall have a personal interest in the bid or quotation or be involved in the adjudication thereof.

(3) Stamping of bids and reading out of names

- (a) As each bid is opened the name of the bidder and the amount shall be read out. An employee shall date-stamp the bid or quotation and all enclosures related to prices, delivery periods and special conditions.

(b) Bids and quotations shall be numbered in the sequence in which they have been opened and the words “and last” shall be endorsed on the last bid or quotation. In instances where only one bid has been received the words “and only” shall be endorsed on such bid.

(c) Where prices have not been inserted in all relevant spaces on the form and such items have not been deleted by bidders, such spaces shall be stamped “no price” by the employee who opens the bids or quotations.

Note: It is the policy of the Municipality to disclose bid prices. With regard to quotations of a value below R200 000 (VAT included), names of bidders and prices will not be read out, but will be registered in a register and available for inspection at the Supply Chain Management Unit.

(d) Details on how bidders responded to the relevant evaluation criteria e.g. SMME contribution, community benefits, job creation, environmental impact, etc. should not be disclosed.

(e) Bids opened in public should be registered in the Bidding Register.

(4) Late Bids

(a) Bids or quotations arriving after the specified closing time shall not be considered and where practicable and cost effective shall be returned to the bidder unopened with a letter explaining the circumstances.

(b) Bid documents must clearly state the venue where the bidding box is situated for each bid. Any bid delivered to the wrong bid box will not be considered, even if it was delivered on time.

(c) Where it's necessary to open a late bid or quotation to obtain the name and address of the sender, each page of the document shall be stamped “late bid” before the bid is returned to the bidder. The envelope must be stamped and initialed in like manner and must be retained for record purposes.

(5) Amendments before the closing date

The Municipality is entitled to amend any bid condition, validity period, specification or plan, or extend the closing date of such a bid or quotation before the closing date, provided that such amendments or extensions are advertised and/or that all bidders to whom bid documents have been issued, are advised in writing per registered post or by fax of such amendments or of the extension clearly reflecting the new closing date and time. For this reason, employees issuing bids shall keep a record of the names, addresses and contact numbers of the persons or enterprises to whom bid documents have been issued.

(6) Dealing with bids and quotations if the closing date thereof has been extended

Where the closing date of a bid or quotation is extended, the notice which makes known such extensions shall also mention the bids or quotations already received, will be retained unopened in the bidding box and be duly considered after the expiry of the extended period, unless the bidder requests that such bid or quotation to be returned to the bidder or unless the bidder cancels it by submitting a later dated bid or quotation before the extended closing date.

(7) No amendments after the closing date allowed

The municipality is not entitled to amend any bid condition, validity period, specification or plan after the closing date of the bid and before the acceptance of a bid or quotation has been notified.

**24. Negotiations with preferred bidders and communication with prospective providers of goods and services and bidders**

- (1) The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation –
  - (a) does not allow any preferred bidder a second or unfair opportunity;
  - (b) is not to the detriment of any other bidder; and
  - (c) does not lead to a higher price than the bid as submitted.
- (2) Minutes of such negotiations must be kept for record purposes.
- (3) No communication with bidders and prospective providers.
  - (a) Where bids and quotations have been submitted to the municipality, a bidder may not communicate with any councillor or official on any matter regarding his bid, quotation or offer other than a notice of withdrawal.
  - (b) No municipal personnel may communicate with a bidder or any other party who has an interest in a bid, during the period between the closing date for the receipt of the bid or quotation (or date of receipt of an offer), and the date of notification of the successful bidder of acceptance of his bid, quotation or offer, except as provided for in paragraph (c) below. Every such case of unauthorised communication shall forthwith be reported to the Supply Chain Management Unit as well as the relevant chairperson of the Bid Adjudication Committee. A bid or quotation in respect of which unauthorised communication has occurred may be disqualified.
  - (c) The chairperson of the Bid Adjudication Committee, may authorise an employee, in writing, to communicate with a bidder during the period mentioned in subsection (b) above for the purpose of:-
    - (i) explaining and verification of declarations made in the bid response;
    - (ii) confirming technical particulars and the compliance thereof with specifications;
    - (iii) clarifying delivery times/quantities;
    - (iv) extending the validity period of a bid;
    - (v) amending any bid condition, validity period or specification after the closing date; and
    - (vi) clarifying any other commercial aspect.
  - (d) In all cases where authority has been granted to communicate with bidders in terms of paragraph (c) above, it should be clearly stated in the submission to the Bid Adjudication Committee the nature of the communication as well as by whom such authority to communicate has been granted.

- (e) All changes and/or clarification of specifications shall be conveyed to all bidders by means or methods as specified in paragraph 23.

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

- (1) A two-stage bidding process is allowed for –
  - (a) large complex projects;
  - (b) projects where it may be undesirable to prepare complete detailed technical specifications; or
  - (c) long term projects with a duration period exceeding three years.
- (2) In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.
- (3) In the second stage final technical proposals and priced bids should be invited.

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

- (1) A committee system for competitive bids is hereby established, consisting of the following committees for each procurement or cluster of procurements as the accounting officer may determine:
  - (a) a bid specification committee;
  - (b) a bid evaluation committee; and
  - (c) a bid adjudication committee.
- (2) The accounting officer must appoint the members of each committee, taking into account section 117 of the Act; and
- (3) A neutral or independent observer, appointed by the accounting officer, must attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.
- (4) The committee system must be consistent with –
  - (a) paragraph 27, 28 and 29 of this policy; and
  - (b) any other applicable legislation.
- (5) The accounting officer may apply the committee system to formal written price quotations.

## **27. Bid specification committees**

- (1) The appropriate bid specification committee must compile the specifications for the procurement of goods or services by the municipality.
- (2) Specifications –
  - (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;

- (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;
  - (c) must where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
  - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labeling of conformity certification;
  - (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word "equivalent";
  - (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2001;
  - (g) must be approved by the accounting officer prior to publication of the invitation for bids in terms of paragraph 22 of this policy; and
  - (h) In any tender where it is alleged that there is only one or no company that meets the tender specifications, the specification committee may solicit the opinion of a technical expert.
- (3) A bid specification committee must be composed of two or more officials of the municipality, preferably including the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.
- (4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.

## **28. Bid evaluation committees**

- (1) The bid evaluation committee must –
  - (a) evaluate bids in accordance with –
    - (i) The specifications for a specific procurement; and
    - (ii) The points system set out in terms of paragraph 27(2)(f).
  - (b) evaluate each bidder's ability to execute the contract;
  - (c) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears;
  - (d) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter; and
  - (e) In the case of formal tenders being discovered that they have failed to comply with the tender specification or any general tender requirement, the Evaluation Committee has a right to issue an instruction for re-tendering.

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

## **29. Bid adjudication committees**

- (1) The bid adjudication committee must –
  - (a) consider the report and recommendations of the bid evaluation committee; and
  - (b) either –
    - (i) Depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or
    - (ii) Make another recommendation to the accounting officer how to proceed with the relevant procurement.
- (2) The bid adjudication committee must consist of at least four senior managers of the municipality which must include –
  - (i) The chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer;
  - (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.
- (3) 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.
- (4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.
- (5) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –
  - (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;
  - (ii) Notify the accounting officer.
- (6) The accounting officer may –
  - (i) After due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
  - (ii) If the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.



- (7) The accounting officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (8) The accounting officer must comply with section 114 of the Act within 10 working days.

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

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

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

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

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

- (1) The accounting officer may procure goods or services under a contract secured by another organ of state, but only if –
  - (a) the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;

- (b) there is no reason to believe that such contract was not validly procured;
  - (c) there are demonstrable discounts or benefits to do so; and
  - (d) that other organ of state and the provider have consented to such procurement in writing.
- (2) Subparagraphs (1)(c) and (d) above do not apply if –
- (a) a municipal entity procures goods or services through a contract secured by its parent municipality;  
or
  - (b) a municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.

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

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

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

- (1) The municipality supports the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services from:
  - (a) Firstly –suppliers and businesses within the municipality;
  - (b) Secondly – suppliers and businesses within the relevant province; and
  - (c) Thirdly – suppliers and businesses within the Republic of South Africa.
- (2) These principles are to be embodied in the points allocated in terms of the preferential procurement policy of the municipality.

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

- (1) The accounting officer may procure consulting services provided that any Treasury guidelines and CIDB requirements in respect of consulting services are taken into account when such procurements are made.
- (2) Consultancy services must be procured through competitive bids if -
  - (a) the value of the contract exceeds R200 000 (VAT included); or
  - (b) the duration period of the contract exceeds one year.
- (3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of –
  - (a) all consultancy services provided to an organ of state in the last five years; and
  - (b) any similar consultancy services provided to an organ of state in the last five years.

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

### **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 food for such animals and/or botanical specimens for nature and game reserves; or
  - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes;
- (b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.
- (2) The accounting officer must record the reasons for any deviations in terms of subparagraphs (1)(a) and (b) of this policy and report them to the next meeting of the council and include as a note to the annual financial statements.
- (3) Subparagraph (2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this policy.

