

**Buffalo City Metropolitan Municipality  
Supply Chain Management Policy**



**1. POLICY TITLE**

**SUPPLY CHAIN MANAGEMENT POLICY**

**2. 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;

Words importing the singular shall include the plural and vice versa;

Words importing persons shall include companies, closed corporations and partnerships;

Words importing the masculine gender shall include the feminine gender and vice versa.

**“BAC”** refers to the Bid Adjudication Committee

**“Bid opening date”** means the date for the opening of bids as specified in the tender documentation;

**“Bid validity period”** means the period from the bid opening date, during which a bidder’s offer is considered to be legally binding, in terms of its content and conditions;

**“Broad-Based Black Economic Empowerment Act”**: means the Broad-Based Black Economic Empowerment Act, 53 of 2003 and Codes of Good Practice pertaining thereto.

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

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

**“CIDB”** means Construction Industry Development Board

**“Construction Industry Development Board (CIDB) Act”**: means the

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Construction Industry Development Board Act, 38 of 2000 and includes the Regulations pertaining thereto

**“Contract Participation goal”**: the value of the participation of a specific target group that a contractor must achieve in the performance of a contract, expressed as a percentage of the bid sum less provisional sums, contingencies and VAT

**“Day”** means a calendar day;

**“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;

**“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 (c) of this Policy;

**“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 Buffalo City Municipality

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must keep in terms of paragraph 14 of this policy;

**“Metro”** means the Metropolitan Municipality of the Buffalo City or any person(s) or committee delegated with the authority to act on its behalf.

**“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); Preferential Procurement Regulations, 2022
- (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);

**“National Treasury’s Circular 11 of 2016/17”**: circular on Microsoft software, products & services cost containment project implementation

**“National Treasury SCM Circular 14 of 2016/17”**: circular on amendments of standard bidding documents (SBD 6.1 and 6.2) and municipal bidding documents (MBD 6.1 and 6.2) in respect of preference points claim form and local content in terms of the preferential procurement regulations 2017 and the implementation guide.

**“National Treasury SCM Circular 34 of 2006”**: circular on reporting of awards above R100 000 and guidelines for bid adjudication committee members.

**“National Treasury SCM Circular 77 of 2015”**: Model SCM policy for Infrastructure Procurement and Delivery Management

**National Treasury SCM Circular 81 of 2015**:  
Circular of Web-based Central Supplier Database

**National Treasury SCM Circular 83 of 2016**:

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Circular of advertisement of bids and the publication of notices in respect of awarded bids, cancelled bids, variations and extensions of existing contracts on the e-Tender Publication Portal

**“Preference Points”**: mean the points for preference referred to in this Policy.

**“Preferential Procurement Policy Framework Act” (PPPFA)**: means the Preferential Procurement Policy Framework \*(Act No. 5 of 2000)

**“Preferential Procurement Regulations, 2022”**: means the regulations pertaining to the PPPFA as amended on 16 January 2023.

**“Responsible Agent”**: means either an internal project manager (being an employee of the Metro) or an external consultant (appointed by the Metro), as the case may be, who is responsible for the implementation of a project or part thereof.

**“QCBS”** means the Quality and Cost Based Selection approach for the appointment of Consultants

**“SARS Tax e-file”** Guide to the Tax Compliance Functionality on E-filing

**“Targeted Enterprises”**: means those enterprises (suppliers, manufacturers, service providers or construction works contractors) that own, operate or maintain premises within the target area defined in the contract, for the purposes of carrying out their normal business operations.

**“Targeted Labour”**: means that individual employed by a contractor, or sub-contractor, in the performance of a contract, who is defined in the contract as the target group, and who permanently resides in the defined target area.

**“The Act”** means the Local Government: Municipal Finance

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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;

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

“**Written or Quotations**” means quotations referred to in paragraph 12(1) (b) of this Policy.

### **3. LEGAL MANDATES AND REGULATORY FRAMEWORK**

This Policy gives effect to the following Legislation:

- 3.1 The Preferential Procurement Policy Framework Act 2000 (Act no.5 of 2000):
- 3.2 The Broad-Based Black Economic Empowerment Act 2003 (Act 53 of 200203);
- 3.3 The Construction Industry Development Board Act 2000 (Act No.38 of 2000);
- 3.4 The Local Government: Municipal Systems Act 2000 (Act No. 32 of 2000)
- 3.5 The Promotion of Administrative Justice Act 2000, and
- 3.6 Any regulations promulgated in terms of the legislation referred to above.

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### **4. PURPOSE OF THE POLICY**

The Purpose of this policy is to ensure sound, sustainable and accountable supply chain management practices within the Buffalo City Metropolitan Municipality, whilst promoting broad based black economic empowerment as a priority in terms of the goals and objectives of the municipality's preferential procurement policy and other empowerment strategies.

### **5. STRATEGIC OBJECTIVES**

The objectives of this policy are:

- 5.1 To give effect to Section 217 of the Constitution of the Republic of South Africa;
- 5.2 To implement a policy that is fair, equitable, transparent, competitive and cost effective;

### **6. POLICY PRINCIPLES**

This Policy is underpinned by the following Principles:

#### **6.1 Uniformity**

This policy will also strive to ensure that the objectives of uniformity in supply chain management systems between all organs of state is not undermined, and that consistency with national economic policy on promotion of investments and doing business with the public sector is maintained

#### **6.2 Compliance with ethical standards**

In order to create an environment where business can be conducted with integrity and in a fair and reasonable manner, this policy provides that all representatives of the Municipality involved in supply chain management activities shall act with integrity and in accordance with the ethical standards set out in this policy

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**7. SCOPE OR APPLICABILITY OF THE POLICY**

This Policy applies when the municipality -

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

This Policy, except where provided otherwise, does not apply in respect of 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

**8. GOVERNANCE ISSUES/DELEGATIONS/AUTHORITY**

This policy is effective from a date to be determined by Council of the municipality.

This policy shall be reviewed annually and when considered necessary by the accounting officer, proposals for the amendment of this policy shall be submitted to Council for approval.

