

# **MANDENI MUNICIPALITY**



## **SUPPLY CHAIN MANAGEMENT POLICY 2022/2023**

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

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**Municipal Manager**

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## Definitions

1. **In this Policy, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, and -**

**“BBBEE”** means broad based black economic empowerment as defined in Section 1 of the Broad Based Black Economic Empowerment Act.

**“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

**“black designated groups”** has the meaning assigned to it in the codes of good practice issued in terms of Section 9(1) of the Broad Based Black Economic Empowerment Act.

**“black people”** has the meaning assigned to it in Section 1 of the Broad Based Black Economic Empowerment Act.

**“co-operative”** means a co-operative registered in terms of Section 7 of the Co-operatives Act 2005 (Act no.14 of 2005)

**“co-opted external specialist advisor”** any person or official contracted by the municipality or appointed by the Accounting Officer to provide technical support to the Business Unit

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

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

**“designated group”** means

- (a) black designated groups
- (b) black people
- (c) women
- (d) people with disabilities
- (e) small enterprises as defined in Section 1 of the National Small Enterprise Act 1996 (Act no. 102 of 1996)

**“designated sector”** means a sector, sub-sector or industry or product designated in terms of Regulation 8 (1) (a)

**“EME”** means an exempt micro enterprise in terms of a code good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Act.

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

**"formal written price quotation"** means quotations referred to in paragraph 12 (1) (c) of this Policy;

**"functionality"** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.

**"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;
- g) EPWP Employees
- h) Audit Committee
- i) Traditional leaders
- j) Ward Committee Members

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

**"list of accredited prospective providers"** means **the list of accredited** prospective providers which the municipality must keep in terms of paragraph 14 of this policy;

**"military veteran"** has the meaning assigned to it in Section 1 of the Military Veterans Act of 2011 (Act no. 18 of 2011)

**"A neutral or independent observer"** independent / impartial, not directly involved in the supply chain management processes appointed by the Accounting Officer on an adhoc basis

**"other applicable legislation"** means any other legislation applicable to municipal supply chain management, including -

- a) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
-

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

**“panel of service providers”** pre-qualified, appointed on rotational basis

**“people with disabilities”** has the meaning assigned to it in Section 1 of the Employment Equity Act of 1998 (Act no 55 of 1998)

**“price”** includes all applicable taxes, less all unconditional discounts

**“proof of BBBEE status level of contributor”** means: -

- a) BBBEE status level certificate issued by an authorized body or person
- b) a sworn affidavit as prescribed by the BBBEE codes of good practice
- c) any other requirement prescribed in terms of the BBEE Act

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

**“rural area”** means

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

**“stipulated minimum threshold”** means the minimum threshold stipulated in terms of Regulation 8 (1) (b) of the PPPFA Regulations of 2017

**“sub-contracting”** means one who takes a portion of a contract from the principal contractor or from another subcontractor.

**“transversal contracts”** contracts secured by National and Provincial Treasury

**“Treasury”** has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act no 1 of 1999)

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

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

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

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**“township”** means an urban living area that anytime from the date 19 century until 27 April 1994, was reserved for black people including areas developed for historically disadvantaged individuals post 27 April 1994.

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

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

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

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

## **CHAPTER 1**

### **IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY**

#### **2. Supply chain management policy**

- (1) All officials and other role players in the supply chain management system of the municipality must implement this Policy in a way that –
    - (a) gives effect to –
      - (i) section 217 of the Constitution; and
      - (ii) Part 1 of Chapter 11 and other applicable provisions of the Act;
    - (b) is fair, equitable, transparent, competitive and cost effective;
    - (c) complies with –
      - (i) the Regulations; and
      - (ii) any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
    - (d) is consistent with other applicable legislation;
    - (e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
    - (f) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.
  - (2) This Policy applies when the 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.
  - (3) This Policy, except where provided otherwise, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –
    - (a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
    - (b) electricity from Eskom or another public entity, another municipality or a municipal entity.
-

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

- (1) The accounting officer must -
  - (a) at least annually review the implementation of this Policy; and
  - (b) when the accounting officer considers it necessary, submit proposals for the amendment of this Policy to the Council.
- (2) If the accounting officer submits proposed amendments to the Council that differs from the model policy issued by the National Treasury, the accounting officer must -
  - (a) ensure that such proposed amendments comply with the Regulations; and
  - (b) report any deviation from the model policy to the National Treasury and the relevant provincial treasury.
- (3) When amending this supply chain management policy, the need for uniformity in supply chain practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.

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

- (1) The Council hereby delegates all powers and duties to the municipal manager which are necessary to enable the Municipal Manager –
    - (a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
      - (i) Chapter 8 or 10 of the Act; and
      - (ii) this Policy;
    - (b) to 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 sub-paragraph (1).
  - (3) The Municipal Manager may not sub-delegate any supply chain management powers or duties to a person who is not an official of municipality or to a committee which is not exclusively composed of officials of the municipality.
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- (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. 12

## 5. Sub-delegations

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

| <b>STRUCTURE OF APPROVAL</b>                                                                                                                                                                                                      |                                                                                                                                                           |                                                         |                                                                                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|----------------------------------------------------------------------------------|
| <b>GOODS/SERVICES VALUE</b>                                                                                                                                                                                                       | <b>PROCUREMENT METHOD</b>                                                                                                                                 | <b>APPROVAL AUTHORITY FOR CHEQUE REQUISITION</b>        | <b>APPROVAL AUTHORITY FOR ORDER</b>                                              |
| R0-R500                                                                                                                                                                                                                           | Petty Cash One Quote (Petty cash policy applies)                                                                                                          | Head Of Department/<br>Managers/<br>Delegated<br>Person | Manager SCM /<br>Expenditure or CFO                                              |
| R501-R2000                                                                                                                                                                                                                        | One Quote                                                                                                                                                 | Head Of Department/<br>Managers/<br>Delegated<br>Person | Manager SCM or CFO                                                               |
| R2001- R10000                                                                                                                                                                                                                     | Three Written quotation                                                                                                                                   | Head Of Department/<br>Managers/<br>Delegated<br>Person | Manager Supply Chain/<br>Delegated Official / CFO                                |
| R10001 - R30000                                                                                                                                                                                                                   | Obtain at least 3 written quotations                                                                                                                      | Head Of Department/<br>Manager or Delegated<br>Person   | Manager Supply<br>Chain/Delegated Official<br>/ CFO                              |
| R30001-R200000                                                                                                                                                                                                                    | Advertise on a municipal notice board or website at least for a period of seven working days and must be evaluated; by the SCM Unit: 80/20 (point system) | Head Of Department<br>/Delegated Person                 | Chief Financial<br>Officer/Delegated<br>Person / MM                              |
| R200001-R2million                                                                                                                                                                                                                 | Competitive Bidding:80/20 (point system)                                                                                                                  | Bid Adjudication<br>Committee                           | Bid Adjudication<br>Committee where CFO<br>sit as the Chairperson                |
| R2million-R10million                                                                                                                                                                                                              | Competitive Bidding:80/20 (preference point system) – in terms of PPPFA Regulations, 2017                                                                 | Bid Adjudication<br>Committee                           | Bid Adjudication<br>Committee where CFO<br>sit as the Chairperson                |
| Above R10million – R50 million                                                                                                                                                                                                    | Competitive Bidding :80/20 (preference point system)                                                                                                      | Accounting Officer                                      | Bid Adjudication<br>Committee makes<br>recommendations to-<br>Accounting Officer |
| Above R50m                                                                                                                                                                                                                        | Competitive Bidding :90/10 (preference point system)                                                                                                      | Accounting Officer                                      | Bid Adjudication<br>Committee makes<br>recommendations to-<br>Accounting Officer |
| <p>*Delegation must be in writing in line with circular 73 of the MFMA – Sub-Delegations</p> <p>*Authorisation of Invoice for confirmation of expenditure incurred are in line with approval authority for cheque requisition</p> |                                                                                                                                                           |                                                         |                                                                                  |

- (2) The power to make a final award –
  - (a) Above R10 million (VAT included) may not be sub-delegated by the Municipal Manager;
  - (b) Above R2 million (VAT included), but not exceeding R10 million (VAT included), may be sub-delegated but only to –
    - (i) a bid adjudication committee of which the Chief Financial Officer or senior manager is a member.
  - (c) For threshold exceeding R200,000 but not exceeding R2 million (VAT included) may be sub-delegated but only to –
    - (i) 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 municipal manager a written report containing particulars of each final award made by such official or committee during that month, including–
  - (a) the amount of the award;
  - (b) the name of the person to whom the award was made; and
  - (c) the reason why the award was made to that person.
- (4) Sub-paragraph (3) of this paragraph does not apply to procurements out of petty cash.
- (5) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub-delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.
- (6) No supply chain management decision-making powers may be delegated to an advisor or consultant.