### **37. Unsolicited bids**

- (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- (2) The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if –
- (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
  - (b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
  - (c) the person who made the bid is the sole provider of the product or service; and
  - (d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.

- (3) If the accounting officer decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with –
  - (a) reasons as to why the bid should not be open to other competitors;
  - (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
  - (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) All written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, must be submitted to the National Treasury and the relevant provincial treasury for comment.
- (5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, depending on its delegations.
- (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (7) When considering the matter, the adjudication committee must take into account –
  - (a) any comments submitted by the public; and
  - (b) any written comments and recommendations of the National Treasury or the relevant provincial treasury.
- (8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the accounting officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.
- (9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality to the bid may be entered into or signed within 30 days of the submission.

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

The following measures are established to combat the abuse of the supply chain management system:

- (1) The accounting officer must–
  - (a) take all reasonable steps to prevent abuse of the supply chain management system;
  - (b) investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this supply chain management policy, and when justified –
    - (i) take appropriate steps against such official or other role player; or
    - (ii) report any alleged criminal conduct to the South African Police Service;

- (c) check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
  - (d) reject any bid from a bidder–
    - (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality, or to any other municipality or municipal entity, are in arrears for more than three months; or
    - (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
  - (e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
  - (f) cancel a contract awarded to a person if –
    - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
    - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
  - (g) reject the bid of any bidder if that bidder or any of its directors –
    - (i) has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;
    - (ii) has been convicted for fraud or corruption during the past five years;
    - (iii) has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
    - (iv) has been listed in the Register for Bid Defaulters In terms section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- (2) The accounting officer must inform the National Treasury, the Provincial Treasury and Council in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) of this policy.

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

#### **39. Logistics management**

An effective system of logistics management must include the following:

- (a) monitoring of spending patterns on types or classes of goods and services which should where practical incorporate the coding of items to ensure that each item has a unique number for the purposes of monitoring
- (b) setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;
- (c) placing of manual or electronic orders for all acquisitions other than petty cash;

- (d) before payment is approved , a certification from the responsible officer that the goods and services are received or rendered on time and is in accordance with the order, the general conditions of contract and specifications where applicable and that the price charged is as quoted / in terms of a contract;
- (e) appropriate standards of internal control and warehouse management to ensure goods placed in stores are secure and only used for the purpose they were purchased;
- (f) regular checking to ensure that all assets including official vehicles are properly managed, appropriately maintained and only used for official purposes; and
- (g) monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for a particular good or service.

#### **40. Disposal management**

- (1) Immovable property belonging to the Municipality shall only be disposed of in accordance with the Municipality's Policy and Procedures for the Disposal of its Immovable Capital Assets incorporating its Immovable Property Disposal Directives.
- (2) Movable Assets of the Municipality shall only be disposed of in compliance with Section 14 of the Act and such assets may be disposed of by –
  - (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
  - (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
  - (iii) selling the asset; or
  - (iv) destroying the asset.
- (3) The accounting officer must ensure that –
  - (a) immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
  - (b) movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
  - (c) firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;
  - (d) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;
  - (e) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;
  - (f) where assets are traded in for other assets, the highest possible trade-in price is negotiated; and

- (g) in the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment.

#### **41. Risk management**

- (1) The criteria for the identification, consideration and avoidance of potential risks in the supply chain management system, are as follows-
  - (a) non compliance by the supplier to deliver within the agreed timeframes;
  - (b) supply of inferior goods or services by the supplier;
  - (c) inability of the supplier to provide goods or services as ordered;
  - (d) non adherence to the municipality policy with regards to utilization of preferred suppliers; and
  - (e) Procurement of goods or services at prices or of a quality not in the best interest of the municipality.
- (2) Risk management includes –
  - (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 establish and implement an effective internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes were followed and whether the measurable performance objectives linked to and approved with the budget and the service delivery and budget implementation plan were achieved.
- (2) Monthly monitoring of service providers and blacklisting thereof will be in line the National Treasury guidelines.

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

#### **43. Prohibition on awards to persons whose tax matters are not in order (R 15 000.00)**

The accounting officer must ensure that, irrespective of the procurement process followed, no award above R30 000 (VAT included) is given to a person whose tax matters have not been declared by the South African Revenue Service to be in order.

- (1) Before making an award to a provider or bidder, a tax clearance certificate from SARS must first be provided as contemplated in paragraph 13(a)(iv).

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

- (1) The accounting officer must ensure that irrespective of the procurement process followed, no award may be given to a person –
  - (a) who is in the service of the state; or
  - (b) if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder, is a person in the service of the state; or
  - (c) who is an advisor or consultant contracted with the municipality in respect of a contract that would cause a conflict of interest.
- (2) Subject to the exemptions reflected in Government Notice 44 as reflected in Government Gazette No. 28411 dated 18 January 2006

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

- (1) The notes to the annual financial statements must disclose particulars of any award of more than R2 000 (VAT included) to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –
  - (a) the name of that person;
  - (b) the capacity in which that person is in the service of the state; and
  - (c) the amount of the award.

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

- (1) A code of ethical standards is hereby established, in accordance with subparagraph (2), for officials and other role players in the supply chain management system in order to promote –
  - (a) mutual trust and respect; and
  - (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
- (2) An official or other role player involved in the implementation of the supply chain management policy –
  - (a) must treat all providers and potential providers equitably;
  - (b) may not use his or her position for private gain or to improperly benefit another person;
  - (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
  - (d) notwithstanding subparagraph (2)(c), must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
  - (e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the municipality;



- (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
  - (g) must be scrupulous in his or her use of property belonging to the municipality;
  - (h) must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
  - (i) must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –
    - (i) any alleged fraud, corruption, favouritism or unfair conduct;
    - (ii) any alleged contravention of paragraph 47(1) of this policy; or
    - (iii) any alleged breach of this code of ethical standards.
- (3) Declarations in terms of subparagraphs (2)(d) and (e) -
- (a) must be recorded in a register which the accounting officer must keep for this purpose;
  - (b) by the accounting officer must be made to the mayor of the municipality who must ensure that such declarations are recorded in the register.
- (4) The National Treasury's code of conduct must also be taken into account by supply chain management practitioners and other role players involved in supply chain management.
- (5) A breach of the code of ethics must be dealt with as follows -
- (a) in the case of an employee, in terms of the disciplinary procedures of the municipality envisaged in section 67(1)(h) of the Municipal Systems Act;
  - (b) in the case a role player who is not an employee, through other appropriate means in recognition of the severity of the breach;
  - (c) In all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act.

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

- (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
  - (a) any inducement or reward to the municipality for or in connection with the award of a contract; or
  - (b) any reward, gift, favour or hospitality to –
    - (i) any official; or
    - (ii) any other role player involved in the implementation of the supply chain management policy.

- (2) The accounting officer must promptly report any alleged contravention of subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
- (3) Subparagraph (1) does not apply to gifts less than R350 in total value received on no more than one occasion from any one supplier during a particular financial year.

#### **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.

#### **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 disputes between the municipality and other persons regarding -
    - (i) any decisions or actions taken in the implementation of the supply chain management system; or
    - (ii) 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.
  - (c) If disputes occur in any projects above R10 million, the Senior Manager responsible for Legal Services will recommend an independent and impartial person to the accounting officer in order to mediate in the dispute.
- (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.

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

- (1) If a service provider acts on behalf of a 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.

## **52. Procurement to local contractors**

53.1 The municipality may, in the bid specification for construction or infrastructure projects with cost estimate above R3 million, require contractors whose head offices are not located in the area of jurisdiction of the Masilonyana Local Municipality or whose head offices are located in the area of jurisdiction of the Masilonyana Local Municipality but do not contribute on at least level 4 of the BBBEE, to subcontract at least 30% of their contract value including construction work, skills transfer and procurement of goods and services in line with the bill of quantities in the bid, to a local contractor registered in the municipal local contractor database.

53.2 With no liability to the municipality, no construction work on awarded contracts above R3 million shall commence unless the contractor has satisfied the Municipal Manager or his delegated authority with the following in respect of subcontracted work:

53.2.1 the contractor has nominated a local contractor within the municipal database for local contractors;

53.2.2 the contractor has signed a subcontract which is legal and valid and is subject to written consent of the municipality with such a contract indicating amongst others:

53.2.2.1 the contractor will pay the local sub-contractor timeously at least 30 days after submission of invoices by the subcontractor;

53.2.2.2 the Contractor grants the municipality the authority and power to deduct local subcontractor invoices from payments due to the contractor and pay to the subcontractor directly, should the contractor have previously defaulted in paying the local contractor after the municipality had paid the contractor payments covering the local contractors invoices;

53.2.2.3 the sub -contracted local contractor is registered in the municipal database for local contractors;

- 53.2.2.4 the sub -contracted local contractor is validly registered with the CIPC, is validly registered with appropriate CIDB grading and where applicable NHBRC;
- 53.2.2.5 the sub-contracted local contractor is owned by Historically Disadvantaged individuals resident in the Masilonyana Local Municipality;
- 53.2.2.6 the sub-contracted local contractor will procure most goods and services with Masilonyana Local Municipality;
- 53.2.2.7 the subcontracted local contractor will employ local residents within Masilonyana Local Municipality.
- 53.3 In the ordinary course of business local contractors or contractors whose head offices are located within the jurisdiction of the Masilonyana Local Municipality and contribute on at least level 4 are not precluded from directly bidding for infrastructural and construction projects above R3 million if they meet requirements of the bid and shall be exempted from a requirement to subcontract 30% of the bid value to another local contractor in terms of section 53.1 of the policy.
- 53.4 The supply chain management unit must prior to the signing of the service level or appropriate agreement and commencement of construction by the contractor, facilitate and convene a meeting with the project management unit and the appointed contractor to consider and facilitate compliance with requirements of section 53.2.
- 53.5 The Municipal Manager may in consultation with council, extend the requirement for subcontracting of 30% of the contract value to other services and supplies.