All correspondence with regards to this Policy shall be addressed to the City Manager and will be available from the following:

Mayoral Committee Members

All Councillors

City Manager's office

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**9 POLICY PROCEDURES/IMPLEMENTATION**

See Annexure A

**10. COMPETENCE AND CAPACITY TO IMPLEMENT THE POLICY**

- 10.1 The Policy should be available and communicated to all staff
- 10.2 All relevant staff must be aware of the prescriptions of the policy
- 10.3 All relevant staff must be aware of the procedures contained in this policy
- 10.4 Relevant Supervisors/Managers must ensure compliance with this policy

**11. CLASSIFICATION TABLE**

<b><i>Governance</i></b>	<b>2.0</b>	<b><i>Governance</i></b>
<b><i>Sub classification</i></b>	<b>N/A</b>	<b>None</b>
<b><i>Title</i></b>	<b>Supply Chain Management Policy</b>	
<b><i>File Number</i></b>		
<b><i>Related Policies or Procedures</i></b>	<b>Standard Policy on Infrastructure Procurement and Delivery Management</b>	
<b><i>Responsible Officer</i></b>	<b>Accounting Officer</b>	
<b><i>Original Authors</i></b>	<b>T.Sali</b>	
<b><i>Current Author</i></b>	<b>D. Gwabeni</b>	



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<b><i>Effective date</i></b>	<b>1 July 2023</b>
<b><i>Last Review Date</i></b>	<b>31 March 2023</b>
<b><i>Review Date</i></b>	<b>31 May 2023</b>

**ANNEXURE A: SCM POLICY PROCEDURE**

**CHAPTER 1. IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY**

**1. Supply chain management policy**

- (1) All officials and other role players in the supply chain management system of the Buffalo City 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.

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

- (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 sub delegation of powers and duties delegated to an accounting officer in terms of subparagraph (1).
- (3) The accounting officer may not sub delegate any supply chain management powers or duties to a person who is not an official of the municipality or to a committee which is not exclusively composed of officials of the municipality;
- (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.

### **3. Sub delegations**

- (1) The accounting officer may in terms of section 79 or 106 of the Act sub

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delegate any supply chain management powers and duties, including those delegated to the accounting officer in terms of this Policy, but any such sub delegation must be consistent with sub paragraph (2) of this paragraph and paragraph 4 of this Policy.

(2) The power to make a final award -

(a) above R10 million (VAT included) may not be sub delegated by the accounting officer;

(b) above 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; or

(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) 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

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- (c) the reason why the award was made to that person.
- (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;
  - (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.

**4. 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 whenever there are serious and material problems in the

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implementation of this Policy, immediately submit a report to the 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 Executive Mayor.

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

(5) Councillors barred from serving on Municipal tender committee.

(a) No councillor of the Buffalo City Metropolitan Municipality may be a member of the municipal bid specification, evaluation or adjudication committees or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer.

### **5. Supply Chain Management Unit**

(1) A Supply Chain Management unit is hereby established to implement this Policy, the members of which shall adhere to the METRO Code of Conduct.

(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.

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

The training of officials involved in implementing this Policy should be in accordance with any Treasury guidelines on Supply Chain Management training



## CHAPTER 2

### SUPPLY CHAIN MANAGEMENT SYSTEM

#### Format of Supply Chain Management System:

9. This Policy provides systems for -
- (i) Demand management;
  - (ii) Acquisition management;
  - (iii) Logistics management;
  - (iv) Disposal management;
  - (v) Risk management; and
  - (vi) Performance management.

#### Part 1: Demand Management

##### 10. System of demand management

- (1) The Accounting Officer must establish and implement an appropriate demand management system 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 are quantified, budgeted for and timely and effectively delivered at the right locations and at the critical delivery dates, and are of the appropriate quality and quantity at a fair cost;
  - (b) take into account any benefits of economies of scale that may be



- derived in the case of acquisitions of a repetitive nature; and
- (c) provide for the compilation of the required specifications to ensure that its needs are met.
  - (d) To undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.

## **Part 2: Acquisitions Management**

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

- (1) The Accounting Officer must implement the system of Acquisition Management set out in this Part 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 considered.
  
- (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.

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- (3) The 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.

**12. Range of procurement processes**

- (1) Goods and services may only be procured by way of -
- (a) petty cash purchases, up to a transaction value of R2 000 (VAT included);
  - (b) written quotations for procurements of a transaction value over R2 000 up to R10 000 (VAT included);
  - (c) formal written price quotations for procurements of a transaction value over R10 000 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 –
    - (i) written 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.

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

- (1) 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 furnished the municipality with the SARS Tax Compliance Status Pin in order to access the tax related information on E-Filing for verification that 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; or



(iii) whether a spouse, child or parent of the provider or 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 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; 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; which must also register on Central Supplier Database
  - (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) All suppliers wishing to trade with BCMM must first register via the Central Supplier Database (CSD)
- (3) 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.
- (4) The list must be compiled per commodity and per type of service.
- (5) Prospective BCMM service providers are required, to register on the Data Base

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and furnish the following documents as a minimum to meet the **BCMM** listing criteria:

- (a) Certified ID copies of people controlling the entity (. i.e. owner, members of close corporation, directors of companies)
- (b) Certified copies of company or other entity registration documents
- (c) Certified Banking Details and or cancelled cheque
- (d) Declaration of being in the Service of the State - MBD 4 Form;
- (e) Valid certification in respect of Exempted Micro Enterprise or Valid BBBE Status Level of Contributor (where applicable)
- (f) A physical copy of the valid original tax clearance certificate must be sent to the supplier database unit before the final approval is granted
- (g) a clearance certificate issued by BCMM in relation to municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties; alternatively, a valid lease agreement in the event that the prospective service provider is not the owner of the property upon which its business is situated;
- (h) Proof of CIDB Registration
- (i) Relevant identification numbers of all members, directors and partners

**15. Petty cash purchases**

- (1.) 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 Chief Financial Officer determines the terms on which a manager may delegate responsibility for petty cash to
  - (b) an official reporting to the manager;
  - (c) The Chief Financial Officer determines the maximum number of petty

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- cash purchases or the maximum amounts per month for each manager;
- (d) The Chief Financial Officer determines any types of expenditure from petty cash purchases that are excluded, where this is considered necessary; and
- (e) 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**

- (1) The conditions for the procurement of goods or services from R0 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,
  - (b) Where quotations have been obtained from providers who are not listed, such providers must meet the listing criteria for registration on the Municipality's Database subject to authorisation by the Accounting Officer or any official delegated by the Accounting Officer.
  - (c) To the extent feasible, providers must be requested to submit such quotations in writing;
  - (d) If it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the CFO or any duly delegated official and reported quarterly to the accounting officer or another official designated by the Accounting Officer;
  - (e) 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**

- (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 not listed, provided that such providers meet the listing criteria set out in this Policy;
  - (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or any duly delegated official, 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 or 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 more than 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

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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 monthly 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 preference points system (PPPFA and associated regulations), must be awarded to the bidder who scored the highest points
  - (1) The CFO shall determine the requirements for proper record keeping.
  - (2) Goods and services below R10 000 and R30 000 shall be awarded by the Programme Manager Acquisitions and goods and services between R30 001 and R200 000 shall be awarded by the General Manager: Supply Chain Management

### **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 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.



## **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 as detailed in paragraph 21
  - (b) Public invitation of bids as detailed in paragraph 22;
  - (c) Site meetings or briefing sessions as detailed in paragraph 22;
  - (d) Handling of bids submitted in response to public invitation as detailed in paragraph 23;
  - (e) Evaluation of bids as detailed in paragraph 28;
  - (f) Award of contracts as detailed in paragraph 29;
  - (g) Administration of contracts
    - (i) After approval of a bid, the accounting officer and the bidder must enter into a written agreement.
  - (h) Proper record keeping
    - (i) Original/legal copies of written contracts agreements should be kept in a secure place for reference purposes.