## **6. Oversight 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 –
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- (a) (i) within 30 days of the end of each financial year, submit a report on the implementation of this Policy and the supply chain management policy of any municipal entity under the sole or shared control of the municipality, to the Council of the municipality; and
  - (ii) whenever there are serious and material problems in the 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 mayor.
- (4) The reports must be made public in accordance with section 21A of the Municipal Systems Act.

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

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

## **8. Competency And Training Of Supply Chain Management Officials**

- (1) The training of officials involved in implementing this Policy should be in accordance with any Treasury guidelines on supply chain management training.
  - (2) The accounting officer shall ensure in terms of section 107 of the Act and regulation 8 of the supply chain management regulations that all persons involved in the implementation of this policy meet the prescribed competency levels, and where necessary, shall provide
  - (3) The training of officials involved in implementing this policy shall be in accordance with any National Treasury circulars/ guidelines on supply chain management
-

## **CHAPTER 2**

### **SUPPLY CHAIN MANAGEMENT SYSTEM**

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

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

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

##### **11. System of acquisition management**

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

- (a) that goods and services are procured in accordance with authorized processes only;
- (b) that expenditure incurred in terms of an approved budget
- (c) that the threshold values for the different procurement processes are complied with;
- (d) that bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
- (e) that any Treasury guidelines on acquisition management are properly taken into account

## **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 R,00 up to R 500 (VAT included);
    - (b) One verbal or written quotation for procurements of a transaction value from R501 up to **R2,000** (VAT included);
    - (c) Three verbal or written quotations for procurements of a transaction value of R2,000 up to **R10,000** (vat included)
    - (d) three formal written price quotations for procurements of a transaction value over **R10,000** up to **R30,000** (VAT included); and
    - (e) Three formal written price quotations for procurements of a transaction value over R30,000 up to **R200,000** (VAT included), PPPFA Regulations of 2017 applied; and
    - (f) 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 Municipal Manager 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 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.
- (4) In respect of 12(1)(b) and 12(1)(c) a Financial System electronic rotational system based on the registered database of suppliers or CSD will be utilized for the procurement of the respective goods or services to be procured. e.g. Catering, advertising, servicing and minor repairing of air conditioners, repairs to tyres, auto electrical works, breakdown services, small renovations, auto electrical works, breakdown services
- (5) The following goods or services shall be procured preferably from service providers through the ward / clusters in which the goods or service are required. Such goods include but not limited to catering, marques, chairs and sound equipment for ward-based meetings.
- (i) Catering and associated goods or services for ward-based meetings
  - (ii) Transportation from relevant area-based taxi associations.
  - (iii) The per unit cost as determined by council for catering shall be incremented annually in line with the CPIX as determined by the National Treasury annually in relation to the budget preparation directive for each financial year
  - (iv) the municipality will determine the prices for the above goods or services on an annual basis
- (6) No competitive bidding shall be utilized for goods or services that are price regulated (e.g.) fuel / gas; or provided by a manufacturing agent or RMI Accredited or AA (for all vehicles outside factory warranty) e.g. servicing / repairing vehicles
- (i) and training conducted by other organs of state
  - (ii) repairs to radios and repeaters for communication
  - (iii) fuel or gas (regulated)
  - (iv) goods or services sourced from a manufacturer or manufacturing agency e.g. vehicles and plant services; electrical equipment, repairs to emergency lights and sirens, calibrations or repairs to speed timing machines, meters (as per appointed service provider), meter reading, fire equipment
  - (v) Sage Pastel system (or as per the appointment), Microsoft Software, Payday
  - (vi) meal vouchers for standby staff
- (7) Objective criteria in terms of section 2(1)(f) of the PPPA Act (Targeted Procurement)
- (a) Mandeni Local Municipality has taken the decision to economically empower youth, women and people living with disabilities. Such will be done through the
-

objective criteria by given preference to the above-mentioned group by providing economic opportunities. The Municipality will ensure that the above complies with the PPPFA 2017.

- (b) Mandeni Municipality will identify goods and services that will be given to the co-operatives; QSE's and EME's composed of youth, women and people living with disabilities, i.e.: -
  - (i) Catering for Events
  - (ii) All small Construction and renovations work
  - (iii) Printing and stationery
  - (iv) Cleansing material
  - (v) Refreshments
  - (vi) The Accounting Officer may enhance the above list of the goods or services as he deems fit over and above-mentioned goods and services.
- (c) The objective criteria will give preference to Co-operatives that are at least 51% youth owned, 51% women owned, 51% people living with disabilities.
- (d) Target procurement will mainly deal with goods and services up to a threshold of R200 000.00 VAT inclusive.
- (e) Council will advertise and call for co-operatives to be registered on the National Treasury Central Supplier Database.
- (f) The co-operatives will be awarded contracts to provide goods or services on a rotational basis using the above-mentioned objective criteria.
- (g) A report must be submitted to Council on the implementation of the "Objective criteria in terms of section 2(1)(f) of the PPPFA Act on a quarterly basis.

### **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) the Bidder must be registered on the Central Supplier Database and the Tax compliance status PIN shall be used to verify the tax compliance status of the bidder. The Bidder may submit a tax clearance certificate. The authenticity of the Tax Clearance Certificate shall be verified on the online SARS e-filing system or Central Supplier Database.
- (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 of a director, manager, shareholder or stakeholder referred to in subparagraph 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) Utilize the National Central Supplier Database that is kept by National Treasury for procurement requirements through written or verbal quotation and formal written price quotations.
    - (b) May also keep a list of accredited prospective providers of goods and services extracted from the National Central Supplier Database that will be used for the procurement requirements through written or verbal quotations and formal written price quotations; and
    - (c) 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 National Central Supplier Database
  - (2) The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.
  - (3) The National Central Supplier Database is compiled per commodity and per type of service.
-

## **15. Petty cash purchases – up to R500.00**

- (1) The accounting officer must establish the conditions for the procurement of goods by means of petty cash purchases referred to in paragraph 12 (1) (a) of this Policy, which include the following-
  - (a) The Chief Financial Officer may, in writing, delegate the responsibility to monitor Petty Cash purchases to the Accountant: Expenditure
  - (b) Goods and services may only be procured by way of petty cash, up to a transaction value of R500 (VAT included).
  - (c) the maximum number of petty cash purchases or the maximum amounts per month for each manager;
  - (d) 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 or Verbal Quotation - R501 to 2000.00 / R2001 to R10 000.00**

The conditions for the procurement of goods or services through written or verbal quotations, are as follows

- (a) Verbal or written Quotations must be obtained from one service providers for procurement ranges of between R501 to R2000 and three different providers for procurement above R2000 and preferably from, but not limited to, providers whose names appear on the Central Supplier Database of list of accredited prospective providers of the municipality extracted from the Central Supplier Database,
  - (b) Prospective providers must be requested to submit such quotations in writing;
  - (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the accounting officer or another official designated by the accounting officer;
  - (d) the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices; and
  - (e) if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.
-

## **17. Formal Written Price Quotations (R10 000.00 – R200 000.00)**

- (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 National Central Supplier Database and a list of accredited prospective providers of the municipality extracted from National Central Supplier Database;
  - (b) quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria set out by National Treasury;
  - (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the Accounting Officer;
  - (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 Accounting 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 Or Verbal Quotations and Formal Written Price Quotations**

