

# **OVERBERG**

## **DISTRICT MUNICIPALITY**

### **INFRASTRUCTURE PROCUREMENT AND DELIVERY MANAGEMENT POLICY**

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## **1. BACKGROUND**

- 1.1 Infrastructure procurement and delivery management is necessary to ensure compliance with legislation and the proper procedures for delivery management.

## **2. PURPOSE OF THE POLICY**

- 2.1 This policy establishes the Overberg District Municipality's (ODM) policy for infrastructure procurement and delivery management in accordance with the provisions of the regulatory frameworks for procurement and supply chain management.

## **3. LEGISLATIVE ENVIRONMENT**

- 3.1 The Municipality is committed to adhering to and applying the prescribed legislative environment as it affects SCM.

3.1.1 The Constitution of the Republic of South Africa, Act No 108 of 1996, as amended;

3.1.2 The Local Government Municipal Finance Management Act, Act No-56 of 2003;

3.1.3 Treasury regulations issued in terms of the MFMA;

3.1.4 Municipal Systems-Act 32 of 2000, Chapter 8 Section 83(1), (2), (3) and (4);

3.1.5 The Policy to Guide Uniformity in Procurement Reform Processes in Government as approved by Cabinet 10 September 2003 and promulgated on 05 December 2003;

3.1.6 National Treasury Circulars: All documents relevant to SCM available electronically on National Treasury's web page [http://www.treasury.gov.za /MFMA /regulations /circulars](http://www.treasury.gov.za/MFMA/regulations/circulars);

- 3.1.7 Preferential Procurement Policy Framework Act (PPPFA), Act No 5 of 2000;
- 3.1.8 Preferential Procurement Policy Framework Act Regulations as amended by Preferential Procurement Regulations 2011 and 2017;
- 3.1.9 Broad Based Black Economic Empowerment Act (BBBEE Act), Act No 53 of 2003;
- 3.1.10 Prevention and Combating of Corrupt Activities Act, Act 12 of 2004;
- 3.1.11 King IV Report on Corporate Governance for South Africa;
- 3.1.12 State Information Technology Act 38 of 1998 as amended;
- 3.1.13 National Small Business Act, Act No 102 of 1996, as amended;
- 3.1.14 Public Service Act, Act No 23 of 1994;
- 3.1.15 Promotion of Administrative Justice Act, Act No 3 of 2000;
- 3.1.16 Promotion of Access to Information Act, Act No 2 of 2000;
- 3.1.17 Protected Disclosure Act, Act No 26 of 2000;
- 3.1.18 The Competition Act, Act No 89 of 1998.

#### 4. SCOPE FOR APPLICATION

4.1 This policy includes the procurement of goods and services necessary for a new facility to be occupied and used as a functional entity but excludes:

- 4.1.1 The storage of goods and equipment following their delivery to ODM which are stored and issued to contractors or to employees
- 4.1.2 The disposal or letting of land
- 4.1.3 The conclusion of any form of land availability agreement;
- 4.1.4 The leasing or rental of moveable assets; and
- 4.1.5 Public private partnerships

#### 5. TERMS, DEFINITIONS AND ABBREVIATIONS

5.1 For the purposes of this document, the definitions and terms given in the standard and the following apply:

**“Agent”**: person or organization that is not an employee of ODM that acts on the ODM's behalf in the application of this document

**“Authorised person”**: the municipal manager or chief executive or the appropriately delegated authority to award, cancel, amend, extend or transfer a contract or order

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

**“Conflict of interest”**: any situation in which:

- a) Someone in a position of trust has competing professional or personal interests which make it difficult for him to fulfil his duties impartially,
- b) An individual or organization is in a position to exploit a professional or official capacity in some way for his personal or for corporate benefit, or

- c) incompatibility or contradictory interests exist between an employee and the organization that employs that employee

**“Contract manager”**: person responsible for administering contracted goods and/or services on behalf of the employer and performing duties relating to the overall management of such contract from the implementer’s point of-view.

**“Family member”**: a person’s spouse, whether in a marriage or in a customary union according to indigenous law, domestic partner in a civil union, or child, parent, brother, sister, whether such a relationship results from birth, marriage or adoption

**“Framework agreement”**: an agreement between an organ of state and one or more contractors, the purpose of which is to establish the terms governing orders to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged

**“Gratification”**: an inducement to perform an improper act

**“Infrastructure delivery”**: the combination of all planning, technical, administrative and managerial actions associated with the construction, supply, renovation, rehabilitation, alteration, maintenance, operation or disposal of infrastructure

**“Infrastructure procurement”**: the procurement of goods or services including any combination thereof associated with the acquisition, renovation, rehabilitation, alteration, maintenance, operation or disposal of infrastructure

**“Maintenance”**: the combination of all technical and associated administrative actions during an item’s service life to retain it in a state in which it can satisfactorily perform its required function

**“MFMA”**: Municipal Finance Management Act (56 of 2003)

**“ODM”**: Overberg District Municipality

**“Operation”**: combination of all technical, administrative and managerial actions, other than maintenance actions, that results in the item being in use

**“Order”**: an instruction to provide goods, services or any combination thereof under a framework agreement

**“Organ of state”**: an organ of state as defined in section 239 of the Constitution of the Republic of South Africa

**“Procurement document”**: documentation used to initiate or conclude (or both) a contract or the issuing of an order

**“Principal”**: a natural person who is a partner in a partnership, a sole proprietor, a director a company established in terms of the Companies Act of 2008 (Act No. 71 of 2008) or a member of a close corporation registered in terms of the Close Corporation Act, 1984, (Act No. 69 of 1984)