## **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 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;

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- (b) include the preference points system to be used, goals as contemplated in the Preferential Procurement Regulations and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish-
  - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements - (aa) for the past three years; or
    - (bb) since their establishment if established during the past three years;
  - (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
  - (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
  - (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
  - (v) in addition to the above requirements, the following documents must accompany the submission of a bid, failing which the bid may be disqualified:
    - (aa) Fully completed and signed Form of Offer
    - (bb) MBD 1 Invitation to Bid



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- (cc) MBD 3
  - MBD 3.1 Pricing Schedule – Firm Prices (Purchases) or
  - MBD 3.2 Pricing Schedule – Non-Firm Prices (Purchases) or
  - MBD 3.3 Pricing Schedule 3 (Professional Services)
- (dd) MBD 4 Declaration of Interest
- (ee) MBD 5 Declaration for Procurement above R10 Million (all applicable taxes included if applicable)
- (ff) MBD 6
  - MBD 6.1 Preference Points Claim Form in terms of the Preferential Procurement Regulations 2022
  - MBD 6.2 Declaration Certificate for Local Production and Content for Designated Sectors per national treasury or Department of Trade and industry guidelines.
- (gg) MBD 7
  - MBD 7.1 Contract Form - Purchase of Goods/Works or
  - MBD 7.2 Contract Form - Rendering of Services or
  - MBD 7.3 Contract Form - Sale of Goods/Works
- (hh) MBD 8 Declaration of Bidder's Past Supply Chain Management Practices
- (ii) MBD 9 Certificate of Independent Bid Determination
- (jj) Suppliers must submit a Valid Original Tax Clearance Certificate or a SARS Tax Compliance Status Pin along with the MBD-2 form, where an Original Tax Clearance Certificate is not available at the time of submission. Note that the SARS pin code cannot be provided after the tender had closed for purposes/conditions required for such submission of tender
- (kk) Current Debt Clearance or Valid Lease Agreement
- (ll) Valid Original or certified copy BBBEE Certification, if applicable and intending to claim BBBEE points
- (mm) For bids over R10 Million (including VAT) audited annual financial statements
  - (aaa) for the past three years; or
  - (bbb) since their establishment if established during the past three years;

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(nn) Proof of CIDB Registration, if applicable

(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, 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, e- Tender Portal or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and

(b) the information contained in a public advertisement, must include -

(i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long-term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to 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 or 7 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



- (5) The bid validity period for all tenders shall be 90 calendar days or such period as may be prescribed by the Accounting Officer or a duly delegated official, calculated from the closure date for the submission of bids, provided that such period may be extended in accordance with the provisions below.
- (6) If the extension of a bid validity period is required, the Accounting Officer or a duly delegated official may approve a communication to request from bidders for a further extension in writing prior to the expiry of the bid validity period.
- (7) Where the extension of a bid validity period has been approved, bidders must be requested in writing to agree to such extension prior to the expiry of the bid validity period;<sup>1</sup> provided that the failure of a bidder to respond within 48hrs will be treated as his or her having no objection to the extension.
- (8) Upon written request having been made for the extension of a bid validity period, if a bidder:
  - (a) refuses to agree to the extension, then his or her bid may be excluded; or
  - (b) imposes terms or conditions on his or her agreement to the extension, then the Accounting Officer or a duly delegated official may accept or reject such terms or conditions and either disqualify or permit the bid to be considered further.

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

The procedures for the handling, opening and recording of bids, are as follows:

- (a) Bids-
    - (i) must be opened only in public;
    - (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
    - (iii) received after the closing time should not be considered and returned unopened immediately.
  - (b) any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price
  - (c) No information, except the provisions in subparagraph (b), relating to the bid
-

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

- (d) The accounting officer or designated official 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.

### **24. Negotiations with preferred bidders**

- (1) The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidder, provided that such negotiation –
  - (a) Does not allow any preferred bidder a second chance 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 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.



## **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 appoints the members of each committee, taking into account section 117 of the Act, and
- (3) The 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, and including the committee system as envisaged in the BCMM SCM Policy of Infrastructure Procurement and Delivery Management
- (5) The accounting officer may apply the committee system to formal written price quotations.

## **27. Bid specification committees**

- (1) All bid specifications and documentation must be compiled by an ad-hoc bid specification committee constituted for each project or procurement activity.

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### (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 labelling of conformity certification;
- (e) may not refer to any 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 be prepared in accordance with the Preferential Procurement Regulations, 2022 and must comply with the following principles:
  - (i) the 80/20 preference point system is applicable to bids with a Rand value equal to, or above R30 000 and up to a Rand value of R50 million (all applicable taxes included).
  - (ii) institutions may apply the 80/20 preference point system to price quotations with a value less than R30 000 when appropriate.
  - (iii) the 90/10 preference point system is applicable to bids with a Rand value above R50 million (all applicable taxes included).
  - (iv) not all bids should be invited based on functionality as a criterion but only those where the nature of the required commodity or services needs to take into account quality, reliability, viability and durability of



a service and the bidders technical capacity and ability to execute a contract.

- (v) when the municipality invites a bid that will also be evaluated based on functionality as a criterion, the accounting officer or the delegated official or committee must clearly specify the following aspects in the bid documents:
- The evaluation criteria may include criteria such as the bidder's relevant experience for the assignment, the quality of the methodology; the qualifications of key personnel; transfer of knowledge etc.
  - weight of each criterion, the weight that is allocated to each criterion should not be generic but should be determined separately for each bid on a case by case basis.
  - applicable values that will be utilised when scoring each criterion.
  - the minimum qualifying score that must be obtained for functionality for a bid to be considered further should not be generic and should be determined separately for each bid on a case by case basis.
  - that bids in respect of services, works or goods that have been designated for local production and content, must contain a specific bidding condition that only locally produced goods, services or works or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered as per MBD 6.2
- (g) must be approved by the accounting officer or delegated official prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.
- (h) In any tender where it is claimed or alleged that there is only one or no company meeting the tender specifications, the specification committee may solicit the opinion of a technical expert.
- (i) Must be drafted in such a manner as to effectively achieve the targets and objectives of Chapter 3- Promoting Black

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Economic Empowerment through Metro Procurement Strategies.