- (1) The procedure for the procurement of goods or services through written or verbal quotations or formal written price quotations, is as follows:
    - (a) when using the National Central Supplier Database list of accredited prospective providers, the accounting officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;
    - (b) all requirements in excess of R30,000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, be advertised for at least seven days on the website and an official notice board of the municipality; PPPFA Regulations of 2017 must also be applied in this procurement range
    - (c) the Accounting Officer must take all reasonable steps to ensure that the procurement of goods or services through written or verbal quotations or formal written price quotations is not abused
    - (d) offers received must be evaluated on a comparative basis taking into account unconditional discounts;
-

- (e) the accounting officer or chief financial officer must on a monthly basis be notified in writing of all written or verbal quotations and formal written price quotations accepted by an official acting in terms of a sub delegation;
  - (f) 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;
  - (g) 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; Section 28(1) f) of this policy, sub-regulation 9 and regulation 11 of the Preferential Policy Regulations of 2017
  - (h) Preference for the award of goods or services to be given to bidders residing in:
    - (i) In the Mandeni Municipal Wards / Clusters in which the project will be rendered
    - (ii) The Mandeni Municipal area of jurisdiction,
    - (iii) The ILembe District
    - (iv) The KZN province and
    - (v) The Republic of South Africa
  - (i) **Proof of address by way of municipal utility bill must be provided for (h) above or the service provider must be registered on the voters roll.**
  - (j) Contracts may be expanded or varied by not more than 20% for construction related goods, services and infrastructure projects and 15% for all other goods or services of the original value of contract. Anything the above-mentioned thresholds must be reported to Council. Any expansion or variation on excess of these thresholds must be dealt with in terms of the provisions of Section 116(3) of the MFMA which would be regarded as an amendment to the contract.
  - (k) MFMA Circular 49 issued in 2009 and Section 65 (2) (e) of the Municipal Finance Management Act of 2003 states “that all monies owing by the municipality be paid within 30 days of receiving the relevant invoice or statement, unless prescribed otherwise for certain categories of expenditure”. In exceptional cases where the procurement activities are not finalized in the required timeframes, the Accounting Officer may request the extension of validity period from potential service provide
  - (l) Validity period for construction related goods/ services, infrastructure projects and for all other goods or services must be stated and indicated in the bid
-

document. In exceptional cases where the procurement activities are not finalized within indicated timeframes, the Accounting Officer may request the extension of validity period from potential service providers

- (m) Contracts may be expanded or varied by not more than 20% for construction related goods, services and infrastructure projects and 15% for all other goods or services of the original value of contract. Anything the above-mentioned thresholds must be reported to Council. Any expansion or variation on excess of these thresholds must be dealt with in terms of the provisions of Section 116(3) of the MFMA which would be regarded as an amendment to the contract.
- (n) Validity period for construction related goods/ services, infrastructure projects and for all other goods or services must be stated and indicated in the bid document. In exceptional cases where the procurement activities are not finalized within indicated timeframes, the Accounting Officer may request the extension of validity period from potential service providers
- (o) Preference will be given to service providers who are registered with a CIDB Grading of 1 and 2 will be considered for award.

## **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 part or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

## **20. Bid Documentation for Competitive Bids**

The criteria to which bid documentation for a competitive bidding process must comply, must

- (a) take into account -
    - (i) the Preferential Procurement Regulations of 2017 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; adjudication criteria, including any criteria required by other applicable legislation;
-

- (b) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (c) 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 noncompliance 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
- (d) 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.

## **21. 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 or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin and eTender Publication portal); 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; a statement that bids may only be submitted on the bid documentation provided by the municipality ;and date, time and venue of any proposed site meetings or briefing sessions.;
  - (2) The accounting officer may determine a closure date for the submission of bids which is less than the 30- or 14-days requirement, but only if such shorter period can be
-

justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.

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

## **22. Procedure for handling, opening and recording of bids 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
- (a) 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;
- (b) No information, except the provisions in subparagraph (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
- (d) The accounting officer must -
  - (i) record in a register all bids received in time;
  - (ii) make the register available for public inspection; and (iii) publish the entries in the register and the bid results on the website

## **23. 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 bidders, provided that such negotiation-
    - (a) does not allow any preferred bidder a second or unfair opportunity;
    - (b) is not to the detriment of any other bidder; and
    - (c) does not lead to a higher price than the bid as submitted.
    - (d) will lead to a fair market price
  - (2) Minutes of such negotiations must be kept for record purposes.
  - (3) The Municipal Manager delegates the Head: SCM, Director Legal and the Head of the Business Unit or his nominee and the Budget Office (observer) to enter into negotiations in line with (1) and (2) above and report back to the Tender Adjudication Committee for a threshold not exceeding R10m.
-

- (4) For thresholds exceeding R10m, the Municipal Manager, the Chief Financial Officer and the Executive Director of the Business Unit may enter into negotiations but keeping in line with (1) and (2) above
- (5) The municipality apply PPPFA Regulations, 2017, Implementation Guide Section 19: negotiating a fair market related price

## **24. 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.

## **25. 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) A neutral or independent observer, appointed by the accounting officer, must attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.
  - (4) The committee system must be consistent with –
    - (a) paragraph 27, 28 and 29 of this Policy; and
    - (b) any other applicable legislation.
  - (5) The accounting officer may apply the committee system to formal written price quotations.
-

## 26. Bid specification committees

- (1) A bid specification committee must compile the specifications for each procurement of goods or services by the municipality and ensure that:
    - (a) the draft tender document meets the supply chain management and contract management requirements;
    - (b) the functionality points meet the minimum requirements as prescribed;
    - (c) the applicable **pre-qualification criteria for preferential procurement** are included in the draft tender document; in line with PPPFA
    - (d) correct preference point system is utilized;
    - (e) the advert meets the minimum requirements;
    - (f) local content, where applicable has been included in tender document as well as advert;
    - (g) BBEEE status level certification is included
    - (h) Sub-contracting as a pre-condition of tender for procurement above R30-million, where feasible, has been included; and
    - (i) Determine briefing meeting and closure for submission of bids, sub-contract
  - (2) Specifications -
    - (a) Specification may only be completed and advertised if sufficient budgetary provision was approved on the annual budget or included in the Business Plan
    - (b) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
    - (c) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organization, or an authority accredited or recognized by the South African National Accreditation System with which the equipment or material or workmanship should comply;
    - (d) must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
-

- (e) 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;
  - (f) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word "equivalent";
  - (g) must be approved by the relevant senior manager prior to submission to the specification committee
  - (h) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2017; and as set out in this policy
    - (i) 80/20 preference points system for the acquisition of goods or services for Rand value equal to or above R30,000 up to R50 million
    - (ii) 90/20 reference points system for the acquisition of goods or services for Rand value equal to or above R50 million
  - (i) must be approved by the accounting officer prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.
- (3) A bid specification committee must be composed of one or more officials of the preferably the manager responsible or delegated person for the function involved, and
- i. may, when appropriate, include external specialist advisors; and
  - ii. a quorum shall be 50% plus one member
- (4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts
- (5) The transversal tender process may be applied by the municipality and the application must be submitted to the office of the Accounting Officer after the Specification committee has considered the item
- (6) That for all projects with a threshold exceeding R1 million - R30 million inclusive of the following shall apply: -
- (a) That a tenderer must sub-contract a minimum to a maximum of 30 %
    - (i) an EME or QSE;
-

- (ii) an EME or QSE which is at least 51% owned by black people who are black people;
- (iii) an EME or QSE which is at least 51% owned by black people who are youth;
- (iv) an EME or QSE which is at least 51% owned by black people who women;
- (v) an EME or QSE which is at least 51% owned by black people with disabilities;
- (vi) an EME or QSE which is at least 51% owned by black people living in rural or underdeveloped areas or townships;
- (vii) a cooperative which is at least 51 % owned by black people
- (viii) an EME or QSE which is at least 51 % owned by black people who are military veterans; or in paragraphs (a) to (h).

