



FETAKGOMO TUBATSE
LOCAL MUNICIPALITY

FETAKGOMO TUBATSE LOCAL MUNICIPALITY

SUPPLY CHAIN MANAGEMENT POLICY

2020/21 Financial Year

LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT,2003

The Council of the Fetakgomo Tubatse 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. 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 –

“**Bid**” means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods, works or services.

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

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

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

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

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

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

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

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

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

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

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

“list of accredited prospective providers” means the list of accredited prospective providers which the [municipality] must keep in terms of paragraph 14 of this policy;

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

- (a) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- (b) the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
- (c) the Construction Industry Development Board Act, 2000 (Act No.38 of 2000);

“Sub-contracting” means the primary contractor’s assigning or leasing or making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract.

“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);

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

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

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CHAPTER 1
IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

Supply chain management policy

2. (1) All officials and other role players in the supply chain management system of the Fetakgomo Tubatse Local Municipality

must implement this Policy in a way that –

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

(2) This Policy applies when the Fetakgomo Tubatse Local Municipality

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

(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.

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Amendment of the supply chain management policy

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

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

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

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

Delegation of supply chain management powers and duties

4. (1) The **council** hereby delegates all powers and duties to the accounting officer which are necessary to enable the accounting officer –

- (a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
 - (i) Chapter 8 or 10 of the Act; and
 - (ii) this Policy;
- (b) to maximise administrative and operational efficiency in the implementation of this Policy;
- (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this Policy; and
- (d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.

(2) Sections 79 and 106 of the Act apply to the subdelegation of powers and duties delegated to an accounting officer in terms of subparagraph (1).

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(3) The accounting officer may not subdelegate any supply chain management powers or duties to a person who is not an official of **the Fetakgomo Tubatse Local 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.

Subdelegations

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

(2) The power to make a final award –

- (a) above R500 000(VAT included) may not be sub-delegated by the accounting officer;
- (b) above R200 000 (VAT included), but not exceeding R500 000 (VAT included), may be subdelegated but only to –
 - (i) the chief financial officer;
 - (ii) senior manager

(c) not exceeding R200 000 (VAT included) may be sub-delegated but only to –

- (i) the chief financial officer;
- (ii) senior manager,
- (iii) a manager directly accountable to the chief financial officer

(3) An official or bid adjudication committee to which the power to make final awards has been sub-delegated in accordance with subparagraph (2) must within five days of the end of each month submit to the official referred to in subparagraph (4) a written report containing particulars of each final award made by such official or committee during that month, including–

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

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- (4) A written report referred to in subparagraph (3) 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); 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** reserves its right to maintain oversight over the implementation of this Policy.
- (2) For the purposes of such oversight the accounting officer must –
 - (a) Within 30 days of the end of each financial year, submit a report on the implementation of this Policy and the supply chain management policy of any municipal entity under the sole or shared control of the municipality, to the council of the municipality; and
 - (b) Whenever there are serious and material problems in the implementation of this Policy, immediately submit a report **to council**.
- (3) The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the **mayor**.
- (4) The reports must be made public in accordance with section 21A of the Municipal Systems Act.

Supply chain management unit

- 7. (1) A supply chain management unit is hereby established to implement this Policy.

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(2) The supply chain management unit operates under the direct supervision of the chief financial officer or an official to whom this duty has been delegated in terms of section 82 of the Act.

Training of supply chain management officials

8. The training of officials involved in implementing this Policy should be in accordance with any Treasury guidelines on supply chain management training and aligned with the minimum competency levels as stipulated in section 119 of the MFMA

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CHAPTER 2

SUPPLY CHAIN MANAGEMENT SYSTEM

Format of supply chain management system

9. This Policy provides systems for –
- (i) demand management;
 - (ii) acquisition management;
 - (iii) logistics management;
 - (iv) disposal management;
 - (v) risk management; and
 - (vi) performance management.

Part 1: Demand management

System of demand management

10. (1) The 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 –

Demand management provides for an effective system to ensure that the resources required to support the strategic operational commitments of Fetakgomo Tubatse Municipality are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy the needs of the Municipality.