### **53. Short title and commencement**

53.1 This part of the policy is called the Masilonyana Local Municipality Supply Chain Management Policy and takes effect on the date approved by the Council.





## ACQUISITION MANAGEMENT DIRECTIVES

1. **Definitions** – In these directives, unless the context indicates otherwise -
  - 1.1 Act shall mean the Local Government: Municipal Finance Management Act 56 of 2003 and the Regulations thereto;
  - 1.2 Control means 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;
  - 1.3 Disability / Disabled means, in respect of a person, a permanent impairment of a physical, intellectual, or sensory function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being;
  - 1.4 Equity Ownership means the percentage of an enterprise which is owned by individuals, or in the case of a Company or Close Corporation, the percentage shares or member's interest that are owned by individuals who are actively involved in the Management and daily business operations of the enterprise and exercise Control over the enterprise, commensurate with their degree of ownership at the closing of the tender, with due consideration of the following:
    - 1.4.1 Where individuals are not actively involved in the Management and daily business operations and do not exercise Control over the enterprise commensurate with their degree of ownership, BEE points for Equity Ownership may not be claimed for them.
    - 1.4.2 Equity within Private Companies or Close Corporations must be based on the percentage Equity Ownership or shareholding.
    - 1.4.3 No BEE points will be awarded to Public Companies.
    - 1.4.4 No BEE points will be awarded to Tertiary Institutions.
    - 1.4.5 Equity claims for a Trust will be allowed only for those persons who are both a Trustee and a beneficiary and must be actively involved in the Management and daily operation of the Trust. Substantiating documentation as prescribed by the Municipality is required with regard to Trustees thereby validating their appointments.



- 1.4.6 A Consortium or Joint Venture (JV) can be entitled to Equity Ownership in respect of HDI's, Women, Disabled and Youths. It should however be indicated what percentage interest in the Consortium or JV is held by HDI's, Women, Disabled and Youths and regard shall only be had to such percentage.
- 1.5 Historically Disadvantaged Individual (HDI) means a South African Citizen who, due to the Apartheid Policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 or the Constitution of the Republic of South Africa 1993 ("the Interim Constitution") Provided that a person who obtained South African Citizenship on or after the coming into effect of the Interim Constitution, is deemed not to be an HDI.
- 1.6 Management in relation to an organization, means an activity inclusive of Control and performed on a daily basis, by any person who is a principal executive officer of the entity, by whatever name that person may be designated and whether or not that person is a director.
- 1.7 Municipality means the Masilonyana Local Metropolitan Municipality;
- 1.8 Owned 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.
- 1.9 Rand Value means the total estimated value of a contract in Rand denomination, which is calculated at the time of tender invitations and includes all applicable taxes and excise duties.
- 1.10 Youth means any person irrespective of race or gender who is between the age of 18 and 35 years at the date stipulated for the closing of any particular tender or bid;
- 1.11 Woman / Women means a female person irrespective of race who is a South African Citizen and at birth was female;

## 2. Application

Subject to the provisions of the Act and the Supply Chain Management Policy, the following directives shall be applied by the Municipality in procurement/acquisition management and shall be applied in such a manner which:



- 2.1 Promotes economic transformation;
- 2.2 Achieves a substantial change in the racial composition of procurement awards;
- 2.3 Promotes HDI economic empowerment.

### 3. BEE Point System

- 3.1 Where any envisaged transaction results in competing tenders or bids being received by the Municipality, the BEE point systems referred to herein shall be applied.
- 3.2 Where only one tender or bid is received by the Municipality in respect of an envisaged transaction, the BEE point systems referred to herein shall not be applied and the tender or bid shall be evaluated in accordance with Price.

### 4. The 80/20 BEE point system for acquisition of services, works or goods up to a Rand of R1 million

- 4.1 (a) The following formula must be used to calculate the points for price in respect of tenders(including price quotations) with a Rand value equal to, or above R30 000 and up to a Rand value of R1 000 000 (all applicable taxes included):

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

Where

$P_s$  = Points scored for comparative price of tender or offer under consideration;

$P_t$  = Comparative price of tender or offer under Consideration; and

$P_{min}$  = Comparative price of lowest acceptable tender or offer.

- (b) Organs of state may apply the formula in paragraph (a) for price quotations with a value less than R30 000, if when appropriate:

- 4.2 Subject to sub-regulation (4.3), points must be awarded to a tenderer for attaining the B-BBEE status level of contributor in accordance with the table below.





B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

4.3 A maximum of 20 points may be allocated in accordance with sub-regulation (4.2).

4.4 The points scored by a tenderer in respect of B-BBEE contribution contemplated in sub-regulation (4.2) must be added to the points scored for price as calculated in accordance with sub-regulation (4.1).

4.5 Subject to regulation 9, the contract must be awarded to the tenderer who scores the highest total number of points.

**5. The 90/10 BEE point system for acquisition of services, works or goods with a Rand value above R1 000 000 (all applicable taxes included):**

5.1 The following formula must be used to calculate the points for price in respect of tenders/procurement with a Rand value above R1 000 000 (all applicable taxes included):

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

Where

Ps = Points scored for price of tender or under Consideration;

Pt = Comparative price of tender or offer under consideration; and

Pmin = Comparative price of lowest acceptable tender or Offer.

5.2 Subject to sub-regulation (5.3), points must be awarded to a tenderer for attaining their B-BBEE status level of contributor in accordance with the table below:



B-BBEE Status Level of Contributor	Number of Points
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

- 5.3 A maximum of 10 points may be allocated in accordance with sub-regulation (5.2).
- 5.4 The points scored by a tenderer in respect of the level of B-BBEE contribution contemplated in sub-regulation (5.2) must be added to the points scored for price as calculated in accordance with sub-regulation (5.1).
- 5.5 Subject to regulation 9, the contract must be forwarded to the tenderer who scores the highest total number of points.

## 6. Evaluation of Tenders on functionality and price

- 6.1 The Municipality must, in the tender documents, indicate if, in respect of a particular tender, tenders will be evaluated on functionality and price.
- 6.2 The total combined points allowed for price may, in respect of tenders with an estimated Rand value equal to, or below, R1 000 000, not exceed 80 points.
- 6.3 The total combined points allowed for price may, in respect of tenders with an estimated Rand value above R1 000 000, not exceed 90 points.
- 6.4 When evaluating the tenders contemplated in this item, the points for functionality must be calculated for each individual tenderer.
- 6.5 The conditions of tender may stipulate that a tenderer must score a specified minimum number of points for functionality to qualify for further adjudication.
- 6.6 The points for price in respect of a tender which has scored the specified number of points contemplated in paragraph 6.5 must, subject to the application of the evaluation system for functionality and price contemplated in this paragraph, be established separately and be calculated in accordance with the provisions of paragraphs 4 and 5.



6.7 BEE Points must be determined separately and must be added to the points scored for price.

6.8 Only the tender with the highest number of points scored may be selected.

## **7. Responsibility of service providers**

7.1 Service providers and prospective service providers have the responsibility to ensure compliance and be verified by accredited service providers.

7.2 Only a BEE certificate endorsed by a SANAS accredited service provider will be recognized.

7.3 Failure to submit a valid BEE certificate will result in no points being allocated for BEE Status.

## **8. Stipulation of BEE point system to be used**

8.1 The Municipality must, in the tender or bid documents, stipulate the BEE point system, which will be applied in the adjudication of tenders or bids.

## **9. Award of contracts to tenderers not scoring the highest number of points**

9.1 A contract may be awarded to a tenderer that did not score the highest total number of points, only in accordance with Section 2(1) of the Act.

## **10. Cancellation and re-invitation of tender**

10.1(a) In the event that, in the application of 80/20 BEE point system as stipulated in the tender documents, all tenders received exceed the estimated Rand value of R1 000 000, the tender invitation must be cancelled.

(b) If one or more of the acceptable tenders received are within the prescribed threshold of R1 000 000, all tenders received must be evaluated on the 80/20 BEE point system.

10.2(a) In the event that, in the application on the 90/10 BEE point system as stipulated in the tender documents, all tenders received are equal to, or below R1 000 000, the tender must be cancelled.