- (b) **In accordance with the spirit of promoting B-BBEE through** a radical economic transformation approach and in a bid to address the challenges of the local economy, the concept of sub-contracting as condition of tender is adopted for implementation by the Municipality using the ranges listed here over in terms of tender rand value

| Between           | 2020 -2021           | 2021 - 2022          |
|-------------------|----------------------|----------------------|
| a. R 1 million    | – R 2 million – 10%  | – R 2 million – 10%  |
| b. R 2,1 million  | – R 5 million – 15%  | – R 5 million – 15%  |
| c. R 5,1 million  | – R 8 million – 20%  | – R 8 million – 20%  |
| d. R 8,1 million  | – R 10 million –25 % | – R 10 million –25 % |
| e. R 10,1 million | – R 15 million – 30% | – R 15 million – 30% |
| f. R15,1 million  | – R 20 million – 30% | – R 20 million – 30% |
| g. R 20,1 million | – R 25 million – 30% | – R 25 million – 30% |
| h. R 25,1 million | – R 28 million – 30% | – R 28 million – 30% |
| i. R 28,1 million | – R 30 million – 30% | – R 30 million – 30% |

- (c) Mandeni Local Municipality must apply pre-qualifying criteria to advance certain designated groups. That Council must advertise the tender with a specific tendering conditions that only one or more of the above (a) tenderers may respond in terms of Section 4(1) of the Preferential Procurement Regulations of 2017.
- (d) That local labour must be employed in terms of EPWP and 80% employed from within the ward and 20% within all wards of Mandeni Local Municipality.
- (e) That the Business unit concerned should identify and specify the line items to be subcontracted; and be included in the tender document
- (7) The Accounting Officer may call on preferred bidders to form a joint venture with SMME's for projects exceeding R10m.
- (8) Skills development program

- (a) that for all technical projects exceeding R4.0 million, 1.00% of the project value must be allocated to skills development program for example; all graduates within Mandeni Local Municipality jurisdiction

(9) Corporate Social Responsibility (CSR)

- (a) The municipality recommends that 3% will be allocated towards CSR for all projects exceeding R1,0 million which shall be towards the Ward/s within the project/s are implemented

10. Subcontracting after award of tender

- (1) If feasible to subcontract for contract above R30 million, the municipality must apply subcontracting to advance designated groups.
- (2) If a municipality applies subcontracting as contemplated in sub-regulation (1), the municipality must advertise the tender with specific tendering condition that the successful tenderer must subcontract a minimum of 30% of the value of the contracting to:
  - (a) an EME (exempted micro enterprise) or QSE (qualifying small business enterprise);
  - (b) an EME or QSE which is at least 51% owned by black people;
  - (c) an EME or QSE which has 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 women;
  - (e) an EME or QSE which is at least 51% owned by black people living in rural or underdeveloped area or to 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; or
  - (i) more than one category referred to in paragraphs (a) to (h).
- (3) The municipality must make available the list of all suppliers registered on a database approved by National Treasury to provide the required goods or services in the respect of the applicable designated groups mentioned in sub regulation (2) from which the tenderer must select a supplier.

**27. Bid evaluation committees**

- (1) A bid evaluation committee must –
-

- (a) evaluate bids in accordance with –
    - (i) the qualification criteria and specifications for a specific procurement; and
    - (ii) the points system set out in terms of paragraph 27(2)(f) and as prescribed in terms of the Preferential Procurement Policy Framework Act;
  - (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 (in line with section 39 (d) of this policy
  - (d) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
  - (e) in terms of (b) above, the committee may not appoint a contractor to carry out works which exceeds the value of the maximum threshold enabled for their CIDB grading to mitigate its risk.
  - (f) A tenderer that fails to meet any pre-qualifying criteria in terms of Section 27(6) of this policy and section 4(1) & (2) of the Preferential Procurement Regulations of 2017 should be deemed as an unacceptable tender.
  - (g) Contracts above the value of R10 million (all applicable taxes included) may only be awarded to the preferred bidder after the Chief Financial Officer has verified in writing that budgetary provision exists for the acquisition of the goods, infrastructure projects and/or services and that it is consistent with the Integrated Development Plan.
- (2) A bid evaluation committee must as far as possible be composed of;
- (a) Officials, preferably the manager responsible or the delegated person from relevant departments that must be knowledgeable or meet the prescribed competence levels for the function involved;
  - (b) At least one supply one Supply Chain Management practitioner of the municipality;
  - (c) co-opted external specialist advisor; and
  - (d) the quorum must be equal to 50% of the number of permanent (as opposed to co-opted) committee members, plus one other member.
- (3) In the case of infrastructure projects **(refer to Annexure (B))**, a competent person shall draw up and sign a report verifying the evaluation qualification criteria and specifications including the algorithm calculations been correct, for a specific procurement and submit to the chair of the committee for approval.
-

- (4) That the Bid Evaluation Committee checklist must be completed and signed by the Chairperson and its members. The chair of the committee will submit the approved report to the adjudication committee for consideration and recommendation regarding the award of the bid or any other related matter. Bids will only qualify after functionality, quality, and local production and content as a pre-qualification criterion was assessed;

(a) This is an application for all bids and quotations submitted to Mandeni Municipality

## **28. 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 Municipal Manager to make the final award; or
    - (ii) make another recommendation to the Municipal Manager how to proceed with the relevant procurement in terms of S114 of the MFMA
    - (iii) subject to Section 28(1)(f) of this policy, sub-regulation 9 and regulation 11 of the PPPFA Regulations 2017, the contract must be awarded to the tender scoring the highest points
- (2) A bid adjudication committee must consist of at least four senior managers of the municipality which must include –
- (a) Chief Financial Officer
  - (b) Directors or senior managers of which one must be a senior supply chain management official
  - (c) the quorum must be equal to 50% of the number of permanent (as opposed to co-opted) committee members, plus one other member.
- (3) The Municipal Manager must appoint the chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.
- (4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.
-

- (5) (a) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –
  - (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and; 39
  - (d) notify the Municipal Manager.
- (b) The Municipal Manager 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 Municipal Manager 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 Municipal Manager must comply with section 114 of the Act within 10 working days.

## **29. 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). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

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

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

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

### **31. 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.
  - (e) The Municipality must obtain a consent in writing from KZN Provincial Treasury to utilize the contract procured by the other organ of stage.
- (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.

### **32. 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.

### **33. Proudly SA Campaign**

- (1) The municipality supports the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services from:
  - Firstly - suppliers and businesses within the Mandeni Local municipality;
  - Secondly - suppliers and businesses within the iLembe District;
  - Thirdly - suppliers and businesses within the KZN Province;
  - Lastly – suppliers and businesses from National.

### **34. Appointment of consultants**

- (1) The accounting officer may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.
- (2) Consultancy services must be procured through competitive bids if
  - (a) the value of the contract exceeds R200,000 (VAT included); or
  - (b) the duration period of the contract exceeds one year.
- (3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of -
  - (a) all consultancy services provided to an organ of state in the last five years; and
  - (b) any similar consultancy services provided to an organ of state in the last five years.
- (4) The accounting officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the municipality.

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

- (1) The accounting officer may -
-

- (a) dispense with the official procurement processes established by this Policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only -
    - (i) in an emergency;
    - (ii) if such goods or services are produced or available from a single provider only;
    - (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
    - (iv) acquisition of animals for zoos and/or nature and game reserves; or
    - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
  - (b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.
- (2) The accounting officer must record the reasons for any deviations in terms of subparagraphs (1)(a) and (b) of this policy and report them to the next meeting of the Council and include as a note to the annual financial statements.
- (3) Subparagraph (2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this policy.