- a) The resource required by the municipality supports the strategic goals of the municipality as outlined in the Integrated Development Plan and Service Delivery Budget and Implementation Plan.
- b) In order to achieve effective demand management, the Accounting Officer shall continuously ensure:
- c) That efficient and effective provisioning and procurement systems and practices are implemented to enable the Municipality to deliver the required quantity and quality of goods and services to the communities;
- d) Take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature and
- e) Provide for the compilation of the required specifications to ensure that the need are met,

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f) To undertake appropriate industry analysis and research to ensure that innovation and technological benefits are maximized

g) Develop Procurement Plans aligned to the IDP, SDBIP AND BUDGET , which includes major activities associated with identifying demand such as:-

- establishing requirements
- linking the requirement to the budget
- Deciding on appropriate procurement strategies.
 - identifying critical delivery dates;
 - submit the procurement plan to the provincial treasury together with the adopted budget and IDP.

h) Determine the need for pre-qualification criteria for preferential procurement and sub-contracting in terms of PPPFA Regulation 4 and 9

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

- (a) a tenderer having a stipulated minimum B-BBEE status level of contributor;
- (b) an EME or QSE;
- (c) a tenderer subcontracting a minimum of 30% to-
 - (i) an EME or QSE which is at least 51% owned by black people;
 - (ii) an EME or QSE which is at least 51% owned by black people who are youth;
 - (iii) an EME or QSE which is at least 51% owned by black people who are women;
 - (iv) an EME or QSE which is at least 51% owned by black people with disabilities;
- (v) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
- (vi) a cooperative which is at least 51% owned by black people;
- (vii) an EME or QSE which is at least 51% owned by black people who are Military veterans; (viii) an EME or QSE.

(2) A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender.

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Part 2: Acquisition management

System of acquisition management

11. (1) The accounting officer must implement the system of acquisition management set out in this Part in order to ensure –

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

- (a) the kind of goods or services; and
- (b) the name of the supplier.

Range of procurement processes

12. (1) Goods and services may only be procured by way of –

- (a) petty cash purchases, up to a transaction value of R500 (VAT included);
- (b) at least one quotation for procurements of a transaction value of over R500 up to R2000.00(Vat included);
- (c) at least three written or verbal quotations for procurements of a transaction value over R 2000 up to R10 000 (VAT included);
- (d) three formal written price quotations for procurements of a transaction value over R10 000 up to R200 000 (VAT included); and
- (e) a competitive bidding process for–
 - (i) procurements above a transaction value of R200 000 (VAT included); and
 - (ii) the procurement of long term contracts.

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- (2) The accounting officer may, in writing-
- (a) lower, but not increase, the different threshold values specified in subparagraph (1); or
 - (b) direct that –
 - (i) written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000;
 - (ii) formal written price quotations be obtained for any specific procurement of a transaction value lower than R10 000; or
 - (iii) a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000.
- (3) Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of 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.

General preconditions for consideration of written quotations or bids

- 13.** A written quotation or bid may not be considered unless the provider who submitted the quotation or bid –
- (a) has furnished 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;
 - (b) has authorised the **municipality** to obtain a tax clearance from the South African Revenue Services that the provider's tax matters are in order; and
 - (c) 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; orwhether 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.

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Implementation of the tax compliance status system (CIRCULAR 90)

In order to comply with the new TCS system and the condition of bids that a successful bidder's tax matters must be in order,

Accounting Officers of all municipalities should:

- (1) Designate officials, preferably from the supply chain management unit, whose function will be to verify the tax compliance status of a taxpayer and to manage the TCS system on the SARS website and have the functionality to verify the tax compliance status of a taxpayer on the SARS' e-Filing system. Guidance to the Tax Compliance functionality on eFiling is available on the SARS website www.sars.gov.za.
- (2) Utilise the Municipal Bid Document 1 (MBD1) when inviting bids.
- (3) As a bid condition, request bidders to register on government's Central Supplier Database (CSD) and include in their quotations or bids, their Master Registration Number or tax compliance status PIN to enable the municipality to verify the bidder's tax compliance status
- (4) Utilise the Master Registration Number or tax compliance status PIN to verify bidders' tax compliance status.
- (5) Print the tax compliance status screen view or letter with the result of the bidder's status at the date and time of verification to file with the bidder's bid documents for audit purposes.
- (6) Where the recommended bidder is not tax compliant, the bidder should be notified of their non-compliant status and the bidder must be requested to submit to the municipality or municipal entity, within 7 working days, written proof from SARS of their tax compliance status or proof from SARS that they have made an arrangement to meet their outstanding tax obligations.
- (7) The proof of tax compliance status submitted by the bidder to the municipality or municipal entity must be verified via the CSD or e-Filing. The accounting officer should reject a bid submitted by the bidder if such a bidder fails to provide proof of tax compliance status within the timeframe stated above.