(b) If one or more of the acceptable tenders received are above the prescribed threshold of R1 000 000, all tenders received must be evaluated on the 90/10 BEE point system.



- 10.3 An organ of state which has cancelled a tender invitation as contemplated in sub-regulations (10.1)(a) and (10.2)(a) must re-invite tenders and must, in tender documents, stipulate the correct BEE point system to be applied.
- 10.4 An organ of state may, prior to the award of a tender, cancel a tender if -
- (a) due to 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 acceptable tenders are received, or
  - (d) If the process is deemed to be flawed
- 10.5 The decision to cancel a tender in terms of sub-regulation (10.4) must be published in the **Government Tender Bulletin** or the media in which the original tender invitation was advertised.

## 11. General conditions

- 11.1 Only a tenderer or bidder who has completed and submitted all required tender documentation shall be considered.
- 11.2 The Municipality may, before a tender or bid is adjudicated or at any time, require a tenderer or bidder to substantiate claims it has made with regard to tender documentation.
- 11.3 Points scored must be rounded off to the nearest 2 decimals.
- 11.4 In the event that two or more tenders or bids have scored equal total points, the successful tenderer or bid must be the one scoring the highest number of BEE points for specified goals. Should two or more tenders be equal in all respects, the award shall be made to the local tenderer and if two or more tenderers are local, the tender shall be decided by the drawing of lots.
- 11.5 All successful tenderers shall be obliged to conclude employment contracts with their employees failing which the Municipality reserves the right to terminate the awarded contracts.
- 11.6 All successful tenderers shall pay their workers a remuneration not less than that recommended and regulated by the Department of Labour.



- 11.7 A person awarded a contract as a result of BEE points, may not subcontract more than 25 % of the value of the contract to a person who is not BEE or who does not qualify for the same number or more BEE points.
- 11.8 All tenderers must complete a declaration that:
- 11.8.1 The information provided is true and correct.
  - 11.8.2 The signatory is duly authorized to sign the tender document.
  - 11.8.3 He/She/It will submit documentary proof regarding any tendering issue to the satisfaction of the Municipality when called upon to do so.
  - 11.8.4 BEE certification shall be attached to the tender documents and failure to do so will lead to non-allocation of BEE points during evaluation process.
  - 11.8.5 Authorising the municipality to verify all information supplied.
  - 11.8.6 He/She/It does not have a conflict of interest in relation to the tender.
- 11.9 Contracts concluded with successful tenderers shall, where applicable, contain appropriate penalty provisions.
- 11.10 No contract will be awarded to a tenderer who is in arrears (or who fails to make suitable arrangements to settle the arrears) in respect of municipal rates and other charges due to the municipality and shall submit a Municipal Billing Clearance Certificate at the time of submitting his/her/its tender.
12. Should a contractor to a municipality obtain preferences fraudulently or fail to attain any specified goals in terms of the Preferential Procurement Regulations then the municipality may take various actions, including exercising its power in terms of the regulations to restrict the supplier from doing business with the public sector. According to Regulation 13 of the Preferential Procurement Regulations the following should take place:
- 12.1 An organ of state must, upon detecting that a preference in terms of the Act and these regulations has been obtained on a fraudulent basis, or any specified goals are not attained in the performance of the contract, act against the person awarded the contract.
  - 12.2 An organ of state may, in addition to any other remedy it may have against the person contemplated in sub-regulations (12.1) -
    - (a) recover all costs, losses or damage it has incurred or suffered as a result of that person's conduct;
    - (b) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;



- (c) impose a financial penalty more severe than the theoretical financial preference associated with the claim which was made in the tender; and
- (d) restrict the contractor, its shareholders and directors from obtaining business from any organ of state for a period not exceeding 10 years.

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**ANNEXURE “B”**

**A CODE OF CONDUCT FOR SUPPLY CHAIN MANAGEMENT PRACTITIONERS AND OTHER  
ROLE PLAYERS**

**1. General Principles**

- 1.1 The municipality commits itself to a policy of fair dealing and integrity in the conducting of its business. Officials and other role players involved in supply chain management (SCM) are in a position of trust, implying a duty to act in the public interest. Officials and other role players should not perform their duties to unlawfully gain any form of compensation, payment or gratuities from any person, or provider/contractor for themselves, their family or their friends.
- 1.2 Officials and other role players involved in SCM should ensure that they perform their duties efficiently, effectively and with integrity, in accordance with the relevant legislation, policies and guidelines. They should ensure that public resources are administered responsibly.
- 1.3 Officials and other role players involved in SCM should be fair and impartial in the performance of their functions. They should at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual. They should not abuse the power and authority vested in them.

**2. Conflict of interest**

An official or other role player involved with supply chain management –

- 2.1 must treat all providers and potential providers equitably;
- 2.2 may not use his or her position for private gain or to improperly benefit another person;
- 2.3 may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
- 2.4 must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
- 2.5 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, or in any award of a contract by the municipality;



- 2.6 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;
- 2.7 must declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest;
- 2.8 should not place him/herself under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties; and
- 2.9 should not take improper advantage of their previous office after leaving their official position.

### **3. Accountability**

- 3.1 Practitioners are accountable for their decisions and actions to the public.
- 3.2 Practitioners should use public property scrupulously.
- 3.3 Only accounting officers or their delegates have the authority to commit the municipality to any transaction for the procurement of goods and / or services.
- 3.4 All transactions conducted by a practitioner should be recorded and accounted for in an appropriate accounting system. Practitioners should not make any false or misleading entries into such a system for any reason whatsoever.
- 3.5 Practitioners must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system.
- 3.6 Practitioners must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including
  - (i) any alleged fraud, corruption, favouritism or unfair conduct;
  - (ii) any alleged contravention of the policy on inducements, rewards, gifts and favours to municipalities or municipal entities, officials or other role players; and any alleged breach of this code of conduct.
- 3.7 Any declarations made must be recorded in a register which the accounting officer must keep for this purpose. Any declarations made by the accounting officer must be made to the mayor who must ensure that such declaration is recorded in the register.





#### **4. Openness**

Practitioners should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only if it is in the public interest to do so.

#### **5. Confidentiality**

5.1 Any information that is the property of the municipality or its providers should be protected at all times. No information regarding any bid / contract / bidder / contractor may be revealed if such an action will infringe on the relevant bidder's / contractor's personal rights.

5.2 Matters of confidential nature in the possession of officials and other role players involved in SCM should be kept confidential unless legislation, the performance of duty or the provisions of law requires otherwise. Such restrictions also apply to officials and other role players involved in SCM after separation from service.

#### **6. Bid Specification /Evaluation / Adjudication committees**

6.1 Bid specification, evaluation and adjudication committees should implement supply chain management on behalf of the municipality in honest, fair, impartial, transparent, cost-effective and accountable manner. 6.2 Bid committee members should be familiar with and adhere to the prescribed legislation, directives and procedures in respect of supply chain management in order to perform effectively and efficiently.

6.3 All members of bid committees should be cleared by the accounting officer at the level of "CONFIDENTIAL" and should be required to declare their financial interest annually.

6.4 No person should-

6.4.1 interfere with the supply chain management system of the municipality;

6.4.2 amend or tamper with any price quotation / bid after its submission.

#### **7. Combative Practices**

Combative practices are unethical and illegal and should be avoided at all cost. They include but are not limited to:

- (i) Suggestions to fictitious lower quotations;
- (ii) Reference to non-existent competition;
- (iii) Exploiting errors in price quotations / bids;
- (iv) Soliciting price quotations / bids from bidders / contractors whose names appear on the Register for Tender Defaulters.



**ANNEXURE “C”**

**SUPPLY CHAIN MANAGEMENT GUIDELINES ON APPEALS, OBJECTIONS, COMPLAINTS AND  
RESOLUTION OF DISPUTES**

**1. PREAMBLE**

These guidelines provide for procedural mechanisms for persons or service providers whose rights have been adversely affected or negatively impacted upon by the supply chain management processes, actions or related decisions of the municipality.

These guidelines must be implemented in a way that gives effect to:

- a) the provisions of the Promotion of Administrative Justice Act ;
- b) section 217 of the Constitution;
- c) sections 49 and 50 of the Municipality Supply Chain Management Policy; and
- d) section 62 of the Local Government: Municipal Systems Act; and
- e) any other applicable legislation or policy.

**2. THE RIGHT TO LODGE AN APPEAL, OBJECTION OR COMPLAINT**

Persons or service providers aggrieved by decisions taken in the implementation of the Municipality Supply Chain Management policy or system or in the awarding of business, may, within 14 days of the award lodge a written appeal, objection or complaint to the Municipal Manager detailing the following:

- 2.1 The tender/bid/contract or the quotation reference number;
- 2.2 The part of the Policy, Regulations or Act that has been violated;
- 2.3 The details of the violation;
- 2.4 Reasons for the appeal, objection or complaint;
- 2.5 The department or directorate involved;
- 2.6 Relief sought.