#### **PROCEDURE TO FOLLOW**

- 1. Poor planning does not constitute an emergency.**
- 2. In cases where it is impractical or impossible to follow the official procurement process it must be shown where and how the market was tested, why it is impractical to go to tender, the provider chosen was undertaken in a fair manner so as not to prejudice other potential providers, etc. where it would be against the Municipality's best interest to follow the proper procurement process**
- 3. All reports of this nature are to be signed by the Chief Financial Officer who will check:**
  - **Is the motivation valid?**
  - **Is there sufficient reason for not going out to tender?**
  - **Is there adequate finance?**
  - **Is the process fair, equitable, as transparent as can be, cost effective?**
  - **Can the Municipality adequately account for making such a decision?**
- 4. Accounting Officer to Approve prior to implementation with the exception of an emergency**
- 5. Supply Chain Unit to issue official order number.**

### **36. Unsolicited bids**

- (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
  - (2) The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if-
    - (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
    - (b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
    - (c) the person who made the bid is the sole provider of the product or service; and
    - (d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
  - (3) If the accounting officer decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with -
    - (a) reasons as to why the bid should not be open to other competitors;
    - (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
    - (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
  - (4) The accounting officer must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, to the National Treasury and the relevant provincial treasury for comment.
  - (5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, depending on its delegations.
  - (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
  - (7) When considering the matter, the adjudication committee must take into account -
    - (a) any comments submitted by the public; and
-

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

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

- (1) The accounting officer must-
  - (a) take a reasonable step 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;
    - (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 **unless**
      - a. payment arrangement within Mandeni Municipality has been made by the bidder (attach proof ) or
      - b. if the bidder is a tenant then a lease agreement must be submitted
      - c. or an affidavit stating that the ward in which the director /s resides is exempted from paying rates, electricity and water; that if there are no properties listed under the owners name
    - (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;

- (e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
- (f) cancel a contract awarded to a person if-
  - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
  - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
- (g) Reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
- (h) cancel a contract awarded to a person if –
  - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
  - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
- (i) 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 wilfully 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)

### **38 (2) Remedies**

- (1) Upon detecting that a tenderer submitted false information regarding its B-BBEE status level of contributor, local production and content, or any other matter required in terms of these regulations which will be effect or has affected the evaluation of the tender, or where a tender has failed to declare any subcontracting arrangements, the organ of state must-
    - (a) inform the tenderer accordingly;
    - (b) Give the tenderer an opportunity to make representations within 14 days as to why-
-

- (i) the tender submitted should not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or part;
  - (ii) if the successful tenderer subcontracted a portion of the tender to another without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and
  - (iii) the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state; and
- (c) If it concludes, after considering the representations referred to in sub-regulation (1)(b), that-
- (i) such false information was submitted by the tenderer-
    - (aa) disqualify the tenderer or terminate the contract in whole or part; and
    - (bb) if applicable, claim damages from the tenderer; or
  - (ii) the successful tenderer subcontracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.

38 (3)

(a) An organ of state must –

- (i) inform the National Treasury, in writing, of any actions taken in terms of sub regulation (1);
  - (ii) Provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and
  - (iii) Submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with the any organ of the state
- (c) the National Treasury may request an organ of state to submit further information pertaining to sub-regulation (1) with a specific period.

38 (3)

The National Treasury must –

- (a) after considering the representations of the tenderer and any other relevant information, decide whether to restrict tenderer from doing business with any organ of the state for period not exceeding 10 years; and
  - (b) Maintain and publish on its official website a list of restricted suppliers.
-

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

### **38. Logistics Management**

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.

### **39. Disposal Management**

- (1) The accounting officer must establish an effective system of disposal management for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the acts. The Accounting Officer must appoint a Disposal Committee in writing and adopt a Disposal Policy
  - (2) Assets may be disposed of by -
    - (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
    - (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
    - (iii) selling the asset; or
    - (iv) destroying the asset.
-

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

#### **40. Risk Management**

- (1) The accounting officer must establish an effective system of risk management for the identification, consideration and avoidance of potential risks in the supply chain management system.
  - (2) Risk management must include -
    - (a) the identification of risks on a case-by-case basis;
    - (b) the allocation of risks to the party best suited to manage such risks;
    - (c) acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
    - (d) the management of risks in a pro -active manner and the provision of adequate cover for residual risks; and
    - (e) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation
    - (f) in terms of (b) above, the committee may not appoint a contractor to carry out works which exceeds the value of the maximum threshold enabled for their CIDB grading to mitigate its risk.
-

#### **41. Performance Management**

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

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

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

- (1) No bid or price quotations may be awarded in terms of this Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (2) Before making an award to a person the accounting officer must first check with SARS whether that person's tax matters are in order.
- (3) If the recommended bidder is found to be non- tax compliant, the bidder must be notified and be requested to ratify the enterprise tax matters. If the recommended bidder is still found with non-compliant tax status after the above-mentioned period, the recommended bidder must be disqualified from the procurement process.

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

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.

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

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

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

## **45. Ethical standards**

- (1) A code of ethical standards is hereby established, in accordance with subparagraph for officials and other role players in the supply chain management system in order to promote –
    - (a) mutual trust and respect; and
    - (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
  - (2) An official or other role player involved in the implementation of the supply chain management policy –
    - (a) must treat all providers and potential providers equitably;
    - (b) may not use his or her position for private gain or to improperly benefit another person;
    - (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
    - (d) notwithstanding subparagraph (2)(c), must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
    - (e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the municipality
    - (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
    - (g) must be scrupulous in his or her use of property belonging to the municipality
    - (h) must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
    - (i) must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –
      - (i) any alleged fraud, corruption, favouritism or unfair conduct;
      - (ii) any alleged contravention of paragraph 47(1) of this policy; or
      - (iii) any alleged breach of this code of ethical standards.
  - (3) Declarations in terms of subparagraphs (2)(d) and (e) –
-

- (a) must be recorded in a register which the accounting officer must keep for this purpose
  - (b) by the accounting officer must be made to the mayor of the municipality who must ensure that such declarations are recorded in the register.
- (4) The National Treasury's code of conduct will 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 will be dealt with as follows -
  - (a) in the case of an employee, in terms of the disciplinary procedures of the Mandeni Municipality envisaged in section 67(1)(h) of the Municipal Systems Act;
  - (b) in the case a role player who is not an employee, in recognition of the severity of the breach by:
    - (i) listing in the register of defaulters by the municipality and/or
    - (ii) listing in the provincial and national treasury of defaulters and/or
    - (iii) removal from Mandeni Local Municipality database.
  - (c) In all cases, financial misconduct will be dealt with in terms of chapter 15 of the Act
- (6) A breach of the code of conduct adopted by the municipality must be dealt with in accordance with schedule 2 of the Systems Act

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

- (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
    - (a) any inducement or reward to Mandeni Municipality for or in connection with the award of a contract; or
    - (b) any reward, gift, favour or hospitality to –
      - (i) any official; or
      - (ii) any other role player involved in the implementation of this Policy.
  - (2) The Municipal Manager must promptly report any alleged contravention of subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
  - (3) Subparagraph (1) does not apply to gifts less than R350 in value.
-

#### **47. Sponsorships**

- (1) The Municipal Manager 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.

#### **48. Objections and complaints**

- 1) Persons aggrieved by decisions or actions taken in the implementation of this supply chain management system, may lodge within 14 days of the decision or action –
  - (a) if the objection or complaint is against the procurement process, submit a written objection or complaint against the decision or action to the accounting officer of the municipality who shall, in turn, within 72 hours refer the written objection or complaint to the independent and impartial person referred to in paragraph 50 for resolution.

#### **49. Resolution of disputes, objections, complaints and queries**

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

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

- (1) If a service provider acts on behalf of a municipality to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for the service or the amount collected, the contract between the service provider and the municipality must stipulate–
  - (a) a cap on the compensation payable to the service provider; and
  - (b) that such compensation must be performance based.

#### **51. Cancellation of Contract**

- 1) Contract may be terminated in accordance with the termination provision set out in the contract and in terms of PPPFA Regulation 14(1)c(i)(aa) and reasons contemplated in supply chain management sub-regulations 38(1)(f) & (g). Legal advice may be sought as appropriate.