Lists of accredited prospective providers

14. (1) The accounting officer must –
 - (a) keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements through written or verbal quotations and formal written price quotations; The municipality uses the Central Supplier Database to select accredited prospective providers in terms of MFMA Circular 81.

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- (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 on CSD;

Central Supplier Database

The CSD will automatically validate the following registration documents for the municipality: -

- Confirmation and status of Business Registration Documents
- Proof of Bank Account Registration
- Tax compliance status
- Employee in the service of state as defined in the Municipal SCM Regulations
- Identity Documentation
- Tender defaulters and restrictions status
- BBBEE Status
- CIDB

It is the responsibility of the municipality to continue with verification of other listing criteria which are not currently validated by CSD, for instance, proof of municipal account

Petty cash purchases

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

- (a) The responsibility for petty cash to an official reporting to the manager may only be delegated in the absent of the manager;
- (b) purchases from petty cash are to be restricted to small items of stationary, refreshments or small items required in an emergency that do not exceed a transaction value of R500.00 per day;
- (b) At least 5 petty cash purchases may be made per month for each manager;
- (c) Expenditure for registration of motor vehicles may be defrayed from petty cash; 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.
- (a) petty cash requests must be properly authorized and have the correct line item description. All requests to be accompanied by relevant/appropriate supporting documents e.g. cash sale slips, receipts and so forth.

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Written or verbal quotations

16. The conditions for the procurement of goods or services through written or verbal 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 Central Supplier Database,
- (b) to the extent feasible, providers must be requested to submit such quotations in writing;
- (c) 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;
- (d) the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices; and
- (e) if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.

Formal written price quotations

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

- (a) quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the municipality;
- (b) quotations may be obtained from providers who are registered on CSD;
- (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer, and
- (d) the accounting officer must record the names of the potential providers and their written quotations.
- (e) The municipality must implement proper record keeping.

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

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

18. The procedure for the procurement of goods or services through written or verbal quotations or formal written price quotations, is as follows:

- (a) when using the CSD the accounting officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;

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- (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 by the user department and a supply chain practitioner, 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 subdelegation;
- (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 preference points system (PPFA and associated regulations), must be awarded to the bidder who scored the highest points;
- (g) Certain transactions like accommodation, conferencing, training, placing advertisements in newspapers may be negotiated directly with one supplier than requesting for comparative quotations.

Competitive bids

19. (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 paragraph 11(2) of this Policy.

(2) No requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

Process for competitive bidding

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

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

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

Bid documentation for competitive bids

- 21.** The criteria to which bid documentation for a competitive bidding process must comply, must –
- (a) take into account –
 - (i) the general conditions of contract and any special conditions of contract, if specified;
 - (ii) any Treasury guidelines on bid documentation; and
 - (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
 - (b) include the preference points system to be used, goals as contemplated in the Preferential Procurement Regulations 2017 and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
 - (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
 - (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish–
 - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
 - (aa) for the past three years; or
 - (bb) since their establishment if established during the past three years;
 - (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
 - (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
 - (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality is expected to be transferred out of the Republic; and
 - (f) 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.

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- (g) Summary CSD report
- (h) Municipal rates and taxes not older than three months for Company & Directors
- (i) Sale of tender documents
Tender document shall be made available to bidders upon payment of a non-refundable fee of R500.00 or can be downloaded for free on the e-tender portal.

Public invitation for competitive bids

22. (1) The procedure for the invitation of competitive bids, is as follows:

- (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the municipality or any other appropriate ways including an advertisement on the E-Tender portal (MFMA CIRCULAR 81); and
- (b) the information contained in a public advertisement, must include –
 - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to 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.;
 - (iv) indicating whether or not the bid will be evaluated on functionality and stipulate the weighting criteria
 - (v) pre-qualification criteria in terms of the PPPFA Regulation 2017 number 4
 - (vi) sub-contracting criteria (30 %) in terms of the PPPFA Regulation 2017 number 9

(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.