- (3) A bid specification committee must be composed of one or more officials of the municipality, preferably the manager responsible for the function involved, and may, when appropriate, include external specialist advisors, Where procurement involves Infrastructure services, the composition of the committee must be in line with the BCMM SCM Policy on Infrastructure Procurement and Delivery Management. Accordingly, BCMM shall adopt a two-bid committee model system with a chairperson appointed for each specification committee.
- (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.
- (5) All contracts exceeding R10 million (Vat Inclusive) must be accompanied by project specific procurement and BBBEE strategies when presented to the Bid Specification Committee.

### **28. Bid evaluation committees**

- (1) An ad- hoc Bid Evaluation Committee shall be constituted for each project or procurement activity to evaluate the bids received.
- (2) The Accounting Officer or his delegated authority shall, taking into account Section 117 of the MFMA, appoint members of the Bid Evaluation Committees
- (3) 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 sub -Section 27(2)(f).
    - (iii) the functionality criteria, if applicable
    - (iv) disqualify and exclude from further evaluation bidders who do not meet the specified minimum qualifying score that must be obtained for functionality
    - (v) Section 7 – Local Production and Content as



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prescribed in the Preferential Procurement Regulations, 2011 pertaining to the Preferential Procurement Policy Framework Act, Act No 5 of 2000 for services, works or goods that have been designated for local production and content, where applicable”,

- (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.
  - (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 instruction for retendering.
  - (f) 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 state
- (4) A 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.
  - (c) Where procurement involves Infrastructure services, the composition of the committee must be in line with the BCMM SCM Policy on Infrastructure Procurement and Delivery Management. Accordingly,



BCMM shall adopt a three-bid evaluation committee model system with a chairperson appointed for each evaluation committee.

## **29. Bid adjudication committees**

- (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; and
  - (b) at least one senior supply chain management practitioner who is an official of the municipality and
  - (c) 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.

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- (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.
    - (a) The accounting officer may -
      - (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
      - (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (6). The accounting officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (7). The accounting officer must comply with section 114 of the Act within 10 working days.
- (8). The bid adjudication committee must always adhere to the requirements of MFMA circular 34 from National Treasury. The municipality shall consider the holding period of the validity of BBBEE and the Tax Clearance certificate to be at the close of tender.



- (9) The SCM practitioners of the municipality is expected to make all means possible to notify and request submission of the above document(s) by the bidder(s) within a suspensive period of 5 (five) days.
- (10) The bid adjudication for infrastructure services must be constituted in line with the BCMM SCM Policy on Infrastructure Procurement and Delivery Management.

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

- (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)(a) 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 and 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

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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.
- (5) BCMM Procured ICT Applications/Leases/Licences, etc.
- (a) ICT applications and leases will be sourced on a competitive bidding basis and contract must make provision for ongoing support and maintenance embracing the permissible three-year period based on rates tendered for such services.
  - (b) “In the event that a contract will impose financial obligations on the municipality beyond the three years covered in the annual budget for that financial year the accounting officer must adhere to the provisions prescribed in Section 33 of the Municipal Finance Management Act.”
  - (c) A Service Level Agreement must be signed by BCMM and the Service Provider which clearly specify the technical specifications and requirements as well as applicable terms and conditions.
- 6) All contractual arrangements or engagements with SITA on procurement of Microsoft software, products and services must be done in accordance with National Treasury circular 11 of 2016/17 if SITA comments on the submission and the municipality disagree with



**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) 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**



The municipality supports the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services.

### **35 Appointment of consultants**

- (1) (a) Consultants should only be appointed when the skills and /or resources to perform a project, duty or study are not available and the Accounting Officer cannot be reasonably expected to train or recruit personnel in the time available.  
  
(b) The Accounting Officer shall take all reasonable steps to ensure the prevention of an over-reliance on consultants by implementing measures to increase the skills and capacity of BCMM's staff complement.  
  
(c) Senior Managers must review, at least annually, whether the objectives of the institution are better achieved through use of consultants or permanent staff, and prepare a report as such for the Accounting Officer.
- (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 during the consultancy service is vested in the municipality.

### **36. Deviations from, and ratification of minor breaches of procurement processes**

#### **Deviations from Procurement Processes**

- (1) (a) The accounting officer is allowed to dispense with the official procurement processes established by this Policy and procure any required goods or services through any convenient process, which may include direct negotiations, but only:
- (i) in an emergency**
- (a) Where an unexpected and sudden event must be dealt with immediately to prevent:
- Human injury, death or suffering;
  - The deprivation of rights;
  - The possibility of damage to property;
  - Suffering and death of livestock and animals;
  - The disruption of essential services, including transportation, electrical, water, sanitation, health and communication;
  - The compromising of the security of the State and or the citizens of the Municipality;
  - Serious damage occurring to the natural environment;
  - The failure of the Metro to take necessary action to render an essential community service.





- (b) The circumstances and nature of the situation which could precipitate the consequences contemplated in Section (a) above should be so serious that it could not readily be alleviated by interim measure to permit for normal procurement processes to be followed.
- (c) Sufficient details of the nature and extent of the work and services required should also be inadequate to permit the utilisation of normal procurement processes.
- (d) Emergency procurement should not be used to evade the use of standard procurement processes and procedures
- (e) The principles of competitiveness cost effectiveness, fairness and transparency, and equitability must still be observed as far as is possible.
- (f) When an emergency arises:
- The delegated BCMM official available decides on the action needed to mitigate the threat.
  - Where procurement of goods or services is involved, he/she takes the needed action, using the BCMM Supplier Database as far as possible, and within one working day informs the relevant Head of Directorate and General Manager Supply Chain Management of the action taken and submits the necessary information and documentation regarding the emergency to the SCM Unit.