#### **52. Cancellation of Tenders**

- 1) In terms of PPPFA Regulation 13 the municipality may accept or reject any variation, deviation, tender offer, or alternative tender offer, and may cancel the tender process and reject all tender offers at any time before the formation of a contract. The municipality shall not accept or incur any liability to a tender for such cancellation and rejection but will written reasons for such action upon request to do so.
  - 2) The municipality may, prior to the award of a tender, cancel a tender if
    - (a) Due to changed circumstances there is no longer a need for the services, works or goods requested;
-

- (b) The funds are no longer available to cover the total envisaged expenditure;
  - (c) No acceptable tenders are received; or
  - (d) The incorrect application of the preference point system applied.
- 3) In the event of an incorrect preference point system the following will applied;
- (a) In the application of the 80/20 preference 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 more of the acceptance tenders received are within the Prescribed threshold of R50 million, all tenders received must be evaluated on the 80/20 preference point system
  - (c) In the event of the application of the 90/10 preference point system as stipulated in the tender documents, all tenders received are equal to or below the estimated Rand value of R50- million, the tender invitation must be cancelled.
  - (d) If one or more of the acceptance tenders received are above the prescribed threshold of R50- million, all tenders received must be evaluated on the 90/10 preference point system.
  - (e) A cancellation of a tender invitation as contemplated in the supply chain management sub-regulation (3)(a) and (3)(c), must re-invite tenders and must, in the tender documents, stipulate the correct preference point system to be applied.
- 4) The decision to cancel a tender in terms of the supply chain management sub-regulation 58(2) must be published in the government tender bulletin for the media in which the original tender invitation was advertised.
- 5) The municipality may not, subsequent to the cancellation or abandonment of the process, or the rejection of all responsive tenders offers, re-issue a tender covering substantially the same scope of work within a period of six (6) months unless only one tender was received, and such tender was returned unopened to the tenderer.
- 6) The period of six (6) months “cooling off period” commence from the official cancellation of abandonment date (CIDB standard condition of tender)
- 7) An organ of state may only with the prior approval of the relevant treasury cancel a tender invitation for the second time.

### **53. Blacklisting**

- (1) Tenderers and service providers can be blacklisted/ prohibited from doing business with the municipality based on supply chain management sub-
-

regulations 38 (1)(f) &(g) for a prescribed period due to an improper practice or non-performance as defined in the blacklisting policy

- (2) A tenderer who is blacklisted or included on the National Treasury register of tender defaults, shall not be allowed to participate in any procurement process for work offered by the municipality during the period of disqualification. Maximum period of restriction shall be five (5) years and shall be determined on a case-by-case- basis
- (3) The blacklisting of tenderers, service providers, persons and/or business will be conducted according to the procedures as stipulated in the blacklisting policy

#### **54. GENERAL**

- 1) The municipality supports labour intensive construction and other service relating to where physical labour is required. All labour- intensive projects a minimum of 80% local labour will apply to bids.
- 2) All relevant EPWP documents and reports must be completed in full and be submitted as part of the bid documents and thereafter on implementation of the project.
- 3) All construction work contracts shall include:
  - (a) operation and maintenance plans for such contracts;
  - (b) environment impact assessment or exemption/partial exemption thereof; and

#### **55. BUDGETARY ITEMS**

- 1) Retention is an amount of money retained for a certain period to offset costs which may arise from the contractor's failure to comply fully with the contract.
  - 2) Retention amounts are deducted from the value of the interim amounts inclusive of VAT due to contractors in construction works contracts. (Retention amounts are financial arrangements between the parties to a contract and are therefore not subject to VAT.)
  - 3) Some forms of contract include the release of retention monies in interim and financial payments. Others make these amounts due within a specified time after time the employer's agent certifies completion or the end of the defect's liability period in terms of the contract.
  - 4) Release of retention monies. Retention amounts are deducted from the value of the interim amounts inclusive of VAT due to contractors in constructions works contracts (retention amounts are financial arrangements between the parties to a contract and are therefore not subject to VAT) Some forms of contract include the release of retention monies in interim and final payments. Others make these amounts due within a specified
-

time after the employers' agent certifies completion or the end of the defect's liability period in terms of the contract.

- 5) Retention for procurement of goods and services (including consultancy service) will not generally be called for and does not form part of the contract but forms of the programme for specific service or works required. It can, however, be accessed through the programme in accordance with the limits set below for goods and services:
  - (a) In respect of a Rand value less than or equal to R 1 000 000.00 ,5% of the value of work carried out with no limit, reducing by half for the duration of the defect's liability period
  - (b) In respect of a Rand value exceeding R 1 000 000.00, 10% of the value of work carried out with no limit, reducing by half for the duration of the defects liability period unless otherwise provided for in the standard conditions of contract as may be prescribed.
- 6) For construction works see clause 14.5.6 of standard for Infrastructure Procurement and Delivery Management (SIPDM)
  - (a) Retention monies that are held shall not exceed 10% of any amount due to a contractor. The total amount of retention monies held shall not exceed 5% of the contract or package order price.
- 7) No interests shall be paid or claimed on retention monies kept by the municipality on behalf of service providers

## **56. CONTIGENCIES**

1. No provision for contingencies or priced adjustment for inflation shall be made in the pricing data or included in the contract price at the time that the contract is awarded of an order is issued this budgetary item will be kept at programme level, Annexure B) and standard for Infrastructure Procurement (SIPDM section 14.5.9) at programme level

## **57. NO FROMAL BID PROCESS**

- 1) The following line items are not required to be procured through SCM process:
  - (a) The end user to complete and submit documents with the original invoice to SCM unit to check for legal compliancy:
    - (i) Audit fees;
    - (ii) Bursaries and student practical work;
    - (iii) Compensation for injuries and dismissals;
    - (iv) Congresses/professional meetings (S&T);

- (v) Donations /grants by council;
  - (vi) Entertainment: finance – cash collection;
  - (vii) Telecommunication (Telkom);
  - (viii) License fees;
  - (ix) Postage;
  - (x) Mayoral donations;
  - (xi) Membership fees;
  - (xii) Insurance claims;
  - (xiii) Ward committee allowances;
  - (xiv) Eskom;
  - (xv) Debit orders;
  - (xvi) Bank charges;
  - (xvii) Rand water;
  - (xviii) Inter-departmental charges; and
  - (xix) Employee /councilors related costs;
- 2) The following are not required to be procured through the normal supply chain management process as required by any legislation:
- (a) Audit fees
  - (b) Statutory payments;
  - (c) License fees;
  - (d) Postage fees
  - (e) Membership fees;
  - (f) Telecommunication (Telkom)
  - (g) DWAF (water purchases)
  - (h) Eskom (electricity purchases) and/or
  - (i) Purchases less than R2 000 00

## **58. RECORDS TO BE KEPT**

- (a) Record of verbal and written quotations and formal written quotations
- (b) Verbal and written quotations
- (c) Formal written price quotations
- (d) List of bid documents issued
- (e) Record of ad hoc bids
- (f) Record specific term contracts
- (g) Record of deviations processes
- (h) Record of complaints received from bidders of contractors
- (i) Record of gifts received
- (j) Record of instances of fraud or corruption
- (k) Record of instances of fraud or corruption
- (l) Record of irregular, fruitless and wasteful expenditure
- (m) Record of circulars distributed within Mandeni Municipality

## **59. REPORTING OBLIGATIONS**

- 1) Mandeni Municipality shall submit to the Council, the KZN Provincial Treasury, the National Treasury, the Department for Local Government in the Province or the Auditor

General such information returns, documents, explanations and motivations as may be prescribed or as may be required.

## 2) AD HOC REPORTING

### 60. Calculation Of The Preference Points System - The 80/20 Or 90/10 Preference Points System

#### (1) Preference points systems

- (a) The 80/20 preference points 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). Mandeni may apply the 80/20 preference points system to price quotations with a value less than R30,000 if appropriate.
- (b) The 90/10 preference points system is applicable to bids with a Rand value above R50 million (all applicable taxes included).

#### (2) Calculation of points for price

The PPPFA prescribes that the lowest acceptable bid will score 80 or 90 points for price. Bidders that quoted higher prices will score lower points for price on a pro-rata basis.