Procedure for handling, opening and recording of bids

23. 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

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- (iii) received after the closing time should not be considered and returned unopened immediately.
 - (a) Closure time for bids shall be 12h00 as stipulated in the tender documents.
 - (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price;
 - (c) No information, except the provisions in subparagraph (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
 - (e) The accounting officer must –
 - (i) record in a register all bids received in time;
 - (ii) make the register available for public inspection; and
 - (iii) publish the entries in the register and the bid results on the website.
- (f) Bidders shall be required to submit bids for a period specified in the bid document and all bids received will remain valid for period of 90 **working** days after the closing date.

Negotiations with preferred bidders

- 24.** (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.

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.

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Tenders to be evaluated on functionality

- (1) An organ of state must state in the tender documents if the tender will be evaluated on functionality.
 - (2) The evaluation criteria for measuring functionality must be objective.
 - (3) The tender documents must specify-
 - (a) the evaluation criteria for measuring functionality;
 - (b) the points for each criteria and, if any, each sub-criterion; and
 - (c) The minimum qualifying score for functionality.
 - (4) The minimum qualifying score for functionality for a tender to be considered further-
 - (a) Must be determined separately for each tender; and (b) may not be so-
 - (i) Low that it may jeopardize the quality of the required goods or services; or (ii) high that it is unreasonably restrictive.
 - (5) Points scored for functionality must be rounded off to the nearest two decimal places.
 - (6) A tender that fails to obtain the minimum qualifying score for functionality as indicated in the tender documents is not an acceptable tender.
 - (7) Each tender that obtained the minimum qualifying score for functionality must be evaluated further in terms of price and the preference point system and any objective criteria envisaged in PPPFA regulation 11.

Revised preferential points and BB-BEE level contributors

- (i) 80/20 preference points system for acquisition of goods and services for rand value equal to or above R30 000 and up to R50 million.
- (ii) 90/10 preference points system for acquisition of goods and services for rand value above R50 million
- (iii) B-BBEE points will be allocated as follow

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80/20

B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

90/10

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

Consider sworn affidavit (EME & QSE) in terms of NT circular no.5 of 2016

Local production and content

Municipality to use the minimum threshold for local production and content as set out by Department of Trade and Industry

Committee system for competitive bids

26. (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;

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(2) The accounting officer appoints 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.

Bid specification committees

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

(2) Specifications –

(a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;

(b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or 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; and

(g) (i) for procurements of R30 000 to R200 000 must be approved by the Chief financial officer prior to publication of the invitation to bids in terms of paragraph 22 of this policy

(ii) for procurements of R200 000 to infinity must be approved by the Accounting Officer prior to publication of the invitation to bids in terms of paragraph 22 of this policy

(h) indicating whether or not the bid will be evaluated on functionality and stipulate the weighting criteria

(i) pre-qualification criteria in terms of the PPPFA Regulation number 4

(j) sub-contracting criteria (30 %) in terms of the PPPFA Regulation number 9

(3) A bid specification must be composed of at least one member from the supply chain management office, a chairperson and other members from user departments as appointed by the accounting officer.

Other members' participation ceases with the completion of the compilation of a particular specification.

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

Bid evaluation committees

28. (1) A bid evaluation committee must –

(a) evaluate bids in accordance with –

(i) the specifications for a specific procurement; and

(ii) the points system set out in terms of PPPFA regulation

(b) evaluate each bidder's ability to execute the contract;

(c) Evaluation process/criteria

(i) All evaluators/members of Bid Evaluation Committee should be cleared at the level of "CONFIDENTIALITY" and should be required to declare their financial interest annually.

(ii) No persons may interfere with the SCM system of Fetakgomo Tubatse Local Municipality, or tamper with any quotation/bid after its receipt.

Fetakgomo Tubatse Local Municipality must reject a proposal for the award of a contract if the recommended bidder has committed a proven corrupt or fraudulent act in competing for the particular contract.

(iii) Fetakgomo Tubatse Local Municipality must disregard the bid of any bidder if that bidder, or any of its directors:

- Have abused the SCM system of Fetakgomo Tubatse Local Municipality
- Have failed to perform on any previous contract and the proof exists.
- Such actions must be communicated to the National Treasury.