### **3. PERSON APPOINTED AS AUTHORITY**

- 3.1 The Municipal Manager may appoint an independent or impartial person, from outside or within the Municipality as the appeal authority and as well as to deal with complaints, objections and assist in the resolution of any disputes in terms hereof and to investigate and propose any dispute resolution.
- 3.2 Subject to clause 7, in consideration of an appeal the authority must confirm, vary or revoke the decision, but no such variation or revocation may detract from any rights that may have accrued as a result of the decision.
- 3.3 The person so appointed must be someone who was not involved in the bid or transaction in question.
- 3.4 The duties and functions of such a person are to be contained in the Terms of Appointment, and must include:
- (a) striving to resolve promptly, but within 60 days, all appeals, disputes, objections, complaints or queries received ; and
  - (b) submission of regular reports to the Municipal Manager on all disputes, objections, complaints or queries received, attended to or resolved.
- 3.4.1 In the event that the appeal, complaint or objection is against the decision or actions of the Municipal Manager, the Director: Legal Services will recommend an independent and impartial person to the Municipal Manager to mediate in or preside over the dispute.
- 3.4.2 The Municipal Manager, or another official designated by the Municipal Manager, is responsible for assisting the appointed person to perform his or her functions effectively.

### **4. DISPUTES RELATING TO CONTRACTS**

Disputes relating to running contracts or completed contracts must be resolved strictly according to the disputes resolution mechanism provided for in the contract document or service level agreement.

### **5. REFERRAL OF DISPUTES TO TREASURY**

The aggrieved party has the right to submit disputes not resolved by the Municipal Manager within 60 days to the Provincial, failing which, to the National Treasury.



## **6. REFERRAL OF DISPUTES TO THE COURT**

Provisions of these guidelines do not prohibit or infringe on the rights of any person to approach the Court of Law regarding the dispute in question;

## **7. CONSIDERATION OF APPEAL BY APPEAL AUTHORITY**

- 7.1 The appeal authority must commence with the appeal within 3 weeks and it must be decided on within 60 days;
- 7.2 The appeal authority will determine its own procedure for hearing an appeal;
- 7.3 The appeal authority will consider the appeal and could either confirm, vary or revoke the decision, without detracting from any rights that may have accrued as a result of the decision;
- 7.4 The appeal authority must consider all requests for hearings and may also initiate a hearing should it be deemed necessary;
- 7.5 The appeal authority may decide to undertake a site inspection if deemed necessary;
- 7.6 The appeal authority may consider the appeal on the written documentation before it without the appellant being present;
- 7.7 The appeal authority may request clarity on any aspect of the appeal verbally or in writing;
- 7.8 The appeal authority will be entitled to instruct any official to give testimony before the appeal authority, with reasonable prior notice to such official;
- 7.9 All evidence on which the original decision was based must be presented to the appeal authority;
- 7.10 The appeal authority will apply its mind to the facts and come to a conclusion independently, but will be entitled to obtain and duly consider any advice on the matter, especially in complex and difficult instances.

## **8. APPEAL HEARINGS**

- 8.1 The purpose of the hearing is to gather further information for the sake of clarity;



- 8.2 A hearing should not be seen as a court of law and therefore no cross-examination may take place;
- 8.3 Questions may only be asked by the appeal authority to obtain further clarity;
- 8.4 The appellant may be represented by a legal advisor;
- 8.5 At the discretion of the appeal authority, interested and affected parties may make submissions to the appeal authority;

## **9. CONVEYANCE OF DECISION PERTAINING TO APPEAL**

- 9.1 The appeal authority will notify the Municipal Manager in writing of its decision and provide reasons thereof;
- 9.2 The Municipal Manager will then officially notify the appellant in writing of the outcome of the appeal. The relevant official will be requested to notify all other affected parties;
- 9.3 In cases where the official has to negotiate/liaise further with the appellant regarding the matter, the Municipal Manager will communicate the decision to the official who will then be requested to liaise further with the appellant;



## CODE OF ETHICS AND GIFTS POLICY GUIDELINES

### 1. Preamble

- 1.1 Subject to Section 47 of the Municipality Supply Chain Management Policy, a code of ethical standards and gift policy guidelines is hereby established for all officials and other role - players in the supply chain management system of this Municipality in order to promote and protect the interest thereof.
- 1.2 All officials and other role-players in the Supply Chain Management System must promote these interests by way of:
  - 1.2.1 mutual trust and respect and;
  - 1.2.2 create an environment where business can be conducted with integrity and in a fair and reasonable manner

### 2. Definitions

Benefit: Includes any tangible or intangible advantages or profits gained, such as, but not limited to, tickets to sporting, theatrical or other events, invitations to lunches, dinners, promotions or travel.

Corruption: The abuse of a position of employment by the offering or acceptance of a benefit that is not legally due, for the commission of an act in connection with that position of employment, as defined in the Prevention and Combating of Corrupt Activities Act, No 12 of 2004.

Employee: Includes employees, temporary employees, independent contractors and employees/contractors of contracted service providers, of any of the corporate entities forming part of Masilonyana Local Municipality.

Employee's Family: Includes the employee's spouse or equivalent, sibling, parent, grandparent, child, grandchild and any person who is a blood relation of the employee.

Gift: Includes items, goods, services, information or money in whatever form, from which the recipient may derive benefit, as well as any other benefit or gratuity, but does not include:

- Official Masilonyana Local Municipality branded goods or items;



- Official Masilonyana Local Municipality sponsored functions, promotions or hospitality events;
- Official donations made on behalf of Masilonyana Local Municipality; or items, goods, services, information or money in whatever form provided or obtained from third parties in terms of an official contract with Masilonyana Local Municipality.

Gratuity: Includes any sum of money paid in respect of any defined task or project other than the contracted remuneration paid by Masilonyana Local Municipality

Municipality: The Masilonyana Local Municipality.

Supplier: Includes existing and potential vendors, contractors, sourcing partners, service providers, distributors, and consultants who supply goods or services to the Municipality, as well as any other third parties who may in future become suppliers or vendors of goods or services to Masilonyana Local Municipality.

### 3. Objectives

The primary objectives of the policy guidelines are following:

- 3.1 To provide guidance on the behaviours expected in accordance the municipality values.
- 3.2 To promote transparency and avoid business–related conflicts of interest.
- 3.3 To document the process for the acceptance, receiving, and giving of gifts.
- 3.4 To comply with the legal requirements relating to the prohibition of corruption.
- 3.5 By ensuring the above is implemented, the Municipality will be able to:
  - 3.5.1 allow employees, where appropriate, to accept, receive, and give gifts, provided that these gifts do not interfere with or have the potential to interfere with their responsibilities to the Municipality, improperly influence the judgments expected of them when acting on behalf of the Municipality, or amount to corruption in any way.
  - 3.5.2 protect employees from misplaced charges of conflict of interest or corruption by providing a mechanism for the acceptance, receipt, and giving of gifts by employees.
  - 3.5.3 avoid any unjustified perception of bias or self-interest by employees acting in situations where the Municipality has approved the acceptance, receipt, and giving of gifts by employees.



#### **4. Scope**

- 4.1 These policy guidelines are applicable to all employees of the Municipality; and
- 4.2 Regulate processes and procedures in accordance with existing legal duties and obligations that an employee owes the municipality, and should therefore not be construed or applied in a manner contrary to such duties and obligations, nor is it designed to replace such duties and obligations.

#### **5. Ownership**

It is the responsibility of each Department of the Municipality to ensure the implementation of this policy and for taking reasonable steps to ensure that all employees are aware of the contents thereof.

#### **6. Gift Registers**

- 6.1 By the first day of each month each Department must ensure that Gift Registers relating to gifts accepted and received, as well as gifts given, are maintained and submitted to the Head: Supply Chain Management.
- 6.2 The information disclosed is to be captured, recorded, stored and retrieved for a minimum period of 3 years.

#### **7. Prohibition on the Acceptance and Receipt of Gifts**

No official or person who is a supplier or prospective supplier of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of, may, directly or through a representatives or intermediary promise, accept, offer or grant:

- 7.1. any inducement or reward to an official, any Structure or Committee of the Municipality, either to individual members or collectively for or in connection with the award of a contract; or
- 7.2. any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person; and
- 7.3. notwithstanding clauses 7.1 and 7.2, must declare to the Municipal Manager details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;





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## **8. Process and Requirements**

Any official or other person referred to in terms of clause 7 must:

- 8.1 declare to the Municipal Manager 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;
- 8.2 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;
- 8.3 must assist the Municipal Manager in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system;
- 8.4 must report to the Municipal Manager any alleged irregular conduct in the supply chain management system which that person may become aware of, including;
  - 8.4.1 any alleged fraud, corruption, favouritism or unfair conduct;
  - 8.4.2 any alleged contravention of this policy; or
  - 8.4.3 any alleged breach of this code of ethical standards

## **9. Specifically prohibited gifts**

- 9.1 All travel by officials or their immediate families at the expense of suppliers, vendors, clients or third parties is specifically prohibited;
- 9.2 Notwithstanding the provisions of clause 9.1, travel may only be undertaken where prior written approval has been obtained from the relevant Executive Director or from the Municipal Manager in the case of the Executive Director;
- 9.3 The acceptance or receipt of cash (bank notes, cheques, any negotiable instrument or equivalent) is specifically prohibited.