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

(a) Single source procurement could lead to the undermining of the Constitutional imperatives of fairness, equitability, transparency, competitiveness and cost-effectiveness and may be used sparingly and in exceptional circumstances such as:

- (1) **Intellectual property rights** such as patents, trademarks or copyrights where a service
- (2) Provider is the rightful holder of an innovative product, design or manufacturing process for which there is no equivalent.
- (3) **Maintenance and support of legacy or owned systems** including but not limited to financial management and human resources management systems and other similar systems.
- (4) The motivation for the use of a single source must be substantiated with reasonable proof that there are no alternatives.
- (5) Preference for a particular type of process which is subject to exclusive rights which happens to be national over an alternative process which is, itself, the subject of exclusive rights may not be sufficient to warrant deviation.
- (6) Holders of exclusive rights may also licence others to manufacture patented products or to use their

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technical knowledge or manufacturing process. e.g.  
joint ventures

(7) The existence of licensees may also result in the availability of the protected product from several sources

- (ii) For the acquisition of special works of art or historical objects where specifications are difficult to compile;
- (iii) For the acquisition of animals for zoos and/or nature and game reserves; or
- (iv) In any other exceptional case where it is impractical or impossible to follow the official procurement processes including, but not limited to:
  - (a) Unknown specifications or "Strip and Quote" Repairs

(i) The use of the prescribed Supply Chain Management processes may be "impractical" where, for example, repairs need to be done and it is not possible for the municipality to ascertain or specify the nature or extent of the work required.

(ii) It must be shown that the provider chosen was undertaken in a fair manner so as not to prejudice other potential providers, for example by the rotation of service providers from an approved panel established through an Expression of Interest in accordance with the regulated competitive bidding processes.

(iii) The motivation for deviation in such instances must specify the work to be done, the estimated financial implications and the time frame that the request applies to enable the Accounting Officer to adequately account for making such a decision.



**36(1) (b) Ratification of minor breaches of procurement processes**

The Accounting Officer can 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.

- (i) The accounting officer is responsible for deciding whether a breach of procurement processes is minor or material.
- (ii) In exercising this discretion, the accounting officer must be guided by:
  - (1) the specific nature of the breach: is it simply technical in nature, not impacting in any significant way on the essential fairness, equity, transparency, competitiveness or cost effectiveness of the procurement process?
  - (2) the circumstances surrounding the breach: are the circumstances justifiable or, at least, excusable?
  - (3) the intent of those responsible for the breach: were they acting in good faith?
  - (4) The financial implication because of the breach: what was the extent of the loss or benefit?
- (i) The accounting officer must record the reasons for any deviations in terms of sub Sections (1) (a) and (b) of this policy and report them to the next meeting of the council.



**MANDATORY PROCEDURES TO BE FOLLOWED FOR A VALID  
DEVIATION FROM AND RATIFICATION OF MINOR BREACHES OF  
PROCUREMENT PROCESSES AS PER SUB –SECTION 36 (2) BELOW**

36 (2) For a deviation from and ratification of any minor breaches of the procurement processes the following procedures must be strictly followed:

- a) The directorate requesting the deviation from or ratification of minor breaches of procurement process in terms of sub- Section 36(1) (a) and (b) above must provide detailed reasons why such deviation or ratification is required and submits a ten-point memorandum to the General Manager of the Supply Chain Management Unit for support or otherwise
  - (i) The supported request for deviation must then be sent to the Chief Financial Officer for his support or non/support whereupon the memorandum is submitted to the Accounting Officer for approval or otherwise.
  - (ii) The directorate concerned must ensure that the approved record of the Accounting Officer and the relevant Council resolution are noted at the first available meeting of the Bid Adjudication Committee.
  - (iii) The directorate will furnish the General Manager of the Supply Chain Management Unit with a pack containing the accounting officer's record, the council resolution and the BAC resolution within seven days of the date of the noting by the BAC.
  - (iv) The General Manager of the Supply Chain Management Unit will develop and maintain a Deviations Register which categorises the deviation, notes the number of deviations and total value per category

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- (v) The directorates concerned will submit a monthly report of all expenditure against the deviation to the General manager Supply Chain Management and the Accounting Officer.
  
- (vi) If the expenditure against the approved deviation is likely to exceed the amount approved by the Accounting Officer a new deviation request must be processed in accordance with the procedures detailed above
  
- (vii) The deviation must be included as a note to the annual financial statements

**36 (3)** Sub Section 36(2) does not apply to the procurement of goods and services contemplated in sub Section 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.

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- (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) 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 consider -
  - (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 ejected or not followed, the accounting officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.
- (9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality to the bid may be entered into or signed within 30 days of the submission.



**(38) Combating of abuse of Supply Chain Management System**

- (1) The accounting officer must-
  - (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 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 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



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- (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
- (g) reject the bid of any bidder if that bidder or any of its directors -
  - (i) has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;
  - (ii) has been convicted for fraud or corruption during the past five years
  - (iii) has willfully neglected, reneged on or failed to comply with any government, municipal or other public-sector contract during the past five years; or
  - (iv) has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- (2) The accounting officer must inform the National Treasury and relevant Provincial Treasury in writing of any actions taken in term of subparagraphs (1)(b)(ii), (e) or (f) of this policy.



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

#### **39 Logistics management**

- (1) 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



#### **40 Disposal management**

- (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,
  
- (2). A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection (1), but only after the municipal Council, in a meeting open to the public-
  - (a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and
  - (b) has considered the fair market value of the asset and the economic and community value to be received in exchange for 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

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department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment.

- (4) 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.

### **41 Risk management**

- (1) The criteria for the identification, consideration and avoidance of risks in the supply chain management system, are as follows:
- (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 and Contract & Contract Management**

### **(1) Performance Management**

The accounting officer must establish and implement an internal monitoring system 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) Contracts & Contract Management**

(2.1) The Accounting Officer, or his duly appointed delegate, must ensure that all contracts entered by the municipality are legally sound

(2.2) The Accounting Officer or a duly appointed delegate must develop and implement a contract management system, to address at least the following:

- i. The recording of all contracts procured through the supply chain management process to be recorded in a contract register;
- ii. Monitoring of contracts as advised by user departments; user departments being responsible for the day to management of their respective contracts;
- iii. Establishing and management of a register of restricted service providers who have neglected, reneged on or failed to comply with any BCMM contract, or other municipal or public-sector contract;
- iv. Identification of period contracts that are nearing expiry;
- v. Evaluation of applications for price adjustments;
- vi. Evaluation of applications for variations, amendments, and cancellations;
- vii. Invoking of penalty sections.

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viii. The responsibility for contracts management rests with the respective user departments and the Supply Chain Management Unit will perform an oversight role.

(2.3) The Accounting Officer may approve such procedures or guidelines as are necessary to give effect to the provisions of this Section.

(2.4) The Accounting Officer shall abide by the CIDB Act and the respective Practice Notes, where applicable.