(iv) Quotations or Bids above R30 000 but not exceeding R200 000 must be evaluated against the predetermined criteria in the bid document by a Supply Chain Management practitioner & user

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department. A report will then be forwarded to the Chief Financial Officer for approval and appointment. The criteria to be taken into account are as per section 28 (10(c)(v):

- (v) Bids above R200 000 must be evaluated against the predetermined criteria in the bid document.

The criteria to be taken into account are inter alia:

- Compliance with minimum requirements
- Compliance with specification/ TOR and conditions of the bid.
- Functionality
- Price
- the BEE status level of contribution

- (vi) Completion and signing of bids

-During evaluation the evaluation committee must do a compliance check that the quotation/bid documentation complies with the predetermined conditions and that all required forms and information are submitted, completed in full and legible.

-The invitation to bid and all forms that form part of the bid document must be signed in ink. All declarations must also be signed and all witnesses must also sign to qualify as valid claims.

(d)check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, and;

- (e) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.

- (f) Disqualify bids of which any documents that may be required are not attached

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

(a) officials from different departments as appointed by the accounting officer.

(b) at least one supply chain management practitioner of the municipality.

(c) officials from user departments may be invited to specific evaluation committee meeting

(d) technical experts may be invited to sit in the bid evaluation meeting.

- (3) (a) the accounting officer or delegate must establish and appoint one or more Bid Evaluation Committee, as per requirement

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(b) No person other than a member of the Bid Evaluation Committee is allowed to attend the meeting.

Bid adjudication committees

(c) should a member declare a conflict of interest at any stage, the member may not be part of the Bid Evaluation Committee and must be replaced by a member of suitable expertise.

29. (1) A bid adjudication committee must –

(a) consider the report and recommendations of the bid evaluation committee; and

(b) either –

(i) depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or

(ii) make another recommendation to the accounting officer how to proceed with the relevant procurement.

(2) A bid adjudication committee must consist of at least four senior managers of the **municipality** which must include –

(a) the chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer;

(b) at least one senior supply chain management practitioner who is an official of the municipality, and
(b) 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) (a) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –

(i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;

(ii) notify the accounting officer.

(b) The accounting officer may –

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

(6) The accounting officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.

(7) The accounting officer must comply with section 114 of the Act within 10 working days

(8) The Accounting Officer must consider delegating the internal audit to review bid of R10m (MFMA circular 68)

(9) All bid committee members must sign the municipal code of conduct for Bid Committee and adhere to the (*Guidelines for Municipal Bid Adjudication Committees June 2006 (mfma circular 34)*)

Procurement of banking services

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

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

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

Procurement of IT related goods or services

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31. (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** disagrees with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the relevant provincial treasury and the Auditor General.

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

32. (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) 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.

Competitive bidding processes must be the first option before considering participating in a SCM regulation

32. Delay in implementing the procurement plan should not be a reason for participating in SCM regulation

33. (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.

Proudly SA Campaign

34. 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:

- Firstly – suppliers and businesses within the municipality or district;
- Secondly – suppliers and businesses within the Limpopo province;
- Thirdly – suppliers and businesses within the Republic.

Appointment of consultants

35. (1) The accounting officer may procure consulting services provided that any Treasury guidelines 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**.

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(5) Accounting Officers must only contract with consultants after a gap analysis report has confirmed that the municipality does not have the requisite skills or resources in its permanent employment to perform the services required.

(6) Evidence of acute planning of the project must be visible to all relevant persons including the administration and political oversight mechanisms in place at the municipality

(7) Accounting officers of municipalities must appoint consultants on a time and cost basis with specific start and end dates.

(8) Travel and subsistence costs for the appointment of consultants must be in accordance with the travel policy of government and the contract price specifies all travel & subsistence costs.

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

36. (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;

(a) Circumstances that warrant emergency dispensation, includes but are not limited to-

- The possibility of human injury or death;

- The prevalence of human suffering or deprivation of rights;

- The possibility of damage to property;

- The interruption of essential services, including transportation and communication facilities or support services critical to the effective functioning of the municipality as a whole;

-The possibility of serious damage occurring to the natural environment;

-The possibility that failure to take necessary action may result in the municipality not being able to render an essential community service;

- The possibility that the security of the Municipality could be compromised.

(b) The prevailing situation, or imminent danger, should be of such nature that it could not be readily alleviated by interim measures, in order to allow time for the formal tender process.