## **10. Procedure for the Acceptance and Receipt of Gifts**

- 10.1 Only gifts involving a monetary value of less than R350 received on no more than one occasion from any one supplier during a financial year, may be received or accepted by an official of the Municipality, from suppliers, clients or third parties;



- 10.2 Not more than 1 gift may be accepted or received from the same supplier, client or third party in any given three-month period;
- 10.3 When receiving or accepting such gifts in terms of clause 10.1, the following conditions apply:
- 10.3.1 The acceptance or receipt thereof must, in accordance with clause 6, be disclosed as soon as it is practically possible, but within 30 days of receipt;
- 10.3.2 Disclosure in a Gift Register must take place in accordance with **Annexure B** Section 2.3 and 2.4 to this policy, on the prescribed form.
- 10.3.3 In the event of any doubt whatsoever, disclosure must still be made in the prescribed format.
- 10.3.4 Irrespective of the value of the gift or due consent by the Municipal Manager or Executive Director, under no circumstances may the acceptance or receipt of a gift take place in circumstances that may constitute corruption or conflict of interest as envisaged by the Municipality Supply Chain Management Policy; or

## **11. Special considerations**

- 11.1 Where it would be reasonably deemed to be impractical, impossible or inappropriate to refuse to accept or receive a gift that has been offered, such gift may be accepted, with the proviso that such acceptance or receipt is disclosed as soon as it is practically possible, but within 30 days in accordance with clause 6; and
- 11.2 The Municipal Manager condones such receipt and acceptance.

## **12. Conditions for the Giving of Gifts**

The provisions of clauses 10 and 11 are also applicable in the instances of where gifts are given.

## **13. Non-compliance and Reporting**

- 13.1 Non-compliance with this code and policy guidelines and/or any procedures as set out herein, may amount to the breach of the Code of Conduct for Employees in terms of the Local Government: Municipal Systems Act;
- 13.2 The provisions of this code and policy guidelines do not prohibit or detract from any other appropriate measures of reporting that may be utilized by any person in reporting any suspected activities or incidents of corruption. In this regard such reporting may be made to the Internal Audit division of the Municipality or directly to the Municipal Manager.



## APPOINTMENT OF CONSULTANTS

### 1. Definition

“Consultant” means a person or entity who provides services which require knowledge based expertise, skills and resources, and includes professional service providers.

### 2. Introduction

The accounting officer may appoint consultants for the following reasons:

- a) To complement and supplement the Municipality’s capacity and capability;
- b) To provide specialised services for limited periods without any obligation of permanent employment;
- c) To benefit from superior knowledge, transfer of skills and upgrading of a knowledge base while executing an assignment;
- d) To provide independent advice on the most suitable approaches, methodologies and solutions of projects.

### 3. General

The accounting officer may procure consulting services provided that any National Treasury guidelines in this respect are taken into account and, in the case of consultancy services related to the built environment and construction works, that guidelines of the Construction Industry Development Board are taken into account.

The procurement method shall be determined by the scope of the assignment, the quality of the service, the complexity of the assignment and whether assignments are of a standard or routine nature or require specialist inputs.

### 4. Data Base of Professional Service Providers

The accounting officer may establish a database of pre-qualified consultants. The database shall be valid for a period determined by the accounting officer or for a maximum period of 3 years, with an option for an annual review process to accommodate operational requirements and the addition of consultants to the database within the validity period of the current database.

The data base shall categorize registered consultants in terms of:



1. The scope of services commonly required (legal services, engineering and construction services, financial services, project management services, social services, health services, environmental services, media and communication services, IT services, etc.)
2. Where relevant the work categories associated with the professional service and professional responsibility.

The accounting officer may determine minimum eligibility criteria to ensure that a consultant has a basic capability to provide the required service. The eligibility criteria may include the following:

- a) The consultant must have an established office in the MUNICIPALITY area staffed by at least one suitably qualified and experienced person who is registered with the relevant professions legislated governing body,
- b) The consultant must certify that is a natural or juristic persons whose primary business is to provide independent services to employers and which, if a sole practitioner, has a professionally registered person as a principal, or if a partnership, close corporation or company, has at least 50% of its principals registered with the relevant professions legislated governing body,
- c) The consultant has demonstrable and verifiable work experience in the professional service category.
- d) The consultant must have a minimum level of professional indemnity cover appropriate for the appointment.

## **5. Procurement of Consultants**

### **5.1 Written price quotation**

Where the estimated value of fees is less than or equal to R30 000 including VAT and the duration of the appointment is less than one year, written price quotations shall be obtained from at least three different consultants whose names appear on the relevant supplier database for the consultancy service required.

The quotes shall be evaluated on the basis of the price/preference points system described in this Policy.

On conclusion of the selection process all consultants who were requested to provide quotations shall be rotated to the bottom of the relevant supplier database.



## 5.2 Formal written price quotation

Where the estimated value of fees is less than or equal to R200 000 including VAT and the duration of the appointment is less than one year, formal written price quotations shall be obtained from at least three different consultants who are suitably qualified, experienced, have the necessary resources and whose names appear on the relevant supplier database for the consultancy service required.

The quotes shall be evaluated on the basis of the price/preference points system described in this Policy.

On conclusion of the selection process all consultants who were requested to provide quotations shall be rotated to the bottom of the relevant supplier database.

## 6 Competitive bidding process

Where the estimated value of fees exceeds R200 000 including VAT and the duration of the appointment will exceed one year, the selection of consultants shall be by means of a competitive bidding process from consultants who are suitably qualified, experienced, have the necessary resources and whose names appear on the relevant supplier database for the consultancy service required.

### 6.1 Estimated value of fees does not exceed R1,0 million including VAT:

Bids shall be invited from at least five different consultants who are suitably qualified, experienced, have the necessary resources and whose names appear on the relevant supplier database for the consultancy service required.

The bids shall be evaluated on the basis of functionality and the price/BEE points system described in this Policy.

On conclusion of the selection process all consultants who were requested to provide bids shall be rotated to the bottom of the relevant supplier database

### 6.2 Estimated value of fees exceeds R1,0 million including VAT

Bids shall be invited from all the service providers who are suitably qualified, experienced, have the necessary resources and whose names appear on the relevant supplier database for the consultancy service required.



The bids shall be evaluated on the basis of functionality and the price/preference points system described in this Policy.

On conclusion of the selection process the appointed consultant shall be rotated to the bottom of the relevant supplier database.

## **7 Single-source Selection**

Single-source selection of a consultant may be utilised only if it is in the interests of the Municipality and it presents clear advantages over competition in cases where:

- a) The consultancy service represents a natural continuation of previous work carried out by the consultant and continuity of the service is considered beneficial or essential,
- b) In an emergency and where rapid selection is essential,
- c) For small projects and where the estimated value of fees does not exceed R2 000 including VAT,
- d) When only one consultant is qualified or has experience and expertise of exceptional worth for the project.

In cases where the estimated value of fees for a single-source selection of a consultant exceeds R200 000 including VAT the appointment must be approved by the Bid Adjudication Committee. In cases where the estimated value of fees for a single-source selection of a consultant does not exceed R200 000 including VAT the appointment must be approved by the Director: Supply Chain Management.



**RULES OF ORDER REGULATING THE CONDUCT OF MEETINGS OF THE BID COMMITTEES**

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## 1. Definitions

In these rules, unless inconsistent with the context

“Accounting Officer” means the person appointed by the council as the Municipal Manager in terms of the Local Government: Municipal Structures Act, 1998;

“Member” also includes an alternate member;

“Committee” means the –

- (a) Bid Specification Committee;
- (b) Bid Evaluation Committee; or
- (c) Bid Adjudication Committee.

“MFMA” means the Local Government: Municipal Finance Management Act, 2003;

“SCM Policy” means the supply chain management policy adopted by council in terms of section 111 of the MFMA; and

“SCM Regulations” means the Municipal Supply Chain Management Regulations published in GNR.868 of 30 May 2005, as amended;

## 2. Mandate, role and function of the Supply Chain Management Bid Committees.

Sections 79 and 106 of the MFMA empower Accounting Officers to delegate powers or duties to an official to assist the Accounting Officer in ensuring the achievement of the aims of a specific provision of the MFMA.

Chapter 11 of the MFMA prescribes that municipalities/ municipal entities must have and maintain a Supply Chain Management (SCM) system that is fair, equitable, transparent, competitive and cost-effective.

Regulation 26 of the Municipal SCM Regulations stipulates that a municipality’s/municipal entity’s SCM system must provide for a committee system for Competitive Bids consisting of at least a Bid Specification, Bid Evaluation and Bid Adjudication Committee.

In order to meet their obligations, committee members must be familiar with and adhere to all relevant SCM Legislation, Policy, Guides and Circulars.