F(2.5) Variations to existing Contracts

- (i) A variation from normal procurement process may be required where necessary additional and unforeseen work needs to be carried out under an existing contract and it is impractical and / or not cost effective for such work to be separated from the main contract
- (ii) The Accounting Officer can approve variations for contracts to be varied by not more than 20% for construction related goods, services and/or infrastructure projects and 15% for all other goods and/or services of the original value of the contract.
- (iii) A request for variation in such instances must be addressed on a case by case basis and must be dealt with in accordance with the General or Special Conditions of Contract governing the contract concerned or alternatively be accompanied by a convincing argument as to why it is impractical and / or non-cost effective for such work to be separated from the main contract

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(iv) Any expansion or variation more than these thresholds must be dealt with in terms of the provisions of Section 116(3) of the MFMA which will be regarded as an amendment to the contract.

(a) The reasons for the proposed amendment must be tabled at Council prior to any contract or agreement being amended.

(b) In addition, the local community must be given at least seven (7) days' notice of the intention to amend the contract or agreement and be invited to submit representations to the municipality.

The contents of the above Sections are not applicable to specific term contracts (annual contracts) which refer to orders placed as and when commodities are required and at the time of awarding contracts, the required quantities were unknown.



**Part 4: Other matters**

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

- (1) No award above R15 000 may be made in terms of this Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (2) Prior to the finalization of the award of the bid or price quotation:
  - (i) The designated official should verify the bidder's tax compliance status. Where the recommended bidder is not tax compliant, the bidder should be notified of their non-compliant status and 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.
  - (ii) The accounting officer must reject a bid submitted by the bidder if such a bidder fails to provide proof of tax compliance within the timeframe stated above.
  - (iii) Where goods or services have been delivered satisfactorily without any dispute, accounting officers should not delay processing payment of invoices due to outstanding tax matters.



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

- 1) 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.

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

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

**46 Ethical standards**

- (1) A code of ethical standards as set out in subparagraph (2) below is hereby established for officials and other role players in the supply chain management system of the municipality 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 -

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- (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 Executive 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;
  - i. in the case a role player who is not an employee, through other appropriate means in recognition of the severity of the breach.
  - ii. In all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act

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**47 Inducements, rewards, gifts and favours to municipalities/municipal entities, officials and other role players**

- (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
- (a) any inducement or reward to the municipality for or in connection with the award of a contract; or
  - (b) any reward, gift, 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 total value received on no more than one occasion received 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**

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(s), 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 through 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 all projects above R10 Million, the Director: Legal Services, will recommend an independent and impartial person to the Accounting Officer in order to mediate in the dispute.

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- (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**

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



## **52. Fronting**

1. For purposes of this Section, “fronting” shall include the under-mentioned acts on the part of a bidder or any person or party associated with a bidder:
  - (a) Window-dressing: This includes cases in which previously disadvantaged individuals people are appointed or introduced to an enterprise based on tokenism and may subsequently be discouraged or inhibited from substantially participating in the core activities of the enterprise concerned and/or be discouraged or inhibited from substantially participating in the declared areas and/or levels of their participation;
  - (b) Benefit Diversion: This includes initiatives where the economic benefits received by an organization for having B-BBEE Status do not flow to black people in the ratio specified by law.
  - (c) Opportunistic Intermediaries: This includes enterprises that have concluded agreements with other enterprises to leverage the opportunistic intermediary's favourable BBBEE status in circumstances where the agreement involves:
    2. Significant limitations or restrictions on the identity of the opportunistic intermediary's suppliers, service providers, clients or customers;
    3. The maintenance of their business operations in a context reasonably considered improbable having regard to resources; and
    4. Terms and conditions that are not negotiated at arms- length on a fair and reasonable basis.

## **53. Public Private Partnerships**

1. Public Private Partnerships are a specialised area of Supply Chain Management and will be implemented in accordance with Government Gazette No 27431 of 1 April 2005 entitled Local Government: Municipal Finance Management Act 2003- Municipal Public Private Partnership Regulations.



#### **54. Validity Period**

1. The bid offers received at the close of tender are to be accepted within the period of tender validity as stipulated in the bid document
2. In the event where the evaluation or awards of bids received has not concluded within the validity period, the responsible bid committee must arrange to extend period of validity to all bidders before the expiry date
3. Prior approval for the extension of bid validity period must be sought from the designated official.

#### **55. Special Deviations**

1. Certain procurements are to be treated as special deviations from the SCM process. This covers areas previously treated as 'Finance Payments 54' and the approved list is included as per the table below:
  - a. It is still necessary, however, to ensure effective controls. Therefore, prior approval must be sought from the CFO, Head: SCM or designated official. Without evidence of such prior approval payments will not be authorised and will be treated as irregular expenditure.
  - b. Quarterly reports are to be produced for the AO on expenditure incurred and or to be incurred through the central register to be maintained by the SCM department.



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No	Special deviation	Remarks	Authority
1	IT software licences	Licences for approved Software	AO
2	Seminars & Conferences	Staff members attending function relating to their field of expertise and continued professional development	AO
3	Subscriptions- Newspapers, magazines, etc	Newspaper and magazine requirements for libraries and departments	AO
4	Advertising & marketing	All advertising & marketing is done via the Communication Unit	AO
5	Special events	Coordinating normal and special events is done by the Communication Unit	AO
7	Hire of venue	Staff making use of specific venues relating to their field of operation.	AO
8	Food outlets (KFC, Nandos, etc)	Direct purchases from the outlets for meetings and special events	AO



## 56. Green Procurement

- (1) Eco-procurement or green procurement is a procurement that takes into account environmental criteria when procuring goods and services, so that the related environmental impact is minimized.
- (2) Eco- procurement aims to:
  - a. Encourage a decrease in energy and resource use
  - b. Promote environmental best practice in terms of waste minimization and management, water and energy efficiency and conservation, pollution reduction and socio-economic development and,
  - c. Encourage suppliers to change their behaviour and to provide for environmental issues in the design, manufacture and disposal of their products
- (3) The development of eco-procurement as part of Buffalo City Metropolitan Municipality SCM Policy is supported
  - a. To further develop an eco-procurement policy, a steering committee will be constituted that will be working with the relevant stakeholders to identify and prioritize products and services for which specific environmental selection criteria will be developed.
  - b. The environmental criteria for the different products/services will become integrated into the Supply Chain Management processes as they become adopted.
  - c. Training and communication will be undertaken with the relevant stakeholders to ensure their understanding of the specifications and how these translate into the adjudication of tender submissions.
  - d. The questionnaire overleaf is an example of environmental criteria that may be considered for materials management suppliers