(c) Procurement in the case of emergencies must be tacitly approved by the relevant director prior to incurring the expenditure and must be reported to the Municipal manager on the ensuing days.

(ii) if such goods or services are produced or available from a single provider only;

(iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;

(iv) acquisition of animals for zoos and/or nature and game reserves; or

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- (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes;
 - (vi) in the case of a strip and quote, quotations will be sourced from one service providers listed on the CSD on rotational basis.
- (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.

In terms of MFMA section 168 municipalities are required to submit the deviation register to provincial treasury on a quarterly basis

Unsolicited bids

37. (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

- (a) reasons as to why the bid should not be open to other competitors;
- (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
- (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.

(4) The accounting officer must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, to the National Treasury and the relevant provincial treasury for comment.

(5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, depending on its delegations.

(6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.

(7) When considering the matter, the adjudication committee must take into account –

- (a) any comments submitted by the public; and
- (b) any written comments and recommendations of the National Treasury or the relevant provincial treasury.

(8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the 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.

Combating of abuse of supply chain management system

38. (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,

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unfair or irregular practices or failure to comply with this Policy, and when justified –

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- (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
 - (iii) has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).

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

(3) Where there are allegation of financial misconduct the municipality must refer the matter to the financial misconduct board in terms of the Municipal Regulation on Financial Misconduct. Allegations of financial offence must be reported to SAPS

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Part 3: Logistics, Disposal, Risk and Performance Management

Logistics management

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

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

Disposal management

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

- (i) The asset will be disposed off if it is no longer needed for the provision of minimum level of the basic service,

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(ii) After the council of the municipality has taken a resolution in a meeting that is open to the public for the disposal of the asset.

(2) Assets may be disposed of by –

(i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;

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

(iii) selling the asset; or

(iv) destroying the asset

(2) 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.

Risk management

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

(a) Operationalisation of the different supply chain management committees,

(b) Proper segregation of duties in the supply chain management unit,

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- (c) Focusing on business critical functions by the management,
 - (d) Evident risk management programmes
- (2) Risk management must include –
- (a) the identification of risks on a case-by-case basis;
 - (b) the allocation of risks to the party best suited to manage such risks;
 - (c) acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
 - (d) the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
 - (e) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

Performance management

42. 1)The accounting officer must establish and implement an 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 objectives of this Policy were achieved.

(2) Delivery period

Unless otherwise agreed, delivery is to be affected within 7 working days for procurement of goods not exceeding R200 000.

(3) Defaulting service providers

Bidders that fail to perform their duties shall be suspended from the municipality's acquisition system as service provider for a period of 12 months.

(4) Submit to council a quarterly report on the performance of service providers

Part 4: Other matters

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

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

(2) Before making an award to a person the accounting officer must first check with SARS whether that person's tax matters are in order. The use CSD and the implementation of MFMA Circular 90 refers

Prohibition on awards to persons in the service of the state

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

- (a) who is in the service of the state;
- (b) if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
- (c) a person who is an advisor or consultant contracted with the **municipality**.

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

45. The accounting officer must ensure that the notes to the annual financial statements disclose particulars of any award of more than R2000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –

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

46. Special Conditions on awards of tenders.

- a)** The Municipality has no obligation to appoint any bidder and reserves the right to appoint bidders and or collectively execute the contract and negotiate further conditions and requirements with the successful bidder.
- b)** The Municipality will not appoint any bidder that has already been appointed for two projects in a financial year. This is to advance procurement opportunities for the SMME's and other designated groups as identified by PPPFA regulation of 2017.

Ethical standards

47. (1) A code of ethical standards as set out in **[subparagraph (2)]** is hereby established for officials and other role players in the supply chain management system of the **municipality** in order to promote –

- (a) mutual trust and respect; and
- (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.

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- (2) An official or other role player involved in the implementation of this 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 **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

(c) in all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act.

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

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

(a) any inducement or reward to the **municipality** for or in connection with the award of a contract; or

(b) any reward, gift, favour or hospitality to –

(i) any official; or

(ii) any other role player involved in the implementation of this Policy.

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

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

Sponsorships

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

(a) a provider or prospective provider of goods or services; or

(b) a recipient or prospective recipient of goods disposed or to be disposed.