The integrity of Supply Chain Practitioners must never be compromised and the highest level of professional competence must be maintained. Furthermore, courteous conduct is expected of all committee members.

Each member as well as all officials rendering administrative support must sign an Attendance Register and Undertaking of Confidentiality and Impartiality declaration form at each Bid Committee meeting. Members are to declare that they will:

- accept the confidentiality of the meeting;
- not make known anything regarding the meeting, unless officially authorised; and
- not purposefully favour or prejudice anybody.

### **3. Application and Interpretation of Rules**

- (1) These rules apply to all meetings of the -
  - (a) Bid Specification Committee;
  - (b) Bid Evaluation Committee; and
  - (c) Bid Adjudication Committee;
- (2) The chairperson of a committee may give a ruling in respect of any eventuality for which these rules do not provide.
- (3) The ruling of the chairperson must be recorded in the minutes.
- (4) These rules must be applied in conjunction with the SCM Policy, SCM Regulations, and the MFMA.
- (5) Rule 10 is applicable to all officials of this municipality and other role players irrespective of membership of the bid committees.

### **4. Terms of Reference for Bid Committees**

#### **4.1 Bid Specification Committee must-**

- Compile or interrogate specifications submitted to the committee for each procurement of goods or services.
- If satisfied with the specification, will approve for publication for the invitation for bids in terms of Section and/or Regulation 22 of the SCM Policy/Regulations.



#### 4.2 A Bid Evaluation Committee must -

- (a) Evaluate bids in accordance with the specifications for a specific procurement; and the points system set out in the SCM Policy and in terms of the Preferential Procurement Policy Framework Act; and in the event of non-compliance thereof and the Bid Evaluation Committee may issue an instruction for re-tendering;
- (b) Evaluate each bidder's ability to execute the contract;
- (c) Check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears; and
- (d) Submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.

#### 4.3 A bid adjudication committee must –

- (a) Consider the report and recommendations of the Bid Evaluation Committee; and
- (b) either -
  - (i) depending on its delegations, make a final award or a recommendation to the Accounting Officer to make the final award; or
  - (ii) make another recommendation to the Accounting Officer how to proceed with the relevant procurement
- (c) Regulation 29 stipulates that the Bid Adjudication Committee must consider the recommendations/reports of the Bid Evaluation Committee and, depending on the delegated powers, make:
  - a final award; or
  - a recommendation to the accounting officer to make a final award; or
  - another recommendation to the accounting officer on how to proceed with the relevant procurement.

### 5. Duties and powers of the various committee members

#### 5.1 Chairperson

The Chairperson:

- has a casting vote as well as a deliberate vote;
- retains all his/her rights as a member;
- may adjourn a meeting;
- may rule on points of order which will be final;



- may withdraw any proposal or other matters under discussion before it is put to the vote; and
- convene extraordinary committee meetings on request.

The Chairperson shall:

- maintain order during a meeting and ensure that business is conducted in an orderly manner;
- before opening a meeting, ensure that a quorum is present;
- protect the rights of every member;
- vacate his / her seat to the vice chairperson, should he/she wish to partake in a discussion in a partial manner;
- ensure all members have opportunity to speak on any matter before the committee;
- deal with items in sequence of the agenda;
- ensure that members know exactly what they are required to vote on;
- ensure that only one member holds the floor at any one time;
- provide guidance by directing the meeting, but shall not dominate;
- conduct meetings in a formal manner; and
- formulate clearly the decisions to be minuted and sign and approve the minutes after they have been verified by the committee as a true and correct record of the meeting.

## 5.2 Vice-Chairperson

The Vice-Chairperson has the same powers and duties as those of members and in addition, where necessary, shall –

- in the absence of the chairperson, preside as chairperson; and
- take the seat of and act as chairperson, should the chairperson have a conflict of interest in any matter being considered.

In the event that both the Chairperson and Vice-Chairperson are absent from a meeting, the members present may elect one of their members to preside at such meeting.

## 5.3 Secretary

The Secretary shall –

- in conjunction with the Chairperson/Vice Chairperson compile an agenda and determine dates of meetings;
- give notice of proposed meetings to Committee members;



- process and distribute all submissions/reports together with the agenda to Committee members at least three working days before the actual meeting takes place;
- minute all decisions taken at meetings;
- adhere strictly to the stipulations of the National Archives of South Africa Act, No. 43 of 1996 and accompanying directives;
- ensure that the proceedings at meetings are recorded appropriately (e.g. tape);
- give written feedback of all decisions taken by the Committee; and
- be responsible for all the Administrative tasks of the Committee.

#### 5.4 Members

Members of the Committee shall –

- be fully conversant with the powers and limitations of the committee as well as all directives pertaining to Supply Chain Management, including the relevant Sections of the Constitution, Municipal Finance Management Act and accompanying Regulations, Preferential Procurement Policy Framework Act and accompanying Regulations, Broad Based Black Economic Empowerment Act and its related strategy, all directives issued by the National Treasury/relevant Provincial Treasury as well as the delegated powers issued by the Accounting Officer and at all times act in accordance with above-mentioned Legislation, Regulations and Procedures;
- apply their minds to matters at hand in order to take meaningful and accountable decisions and in the event of doubt or uncertainty, to propose that matters be referred back for clarification;
- in advance, furnish a written apology when unable to attend a meeting;
- strive to be punctual for meetings and to stay for the duration of a meeting;
- prepare properly for each meeting by studying the agenda and submissions/reports;
- be familiar with meeting procedures in order to make a contribution in the correct manner; and
- refrain from repetition and duplication of contributions by other members.

Members have the right to –

- have advance knowledge of the agenda;
- submit proposals and participate in proceedings;
- vote; and
- have a dissenting voice and have the reasons thereof recorded.



#### **5.5 Co-opted members/advisors**

Co-opted members/advisors have the same powers and duties as members, excluding the right to vote on any matter under discussion.

Members of the Bid Evaluation Committee may present their recommendations / reports to the Bid Adjudication Committee and clarify any issues but shall not have any voting powers.

#### **5.6 Observers**

The Chairperson may, on request, allow officials to attend a meeting as observers. Observers have no participation in the proceedings, except to advise the Representative (member) or the Committee if permitted by the Chairperson. Observers should be cautioned to maintain the confidentiality of the discussions

### **6. Meeting procedures**

#### **6.1 Notice of meetings**

The agenda of a meeting serves as the programme of the meeting and unless the Committee decides otherwise, the items and sequence may not be changed during the meeting.

In order to afford members the opportunity to prepare for the meeting, the agenda shall be made available to members at least three working days before the actual meeting.

#### **6.2 Submissions/reports to the Committee**

All submissions/reports to the Committee must be in writing, substantiated and channelled through the Bid Specification Committee or Bid Evaluation Committee or Bid Adjudication Committee.

#### **6.3 Minutes**

The minutes will be the written record reflecting in a brief, clear and impartial manner the decisions of the Committee. The signed minutes will serve as proof of the decisions of the Committee.

Should a member wish to have a specific matter other than a decision recorded, it must be specifically requested. A member's reasons for a dissenting voice must also be recorded.



Proceedings are also recorded (e.g. tape) to enable the secretary to prepare verbatim reports when required by a court of law. Further details on requirements for the recording of meetings can be found in the National Archives of South Africa Act, No. 43 of 1996 and accompanying directives.

#### **6.4 Attendance register and undertaking of confidentiality and impartiality**

Members will be required to sign a combined Attendance Register and Undertaking of Confidentiality and Impartiality declaration at each meeting). This must be retained and form part of the committee minutes.

#### **6.5 Conflict of interest**

Where a member of a Bid Adjudication Committee has a conflict of interest with any item to be considered by the Committee, it is imperative that this be recorded in the minutes and the member vacates the meeting room prior to any discussion. An example minute could read as follows:

"[member's name] declared an interest in the following item and vacated the meeting room at [insert exact time]

Insert minutes of item under discussion showing resolution/decision of the committee accordingly

At the conclusion of the discussion [member's name] was invited to return to the meeting room at [insert exact time]"

#### **6.6 Chairperson**

Each meeting will be presided over by the Chairperson. In the absence of the chairperson, the vice-chairperson will preside as Chairperson, in which case he/she will occupy the chair for the duration of the meeting, even if the Chairperson should arrive during the course of the meeting. If the Vice-Chairperson was not appointed, the Committee must elect another member to act as Chairperson.

Every member attending the meeting owes respect to the Chairperson and may be removed if that person does not respect the authority of the chair.



#### 6.7. Conduct of Committee Members

A member's conduct at the meeting must not infringe on the rights of others. The rules of conduct are based on mutual respect for the rights of each other and respect for the purpose of the meeting.