The formulae to be utilised in calculating points scored for price are as follows:

*80/20 Preference point system [(for acquisition of services, works or goods up to a Rand value of R50,000,000) (all applicable taxes included)]*

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

Where

- Ps = Points scored for comparative price of bid or offer under consideration
- Pt = Comparative price of bid or offer under consideration
- Pmin = Comparative price of lowest acceptable bid or offer.

#### **Preference point system [(for acquisition of services, works or goods with Rand value above R50 million) (all applicable taxes included)]**

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

Where

- Ps = Points scored for comparative price of bid or offer under consideration
  - Pt = Comparative price of bid or offer under consideration.
-

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

Points scored must be rounded off to the nearest 2 decimal places.

### **Calculation of points for B-BBEE status level of contributor**

Points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

| <b>B-BBEE Status Level of Contributor</b> | <b>Number of points</b> | <b>Number of points</b> |
|-------------------------------------------|-------------------------|-------------------------|
|                                           | <b>(90/10 system)</b>   | <b>(80/20 system)</b>   |
| <b>1</b>                                  | <b>10</b>               | <b>20</b>               |
| <b>2</b>                                  | <b>9</b>                | <b>18</b>               |
| <b>3</b>                                  | <b>6</b>                | <b>14</b>               |
| <b>4</b>                                  | <b>5</b>                | <b>12</b>               |
| <b>5</b>                                  | <b>4</b>                | <b>8</b>                |
| <b>6</b>                                  | <b>3</b>                | <b>6</b>                |
| <b>7</b>                                  | <b>2</b>                | <b>4</b>                |
| <b>8</b>                                  | <b>1</b>                | <b>2</b>                |
| <b>Non-compliant contributor</b>          | <b>0</b>                | <b>0</b>                |

A bid must not be disqualified from the bidding process if the bidder does not submit a certificate substantiating the B-BBEE status level of contribution or is a non-compliant contributor. Such a bidder will score zero (0) out of a maximum of 10 or 20 points respectively for B-BBEE

#### **(1) Calculation of total points scored for price and B-BBEE status level of contribution**

The points scored for price must be added to the points scored for B-BBEE status level of contribution to obtain the bidder's total points scored out of 100.

#### **(2) Evaluation of bids that scored equal points**

- (i) In the event that two or more bids have scored equal total points, the successful bid must be the one that scored the highest points for B-BBEE.
  - (ii) If two or more bids have equal points, including equal preference points for BBEE, the successful bid must be the one scoring the highest score for functionality, if functionality is part of the evaluation process.
  - (iii) In the event that two or more bids are equal in all respects, the award must be decided by the drawing of lots.
-

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

A municipality may, prior to the award of a bid, cancel the bid if:

- (a) Due to changed circumstances, there is no longer a need for the services, works or goods requested. [AOs / AAs must ensure that only goods, services or works that are required to fulfil the needs of the institution are procured]; or
  - (b) Funds are no longer available to cover the total envisaged expenditure. AO has to ensure that the budgetary provisions exist; or
  - (c) No acceptable bids are received. [If all bids received are rejected, the institution must review the reasons justifying the rejection and consider making revisions to the specific conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids
  - (d) There is a material irregularity in the tender process
- (3) The decision to cancel a tender in terms of subsections must be published in the media in which the original tender was advertised.
- (4) An organ of state may only with the prior approval of the relevant Treasury cancel a tender invitation for the second time.
- (5) In terms of CIDB clause F.1.5.2 The employer may not subsequent to the cancellation or abandonment of a tender process or the rejection of all responsive tender offers re-issue a tender covering substantially the same scope of work within a period of six months unless only one tender was received, and such tender was returned unopened to the tenderer.

## **62. Award of contracts**

- (a) A contract must be awarded to the bidder who scored the highest total number of points in terms of the preference point systems.
  - (b) In exceptional circumstances a contract may, on reasonable and justifiable grounds, be awarded to a bidder that did not score the highest number of points. The reasons for such a decision must be approved and recorded for audit purposes and must be defensible in a court of law.
  - (c) Contracts may be expanded or varied by not more than 20% for construction related goods, services and infrastructure projects and 15% for all other goods or services of the original value of contract. Anything the above-mentioned thresholds must be reported to Council. Any expansion or variation on excess of these thresholds must be dealt with in terms of the provisions of Section 116(3) of the MFMA which would be regarded as an amendment to the contract.
  - (d) MFMA Circular 49 issued in 2009 and Section 65 (2) (e) of the Municipal Finance Management Act of 2003 states “that all monies owing by the municipality be paid within 30 days of receiving the relevant invoice or statement, unless prescribed otherwise for certain categories of expenditure
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### **63. Criteria for breaking deadlock in scoring**

- (1) If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest points for B-BBEE.
- (2) If functionality is part of the evaluation process and two or more tenderers score equal total points and equal preference points for B-BBEE, the contract must be awarded to the tenderer that scored the highest points for functionality.
- (3) If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

### **64. Award of contracts to tenderers not scoring highest points**

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

### **65. Green procurement**

- (1) Eco procurement, or green procurement, is procurement that takes into account environmental criteria when goods and services are purchased, so that the related environmental impact is minimised.
- (2) Eco procurement aims to:
  - (a) Encourage a decrease in energy and resource use,
  - (b) Promote environmental best practice in terms of waste minimisation 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.

### **66. Cost Containment**

- (1) The municipality shall annually develop cost containment measures taking into account its operation and cost drivers.

### **67. PERFORMANCE MONITORING OF SERVICE PROVIDERS**

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

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The performance of service providers that have been selected to provide assistance in the provision of a municipal service, otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies, is required, by Section 116 of the Municipal Finance Management Act, to be monitored and reported on.

Section 67 of this policy apply to contracts that have been awarded or reviewed, before or after the adoption of this policy. Furthermore this policy applies to all tenders with a contract value greater than R200 000 VAT included.

The objectives of the Performance Monitoring of Service Providers is to:-

- i. Ensure a high quality of service is maintained
- ii. Detect underperformance early, thereby reducing the risks to projects
- iii. Create mechanisms to improve performance where targets are not being achieved
- iv. Provide data to municipal officials so that informed decisions can be made
- v. Assist in government's developmental objectives in the form of structuring appropriate business
- vi. support strategies/interventions to targeted enterprises
- vii. Assess the suitability of a service provider for pre-qualification, selective tender lists or expressions of interest

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

- (1) All service providers or prospective service providers must be made aware of:
    - (a) the requirement for the assessment and reporting of a service provider's performance;
    - (b) the use of the service provider performance reports when evaluating service providers for registration, pre-qualification, selective tender list, expressions of interest or awarding of a contract; and
    - (c) the exchange of information on service provider performance reports between government units and/or departments.
    - (d) Monitoring of performance against contract must also include skills transfer to municipality in line with the roles and responsibilities outlined in sub-regulation 23 below.
  - (2) The appointed service provider must be given the opportunity to discuss the performance criteria with the Implementing Department before commencement of the contract.
  - (3) Any changes to the performance criteria must be agreed to by the Municipality and the service provider.
  - (4) The decision to change a performance criteria after commencement of a contract is the responsibility of the Reporting Officer.
-