Objections and complaints

50. 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.

Resolution of disputes, objections, complaints and queries

51. (1) The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes –

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- (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.

(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.

(5) This paragraph must not be read as affecting a person's rights to approach a court at any time.

Contracts providing for compensation based on turnover

51. 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
- (d) that such compensation must be performance based.

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Subcontracting

52. The revised regulations require organs of state to identify tenders, where it is feasible, to sub-contract a minimum of 30% of the value of the contract for contracts above R30 million.

The tenderer must sub-contract a minimum of 30% of the value of the contract to EMEs or QSEs or EMEs or QSEs which are 51% owned by either of the following: Blacks; Black Youth; Black Women; Black people with disabilities; Black people living in rural or underdeveloped areas or townships; cooperatives owned by Black people; Black people who are military veterans.

For contracts below R30 million, tenderers may be required to sub-contract to local SMMEs ,where it is feasible, on projects identified by the municipality.

Subcontracting after award

53. 1) A person awarded a contract may only enter into a subcontracting arrangement with the approval of the organ of state.

(2) A person awarded a contract in relation to a designated sector, may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

(3) A person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

Cancellation of tender

54. (1) An organ of state may, before the award of a tender, cancel a tender invitation if-

- (a) due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;
- (b) funds are no longer available to cover the total envisaged expenditure;
- (c) no acceptable tender is received; or

(d) *there is a material irregularity in the tender process.*

(2) The decision to cancel a tender invitation in terms of subregulation (1) must be published in the same manner in which the original tender invitation was advertised.

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

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Remedies

55. (1) Upon detecting that a tenderer submitted false information regarding its BBBEE status level of contributor, local production and content, or any other matter required in terms of these Regulations which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any subcontracting arrangements, the organ of state must-

(a) inform the tenderer accordingly;

(b) give the tenderer an opportunity to make representations within 14 days as to why-

- (i) the tender submitted should not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part;
- (ii) if the successful tenderer subcontracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and
- (iii) the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state; and

(c) if it concludes, after considering the representations referred to in subregulation

(1)(b), that-

(i) such false information was submitted by the tenderer-

(aa) disqualify the tenderer or terminate the contract in whole or in part; and

(bb) if applicable, claim damages from the tenderer; or

(ii) the successful tenderer subcontracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.

(2)(a) An organ of state must-

(i) inform the National Treasury, in writing, of any actions taken in terms of subregulation (1);

(ii) provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and

(iii) submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.

(b) The National Treasury may request an organ of state to submit further information pertaining to subregulation (1) within a specified period.

(3) The National Treasury must-

(a) after considering the representations of the tenderer and any other relevant information, decide whether to restrict the tenderer from doing business with any organ of state for a period not exceeding 10 years; and

(b) maintain and publish on its official website a list of restricted suppliers.

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Cessionary payment

56. (a) The Municipality shall accept cessionary payment under the following conditions:

- (i) Signed agreement between the parties involved.
- (ii) Provided that the cessionary has a compliant tax status.
- (iii) The cessionary is not blacklisted in the National Treasury Database.

(b) Cession below R200 000 shall be signed by the Chief Financial officer

(c) Cession above R200 000 shall be signed by the Accounting officer.

Contracts Having Budgetary Implications beyond three Financial Years

57. (1)The Municipality may not enter into any contract that will impose financial obligations beyond the three years covered in the annual budget for that financial year, unless the requirements of section 33 of the Municipal Finance Management Act have been fully complied with.

Public-Private Partnerships

(1) Part 2 of chapter 11 of the MFMA applies to the procurement of public-private partnership agreements. Section 33 also applies if the agreement will have multi-year budgetary implications for the Municipality within the meaning of that section.

Extending/ Expansion of contracts

58. (a) It is recognized that, in exceptional cases, an accounting officer may deem it necessary to expand or vary order against the original contract.

(b) Contracts may be expanded or varied by not more than 20% for construction related goods, works and/or services and 15% for all other goods or services of the original value of the contract after approval of the Chief Financial officer and while on tenders above R200 000 must be approved by the Accounting officer.

(c) Any expansion or variation of contract in excess of these thresholds must be dealt with in terms of the provision to section 116(3) of the MFMA which will be regarded as an amendment to contract and should be approved by council.

Review

59. This Policy will be reviewed annually.

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