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Manufacturing phase	Allowed for in specification	
Has recycled materials been used in the product? If the proportion of content made up of recycled materials is known, capture this information	Y/N (% content of product)	Y/N
Can the manufacturer take steps to avoid and minimise the generation of waste in the production of goods?	List of actions taken	Y/N
Can the manufacturer take steps to minimise the use energy in the production of goods?	List of actions taken	Y/N
Can the manufacturer take steps to minimise the emission of use air pollutants in the production of goods?	Y/N	
Does the manufacturer use any hazardous substances in the production of goods?	Y/N if Y, list of hazardous substances used	Y/N
<b>Use phase</b>		
Can the product be reused (e.g. able to accept refills of ink)?	Y/N, Detail how it could be reused	Y/N
Does the product have an Energy star rating? Is the product energy efficient?	Y/N, Suppliers to compare energy efficiency with other similar products	Y/N
Does the product come with a supplier guarantee on quality? Does a product come up with a maintenance plan?	Y/N	Y/N

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**Disposal phase**

Can the product be recycled?	Y/N	Y/N
Has the supplier provided information on how he plans to dispose of the product? Has he considered environmentally friendly options?	Y/N List disposal options	Y/N
Where hazardous substances are used, has the supplier detailed how he plans to dispose of the product	Y/N List disposal options	Y/N



## 57. Preferential Procurement

1. All procurement of goods, services and works are to be in compliance with this policy
2. The unit responsible for management of this policy is the Supply Chain Management Unit.
3. All Directorates responsible for the procurement of goods, services or works are however responsible for compliance with this policy within their area of control, and will be held accountable where transgressions to policy are encountered.
4. The formula for the 80/20 and 90/10 preference point system in as follows:
  - a. The price in respect of bids (including quotations) with an estimate Rand value greater than R30 000 up to a rand value of R50 million (all applicable taxes included):

$$PS = 80 \left[ 1 - \frac{(Pt - P \text{ min})}{P \text{ Min}} \right]$$

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

$$PS = 90 \left[ 1 - \frac{(Pt - P \text{ min})}{P \text{ Min}} \right]$$

Where PS = Points scored for comparative price of the bid under consideration

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Pt = Comparative price for the bid under consideration

P min = Comparative price of the lowest responsive bid

5. A tenderer failing to submit proof of BBBEE status level of contribution or is a non-compliant contributor to BBBEE may not be disqualified but-
  - a. May only score points out of 90 for price and
  - b. Score 0 points out of 10 for BBBEE.
6. A tenderer may not be awarded points for BBBEE status level of contributor if the tender documents indicate that the tenderer intends to sub contract more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capacity to execute the subcontract.
7. If the price offered by a tenderer scoring the highest points is not market related, the Metro may not award the contract to that tenderer;
  - a. The Metro may:
    - i. Negotiate a market related price with the tenderer scoring the highest points or cancel the tender.
    - ii. If the price does not agree to a market related price, negotiate a market related price with the tenderer scoring the second highest points or cancel the tender;
    - iii. If the tenderer scoring the second highest points does not agree to a market related price, negotiate a market related price with the tenderer scoring the third highest points or cancel the tender.
  - b. If a market related price is not agreed as envisaged in paragraph (a) (iii) the Metro must cancel the

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tender.

8. Local production and Content

- a. The local production and content shall be considered in line with the prescripts as set out in the guidelines by the Department of Trade and Industry.

9. Cancellation and re-invitation of tender:

- 1(a) If in the application of an 80/20 preferential point system as stipulated in the tender documents, all tenders received exceed the estimated Rand Value of R50 million, the tender invitation must be cancelled.

- (b) If one of more of the acceptable tenders are within the prescribed R50 million, all tenders must be evaluated on the 80/20 preferential point system,

- 2 (a) If in the applicable 90/10 preferential point system as stipulated in the tender documents all tenders received are equal to or below the R50 million, the tender must be cancelled.

- (b) If one or more of the acceptable tenders are above the prescribed R50 million, all tenders must be evaluated on the 90/10 preferential point system

- 3 (a) When the Metro has cancelled a tender invitation as contemplated in sub-(1)(a) and 2 (a) must re-invite tenderers and must in the tender documents, stipulate the correct preferential point system to be applied.

- 4 (a) The Metro may, prior to the award of the tender, cancel the tender if

- i. Due to the changed circumstances, there is no longer a need for the services, works of goods requested, or:

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- ii. Funds are no longer available to cover the total envisaged expenditure or
  - iii. No acceptance of tenders received
- 5 (a) The decision to cancel a tender in terms of sub-regulation 4(a) must be published in the Government Tender Bulletin or the media in which the original tender invitation was advertised.
- 6 (a) If the tender estimate is close to value of a prescribed threshold than both the 80/20 and 90/10 preferential point system to be stipulated in the tender document
10. Bidders will score up to 20 or 10 preferential points for their BBBEE status level of contribution as per the table below:

<b>BBBEE status of Contribution</b>	<b>Number of points (90/10 system)</b>	<b>Number of points (80/20 system)</b>
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant Contributor	0	0

11. All bidders will have to submit BBBEE rating certificate, issued by either verification agencies accredited by the South African Accreditation System (SANAS) or by registered auditors approved by the Independent Regulatory Board of Auditors (IRBA).



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12. Any enterprise with an annual Total Revenue of R5 million or less qualifies as an Exempted Micro –Enterprise.
13. Exempted Micro- Enterprises are deemed to have a BBBEE status ‘Level Four Contributor’, having procurement recognition of 100%.
14. In an instance where an Exempted Micro Enterprise is more than 50% owned by black people, the enterprise qualifies for a promotion to a BBBEE status “Level Three Contributor”, having procurement recognition of 110%.
15. An auditor’s certificate and or a certificate issued by an Accounting Officer and or a certificate issued by a verification agency must be submitted to prove that an enterprise qualifies as an exempted Micro Enterprise for the purpose of this policy.
16. If a service is provided by only Tertiary institutions such services must be procured from the tertiary institution identified by means of bidding process. Tertiary institutions must submit their BBBEE in terms of the BBBEE specialised Codes of Good Practice Specialised Scorecards
17. **Prequalification Criteria:**
  - a.
    - c. Subcontracting as condition of tender
      1. If feasible to subcontract for a contract above R30 million, the Metro must apply subcontracting to advance designated groups.