- (5) These amendments must be signed by the service provider and the client and implementing department and attached to the contract or service delivery agreement.
- (6) A service provider's performance must be assessed in the context of the project as a whole. The respective roles and obligations of the Municipality and service provider under the contract must be taken into account.
- (7) The delegated official preparing or reviewing the performance of a service provider must consider whether satisfactory progress or completion of a project has been affected by any matters which are:
- (a) outside the service provider's control, or
  - (b) the result of some action by the Municipality; and
  - (c) measure the service provider's performance after taking into account subparagraphs (a) and (b).
- (8) If there is evidence that the underperformance or non-performance of the service provider is due to factors caused by the Municipality then:
- (a) there will be no penalization of the service provider
  - (b) the Accounting Officer, or delegated official, must take corrective action where necessary.
- (9) The performance assessment reports will be made available to inter-departmental, inter-governmental departments and the CIDB (where applicable) only:
- (a) on completion of a contract; and
  - (b) if there are no pending disputes.
- (10) The Service Provider must be notified of the assessment.
- (11) The Service Provider may respond on the assessment, in writing, and this must be filed with the assessment.
- (12) The conditions of appointment set in the contract will determine what action will be taken against the service provider if underperformance or non-performance is detected.
- (13) Appropriate key performance indicators for the contract must be set by the Municipality as a yardstick for measuring performance.
- (14) Measurable targets must be set for each key performance indicator.
- (15) The SMART principle as laid out in the Municipality's Organisational Performance Framework must be followed in developing key performance indicators. (Specific, Measurable, Achievable, Realistic, Time-framed)
- (16) The management of the contract and the performance of the service provider must be reported quarterly to the Council of the Municipality in the format set by the SCM Unit.
- (17) The performance information will be audited:
- (a) as part of the Municipality's internal auditing process; and/or
  - (b) annually by the Auditor-General.
- (18) The Municipality will endeavor to facilitate support interventions to service providers in the identified areas of underperformance.
- (19) Service providers who have been identified as under-performing in identified areas must be informed of these support interventions.
- (20) The support interventions may be:
- (a) sponsored by the Municipality,
  - (b) subsidised by the Municipality; or
  - (c) paid for by the attending service provider.
-

(21) Records of support interventions and attendance registers must be signed by all parties and filed.

(22) The impact of the support interventions provided by the Municipality to the service provider must be monitored.

(23) The table below outlines the roles and responsibilities of municipal officials in the management of service provider performance.

| <b>ROLE</b>             | <b>RESPONSIBILITY</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Reporting Officer       | <input type="checkbox"/> Line Departments<br><input type="checkbox"/> Monitor and assess work done or service provided as per the service delivery agreement or contract<br><input type="checkbox"/> Report on the performance of the service provider<br><input type="checkbox"/> Monitor, review and report on skills transfer in a contract                                                                                                                                                                                                                                                                                   |
| Reviewing Officer       | <input type="checkbox"/> Review the assessment made by the reporting officer                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Supply Chain Management | <input type="checkbox"/> Manage the performance monitoring process<br><input type="checkbox"/> Report on contract management and service provider performance to council quarterly<br><input type="checkbox"/> Report to Council annually on the performance of service providers<br><input type="checkbox"/> Investigate and report on the impact of the interventions on areas of underperformance as part of the quarterly and annually report.<br><input type="checkbox"/> Review the policy and process annually.<br><input type="checkbox"/> Liaise with Business Support Unit on interventions for underperforming areas. |

## **68. Blacklisting**

(1) The Municipality must establish an administrative committee, the Blacklisting Committee (hereinafter “The Committee”) to consider applications for blacklisting, preferably comprising officials at a senior level within the Municipality for a term to be determined by the Accounting Officer.

(2) The Committee may only act on an application from:

- (a) Head of department;
- (b) the Accounting Officer and or

(3) The Municipality in its sole discretion may blacklist an entity which:

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- (a) has submitted a bid to the Mandeni Municipality , through either its quotation management system or competitive bidding system, or any other procurement system utilized by the Municipality and such bid has not yet been awarded;
- (b) has been awarded a contract through the Municipality's procurement systems but has not commenced with any task order or execution of the contract and or
- (c) has been awarded a contract and has proceeded to execute such contract.

#### 4) Grounds for Blacklisting

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

- (a) committing an improper practice/s as defined;
- (b) failing to achieve a specified goal as stipulated in the tender document in terms of Regulation 15(1) of the Preferential Procurement Regulations;
- (c) committing any offence as set out in Section 12 and 13 of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004;
- (d) persistent non-performance as defined, and as monitored in terms of the Performance Management Policy of the Municipality; and

(5) An entity may be blacklisted if such entity is found to have committed an improper practice/s as outlined in 56 (4) (a) to (d) above.

#### (6) The effects of blacklisting

- (a) The effect of blacklisting an entity extends to its' shareholders, and/or directors and/or members and/or partners or persons in the employ of the Entity being sufficiently complicit in the opinion of the Municipality.
- (b) The effect of the aforesaid is that such Entity and persons are barred from doing business with the Mandeni Municipality for a period determined by the Committee established in 56 (1) above.
- (c) New businesses with common directors/members/shareholders or partners from those businesses which were blacklisted will be precluded from tendering with the Municipality until the expiration of the barring period pronounced upon by the Committee
- (d) The entity may not apply for Municipal contracts until the expiry of the sanction.
- (e) Bid Committees must reject any bid submitted to the Municipality but not yet awarded, where the committee issued an order blacklisting the bidder or the bidder is on the National Defaulters database.
- (f) Current Contracts : The User Department shall terminate contracts of a blacklisted entity ,at a point which is deemed most convenient for the Municipality based on prevailing circumstances preferably not exceeding (Ninety) 90 calendar days from the date of the issue of the Order.

#### (7) The Committee shall have the power to:

- (a) Dismiss an application for blacklisting;
  - (b) make a finding of guilty and blacklist the entity
  - (c) defer the matter to request further and detailed information from the person making the application;
  - (d) request the affected company or shareholder or director or partner or member and or management to provide information that will enable the Committee to make a justifiable order to blacklist;
  - (e) observe the principle of audi alterem partem;
  - (f) establish guidelines for sanctions which should be approved by the Accounting Officer for imposition;
  - (g) Communicate its decision with reasons to entities that it blacklists.
-

(8) The blacklisting process:

Step 1

- (a) The person/s applying for blacklisting shall cause to be submitted to the Chairperson of the Committee, a written report making a case for the consideration of blacklisting.
- b) Supporting documents must be attached thereto, which shall include but not be limited to documentary evidence, supplier performance reports, contracts, payment certificates, invoices, communiqué's between parties, statements of witnesses, etc.

Step 2

- (a) All members of the Committee must be furnished with the documentation in Step1 within a period of not less than 2 weeks to enable them to familiarize themselves with the allegations contained in the application.

Step 3

- (a) The Committee Secretariat shall prepare an agenda for the meeting of the Committee on the instructions of the Chair of the Committee.

Step 4

- (a) submissions will be considered by the blacklisting committee.
- (b) Upon receiving an application as stated in section 56 (2) The committee shall send a written communication to the affected entity, advising them that an application for blacklisting has been received for consideration by the committee. Should the affected entity wish to review the attached documents submitted to the Committee, it shall do so by addressing their concerns with the Chair of the Committee
- (c) Failure to take the matter on review within 14 days of receipt of written communication and report as stated above in section 56 (8) 5 b Blacklisting Committee shall consider the matter for Blacklisting.

Step 5

- (a) the secretariat shall cause order to blacklist be communicated in a manner deemed appropriate by the Committee to party and or parties involved.
  - (b) the order must advise the affected entity or persons of their rights of redress should they be aggrieved by the decision of the Committee.
  - (g) If the matter is not deferred nor dismissed the Chairperson must advise the affected entity that the Committee has received an application for blacklisting and must make available;
    - (a) the grounds, together with supporting documents for the entity to respond to the allegations in writing.
    - (b) the affected entity/shareholders/members/partners/employees shall make submission to the Chairperson of the Committee in writing , in a manner deemed appropriate by the Committee by no later than 15 working days.
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(c) Should no submissions be received within the 15 working days, the Committee shall make a finding on the basis of the information before it, unless the affected entity has made a written application to the Chair of the Committee for an extension and such extension shall not be unreasonably refused.

(d) The once off extension shall not exceed 5 business days.

(10) The Order shall set out:

- (a) the time frames within which the Appeal may be lodged;
- (b) the details of the person to whom the Appeal may be addressed and
- (c) the formalities, if any.

(11) (a) If the Appeal Authority appointed in terms of section 49 of the Policy find the decision of the Blacklisting to be correct, the Committee shall uphold the decision.

(b) The Head: SCM or his nominee must submit the names of blacklisted companies to National Treasury for inclusion on the Tender Defaulters Register together with the appropriate supporting information supplied by the Committee.

## **69 Commencement**

This Policy takes effect on the **01 July 2022**

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