Members must accept that –

- The chairperson must be respected;
- The chairperson has the right to interrupt and ask a member to stop speaking if the address is repetitive or irrelevant to the matter under discussion;
- A member must stop speaking if ruled out of order by the chairperson;
- Decisions are taken by general consensus or by a majority show of hands when a matter is decided upon by voting;
- Once a decision has been taken it is final and not open for discussion unless additional information which was not available at the time of decision making can be produced;
- Information and documentation are confidential;
- A member (including the chairperson or vice-chairperson) shall beforehand declare his/her interest regarding any matter serving before the Committee and the member will then excuse her/himself and vacate the meeting room during the discussion of that matter. No discussion by the member concerned will be allowed prior to the serving of that submission/report and such a member may not retain that specific submission/report. Any personal interest that may infringe, or might reasonably be deemed to infringe on a member's impartiality in any matter relevant to their duties must be recorded;
- Outvoted members must abide by the majority decision of the Committee; and
- No communication should be made with a bidder/contractor by any member prior to or after any meeting.

#### 6.8. Confidentiality

- (1) Save for purposes of or during bid committee meetings, no information regarding any bid may be revealed or disclosed or communicated to/with the members of the public until an award has been made and has been officially published as such.
- (2) The relevant directorate, official or project manager must disclose to the bid committees all details of any communication, queries or requests for information relating to a bid, irrespective whether such communication, query or request is made by such directorate, official, project manager or by a third party.





#### **6.9. Attendance at Meetings**

- (1) Every member attending a meeting of the committee must sign his or her name in the attendance register kept for such purpose.
- (2) A member must attend each meeting except when-
  - (a) leave of absence is granted; or
  - (b) the member is required to withdraw in terms of law.

#### **6.10. Leave of Absence**

- (1) A member who wishes to absent himself or herself from meetings must prior to such meeting, obtain leave of absence from the chairperson.
- (2) A member, who has obtained leave of absence from the chairperson, must ensure that an alternate attends the meeting of a committee in his or her stead.

#### **6.11. Sanction for Non-attendance**

The Chairperson of a committee must report any absence by a member to the Accounting Officer for appropriate action by means of the following

- (a) Written report to be submitted to the Accounting Officer with reasons pertaining to his/her continuous absenteeism
- (b) To use his own discretion to consider removal from the committee and replace with a suitable official.

#### **6.12. Quorum**

- (1) A majority of the total number of persons appointed to a committee constitutes a quorum, provided that in the case of the Bid Adjudication Committee, all four senior managers referred to in rule 4(3) must be present.
- (2) If there is no quorum at the time for which the meeting is scheduled, the chairperson of a committee must approach the alternate member(s) to attend.

### **7. Decisions**

- (1) A committee must attempt to take decisions by consensus.



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- (2) If consensus cannot be achieved on any matter such matter must be decided by a supporting vote of a majority of the members present.
- (3) A member must vote when called upon to do so by the chairperson.
- (4) If on any question there is an equality of votes, the chairperson of the committee must exercise a casting vote in addition to his /her deliberative vote.

#### **8. Reasons for decisions**

- (1) A committee must motivate its decisions.
- (2) The chairperson of a committee must ensure that the reasons for decisions are minuted.

#### **9. Referral of decisions**

- (1) The Chairperson of a Bid Specification Committee must submit the specifications for each procurement to the to the relevant Executive Director for approval prior to publication of the invitation for bids in terms of section and/or regulation 22 of the SCM Policy/Regulations.
- (2) The Chairperson of a Bid Evaluation Committee must submit his/her committee's report and recommendations regarding the award of a bid or any other related matter to the Chairperson of the Bid Adjudication Committee.

#### **10. Decisions of the Bid Adjudication Committee**

##### **10.1 Bid Adjudication Committee must ensure that:**

- all necessary bid documents have been submitted;
- disqualifications are justified and that valid and accountable reasons / motivations were furnished for passing over of bids;
- scoring has been fair, consistent and correctly calculated and applied; and
- declarations of interest have been taken cognizance of.
- If a bid other than the one recommended by the Bid Evaluation Committee is approved by the Bid Adjudication Committee, the accounting officer, or a senior official delegated by the accounting officer, must first be notified and he/she may, after consideration of the reasons for the deviation, ratify or reject the decision of the Bid Adjudication Committee.



- If the decision of the Bid Adjudication Committee to approve a bid other than the one recommended by the Bid Evaluation Committee is ratified, the Auditor-General, the relevant provincial treasury and the National Treasury and, in the case of a Municipal Entity, the Parent municipality must be notified of the reasons for deviating from such recommendation.
- The Bid Adjudication Committee must also consider and rule on all recommendations/reports regarding the amendment, variation, extension, cancellation or transfer of contracts awarded.

**10.2 The Bid Adjudication Committee may also, if and when required to do so, consider for approval the recommendations of the Bid Specification Committee in order to ensure that:**

- the need forms part of the strategic goals and objectives contained in the municipality's Integrated Development Plan (IDP)
- a proper and unbiased specification is compiled for the specific requirement;
- proper Terms of Reference are drawn up for the service required clearly indicating the scope of the requirement, the ratio between price and functionality, the evaluation criteria as well as their weights and values;
- strategic sourcing principles were applied and that the market was properly researched and analysed
- the necessary funds are available in the approved budget;
- if and when applicable, in addition to the General Conditions of Contract, appropriate Special Requirements and Conditions of Contract are specified;
- the preference point system and appropriate goals are identified and points allocated for these goals, consistent with the requirements of the Preferential Procurement Regulations; and

**11. Admittance of Public**

- (1) All the meetings of the Bid Committees are not open to the public except as contemplated by Section 37 (6) of this policy.
- (2) The chairpersons of the Bid Committees must take reasonable steps to regulate public access to meetings.

**12. Approval of rules**

These rules or any amendment thereof must be approved by the Accounting Officer in terms of the powers conferred on the Accounting Officer by section 115 of the MFMA.



DRAFT



**Certificate of Approval**

I hereby approve the above Rules of Order Regulating the Conduct of Meetings of the Bid Committees.

***M.D. Nthau***  
***Municipal Manager***  
***Masilonyana Local Municipality***

***Date:.....***

DRAFT



### **PERFORMANCE MANAGEMENT OF SERVICE PROVIDERS**

In terms of section 42 of the Supply Chain Management policy which states:

*"The accounting officer must establish and implement an effective internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes were followed and whether the measurable performance objectives linked to and approved with the budget and the service delivery and budget implementation plan were achieved."*

and Section 116(2)(b) of the Municipal Finance Management Act, which states:

*"monitoring on a monthly basis the performance of the contractor under the contract or agreement"*.

A process has been developed for the Supply Chain Management Unit (SCMU) that needs to be followed by all Project Managers within the Municipality that are involved in the implementation of the SCM Policy in order to comply with regulations mentioned above and National Treasury requirements. The following procedure and steps must be followed in order for the defaulters to be blacklisted in the National Treasury Defaulters database. Should Project Managers notice that the contractor/service provider is in breach of conditions of contract the following should be followed:

- Inform the contractor/service provider or person(s) in writing of deviations eminent from the contractual agreement.
- Allow the contractor/service provider and / or person(s) fourteen (14) calendar days to provide reasons of not complying with the conditions of the contract as stipulated in the service level agreement.
- Allow the contractor/service provider and / or person(s) the right to respond and consider any reasons submitted by the contractor and / or person(s) in terms of paragraph (1).
- If no improvements liaise with SCMU – Contract Management and Compliance Sections to mediate.
- A meeting will be called by the SCMU and Legal Services will be present where minutes will be taken and signed by all present with resolutions to be implemented.
- Failure to implement the resolutions, Project Manager must impose the penalties as per the signed Service Level Agreement.
- In the event that a contract has to be terminated, Legal Services will advise on the legal aspects in relation to the termination contract.
- Impose the restriction or amended restriction.



- Inform the contractor/service provider and/ or person(s) of the decision; and
- SCMU will inform the National Treasury within five working days of such restriction, particulars of the person(s) to be restricted (including, where applicable, names of the restricted persons, identity numbers, trade name of enterprises, company registration numbers, income tax reference numbers and vat registration numbers), the reason(s) for the restriction, the period of restriction and the date of commencement of the restriction.

#### **Right of appeal by the contractor/service provider**

A contractor/service provider or any other person restricted by the Accounting Officer in this manner has a right to contest this restriction in a Court of Law. The municipality or entity that imposed the restriction is responsible and accountable for any costs associated with court proceedings and for the cost of any decision that may result.





**ANNEXURE "H"**

**CERTIFICATE**

**Section 36 of the Municipal Supply Chain Regulations**

**Authorised deviation from procurement processes**

I hereby authorise the deviation from the official procurement processes in terms of Section 36(1)(a) of the Municipal Supply Chain Regulations as follows:

MAS NO.	SUPPLIER	DATE	EFT NO.	Doc No.

DESCRIPTION OF SERVICE/GOODS PROVIDED

AUTHORISED DEVIATION	REASON FOR DEVIATION
Section 36(1)(a)(i)	Emergency:-
Section 36(1)(a)(ii)	Single provider:-
Section 36(1)(a)(iii)	Art or historical object:-
Section 36(1)(a)(iv)	Animals/food for zoos or botanical specimens for game or nature reserves:-
Section 36(1)(a)(v)	Impractical/impossible:-

AMOUNT (INCL VAT)

**MUNICIPAL MANAGER**