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2. If the Metro applies subcontracting as contemplated in sub regulation (1) the Metro must advertise the tender with a specific tendering condition that the successful tenderer must subcontract a minimum of 30% of the value of the contract to an:
  - a) An EME or QSE
  - b) An EME or QSE which is at least 51% owned by Black People
  - c) An EME or QSE which is at least 51% owned by Black People who are youth
  - d) An EME or QSE which is at least 51% owned by Black People who are woman
  - e) an EME or QSE which is at least 51% owned by Black People with disabilities
  - f) An EME or QSE which is at least 51% owned by Black People living in rural areas or underdeveloped areas or townships
  - g) A cooperative which is at least 51% owned by black people.
  - h) An EME or QSE which is at least 51% owned by Black People who are military veterans
  - i) More than one of the categories referred to in paragraph (a) (h).
3. The Metro must make available the list of all suppliers registered on the database approved by the National Treasury to provide the required goods or services in respect of the applicable designated groups mentioned in sub-regulation (2) from which

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the tenderer must select a supplier.

- a. Subcontracting after the award
  - i. A person awarded a contract may only enter into a subcontracting arrangement with the approval of the Metro .
  - ii. A person awarded a contract in relation to the designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
  - iii. 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 BBBEE status level of contributor than the person concerned, unless the contract is subcontracted to an EME that has the capacity and ability to execute the subcontract:



## **CHAPTER 3**

### **PROMOTING BLACK ECONOMIC EMPOWERMENT THROUGH METRO PROCUREMENT STRATEGIES**

#### **58. STRATEGY FOR ACHIEVING PPPFA OBJECTIVES IN LINE WITH BROAD BASED BLACK ECONOMIC EMPOWERMENT**

- (1) The Metro will apply a preference point system for exempted Micro and B-BBEE Contributors in terms of the B-BBEE Act 53 of 2003 and Preferential Procurement Policy Framework Act, Act No.5 of 2000.
- (2) The 80/20 preference point system will be applicable to bids with a Rand value equal to, or above R30 000 and up to a Rand value of R50 million (all applicable taxes included).
- (3) The Metro may apply the 80/20 preference point system to price quotations with a value less than R30 000 when appropriate.
- (4) The 90/10 preference point system will be applicable to bids with a Rand value above R50 million (all applicable taxes included).
- (5) BCMM is committed to the Broad Based Black Economic Empowerment Act No.53 of 2003 and the Codes of Good Practice developed in terms thereof.



**59. CONTRACTOR DEVELOPMENT PROGRAMME**

- (1) The Metro will implement a Contractor Development Programme ("CDP") in accordance with CIDB Framework of September 2011 as mandated by the Construction Industry Development Board Act 38 of 2000.
  
- (2) The CDP will promote equity ownership across the different contracting categories and grades, as well as improve skills and performance in the delivery and maintenance of capital works within the jurisdiction of the Metro.
  
- (3) The CDP will:
  - (i) Increase the number of black, women, disabled, and youth-owned companies in targeted categories and grades;
  - (ii) Increase the representatively of contractors in all categories and grades;
  - (iii) Improve the grading status of previously disadvantaged contractors integrated categories and grades;
  - (iv) Improve the performance of previously disadvantaged contractors in terms of quality, employment practices, skills development, safety, health and the environment; and
  - (v) Improve the business management and technical skills of these contractors.



**60. EXPANDED PUBLIC WORKS PROGRAMME**

- (1) The Metro will establish an Expanded Public Works Programme ("EPWP") which creates opportunities for labour absorption and income transfers to poor households in the short to medium-term.
- (2) The EPWP will be established in terms of the following legal framework:
  - (i) The Constitution of South Africa Act 108 of 1996;
  - (ii) Intergovernmental Relations Framework Act 13 of 2005;
  - (iii) The Municipal Systems Act 32 of 2000; and
  - (iv) Division of Revenue Bill 2006.
- (3) The BCMM EPWP will use expenditure on goods and services to create work opportunities for the unemployed.
- (4) EPWP Projects will employ workers on a temporary or on-going basis either by government, by contractors, or by other non-governmental organisations under the Ministerial Conditions of Employment for the EPWP or learnership employment conditions.
- (5) The EPWP methodology will be entrenched within the IDP to expand the current service delivery model of goods and services to ensure shared economic growth.
- (6) The EPWP will ensure developmental integration across all sectors and re-engineer how the Metro plans, designs and implements projects/ programmes within the existing operational and capital budgets.
- (7) Two key areas of focus of the EPWP will be:



**(i) Increase Employment Opportunities**

A key socio-economic objective is to facilitate the creation of employment for the people within the jurisdiction of the Metro by increasing employment opportunities through procurement by specifying labour intensive technologies and/or methods of construction in the bid documents.

It is up to Responsible Agents to thoroughly investigate the options available in the above regard, to evaluate the positive versus negative impact of any proposals, and to specify labour intensive technologies and /or methods where appropriate.

All labour earning less than a threshold wage, determined in accordance with Ministerial Declaration 4-expanded Public Works Programme as gazetted on 4 May 2012” that is employed for the provision of services or construction works for the Metro, shall be reported in the prescribed format, on a monthly basis.

**(ii) Targeted labour and or targeted enterprises**

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



## **61 COOPERATIVES**

- (1) The Metro will intensify the empowerment of Cooperatives “in accordance with legislative provisions, including CIDB and EPWP” by developing and implementing a strategy which will seek to:
  - (i) enhance institutional capacity of Cooperatives to play their role more effectively and efficiently;
  - (ii) facilitate access to support for cooperatives from a variety of agencies;
  - (iii) facilitate sharing of information that will enhance the existence and performance of cooperatives in the market;
  - (iv) create opportunities for the cooperatives to engage fully with the market;
  - (v) To support the work of cooperatives through facilitating access to enabling infrastructure; and
  - (vi) To facilitate beneficiation of cooperatives in municipal procurement processes

## **62. UNBUNDLING**

- (1) In order to encourage increased participation and the sustainable growth of the small business sector, the unbundling of larger projects into smaller, more manageable, contracts are encouraged provided that such unbundling is in accordance with legislative provisions including CIDB and EPWP
- (2) Unbundling must however be considered in the context of:
  - (i) economies of scale being lost;



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- (ii) abortive work becoming necessary;
  - (iii) additional demands (not only financial) being placed on the Metro's resources; and
  - (iv) the risk of later phases not being completed as a result of budget cuts becoming necessary in the future.
- (3) Unbundling, and all its associated implications, must therefore be carefully considered at the planning stage of any project and the budgets for, and design thereof, should be structured accordingly.
- (4) It is important to note that while it is the Metro's policy to procure goods, services or construction works in the smallest practicable quantities, the practice of parceling such procurement in order to avoid complying with the requirements of the different range of procurement processes described in this policy is not permitted.