**“SARS”**: South African Revenue Service

**“Standard”**: the latest edition of the Standard for Infrastructure Procurement and Delivery Management as published by National Treasury

**“Working day”**: any day of a week on which is not a Sunday, Saturday or public holiday

## **6. GENERAL REQUIREMENTS**

### **6.1 Delegations**

6.1.1 The Council of ODM hereby delegates all powers and duties to the municipal manager which are necessary to enable the municipal manager to:

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

6.1.2 No departure shall be made from the provisions of this policy without the approval of the municipal manager of ODM

6.1.3 The municipal manager shall for oversight purposes:

- a) within 30 days of the end of each financial year, submit a report on the implementation of this the policy to the council of the ODM
- b) within 20 days of the end of each financial year, submit a report on the implementation of this policy to the board of directors, who



must then submit the report to the municipal manager of ODM for submission to the council

- c) immediately submit a report to the council whenever there are serious and material problems in the implementation of this policy
- d) within 10 days of the end of each quarter, submit a report on the implementation of the policy to the mayor and
- e) make the reports public in accordance with section 21A of the Municipal Systems Act of 2000.

## 6.2 Implementation of the Standard for Infrastructure Procurement and Delivery Management

6.2.1 Infrastructure procurement and delivery management shall be undertaken in accordance with the all applicable legislation and the relevant requirements of the latest edition of the National Treasury Standard for Infrastructure Procurement and Delivery Management. Any deviation to the provisions of this policy or standard must be reported to National Treasury and the provincial treasury

## 6.3 Supervision of the infrastructure delivery management unit

The Infrastructure Delivery Management Unit shall be directly supervised by the chief financial officer or person delegated in terms of section 82 of the MFMA.

## 6.4 Objections and complaints

Persons aggrieved by decisions or actions taken in the implementation of this policy, may lodge within 14 days of the decision or action, a written objection or complaint against the decision or action.

6.5 Resolution of disputes, objections, complaints and queries

6.5.1 The municipal manager or delegated person shall appoint an independent and impartial person, not directly involved in the infrastructure delivery management processes to assist in the resolution of disputes between the municipality and other persons regarding:

- a) any decisions or actions taken in the implementation of the supply chain management system
- b) any matter arising from a contract awarded within the ODM's infrastructure delivery management system; or
- c) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract

6.5.2 The Chief Financial Officer shall assist the person appointed in terms of 6.5.1 to perform his or her functions effectively

6.5.3 The person appointed in terms of 6.5.1 shall:

- a) strive to resolve promptly all disputes, objections, complaints or queries received; and
- b) submit monthly reports to the municipal manager on all disputes, objections, complaints or queries received, attended to or resolved

6.5.4 A dispute, objection, complaint or query may be referred to 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.

6.5.5 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.

## 7. CONTROL FRAMEWORK FOR INFRASTRUCTURE DELIVERY MANAGEMENT

### 7.1 Assignment of responsibilities for approving or accepting end of stage deliverables

The responsibilities for approving or accepting end of stage deliverables shall be as stated in Table 1.

No	Stage Name		Person assigned the responsibility for approving end stage deliveries
0	Project Initiation		Director
1	Infrastructure Planning		Director
2	Strategic resourcing		Director
3	Pre-feasibility		Director
	Preparation and Briefing		HOD
4	Feasibility		HOD
	Concept and Viability		HOD
5	Design Development		HOD
6	Design Docu- mentation	6A Production information	The contract manager accepts the manufacture, fabrication and construction information
		6B Manufacture Fabrication And Construction Information	

7	Works	The Contract manager certifies completion of the works or the delivery of the goods and associated services
8	Handover	The owner of end user accepts liability for the works
9	Goods delivery and/ or service Completion	The Contract manager or supervising agent certifies the defects certificate in accordance with the provisions of the contract The Contract manager certifies final completion in accordance with the provisions of the contract CFO accepts the close out report

## 8. CONTROL FRAMEWORK FOR INFRASTRUCTURE PROCUREMENT

- 8.1 The responsibilities for taking the key actions associated with the formation and conclusion of contracts including framework agreements above the quotation threshold shall be as stated in Table 2.

<b>Table 2: Procurement activities and associated with the formation and conclusion of contracts above the quotation threshold</b>					
<b>Activity</b>		<b>Sub-activity (see Table 3 of the standard)</b>		<b>Key action</b>	<b>Person assigned responsibility for key action</b>
1*	Establish what is to be procured	1.3- <b>PG1</b>	Obtain permission	Make a decision to proceed or not to proceed with the procurement based on the board scope of work and the financial estimates	Director
2*	Decide on procurement	2,5 <b>PG2</b>	Obtain approval for procurement	Confirm selection of strategies so that	HOD

<b>Table 2: Procurement activities and associated with the formation and conclusion of contracts above the quotation threshold</b>					
	strategy		strategies that are to be adopted including specific approvals to approach a confined market or the use of the negotiation procedure	tender offers can be solicited	
3	Solicit tender offers	3.2 <b>PG3</b>	Obtain approval for procurement documents	Grant approval for the issuing of the procurement documents	Bid Specification Committee HOD
		3.3 <b>PG4</b>	Confirm that budgets are in place	Confirm that finance is available for the procurement to take place	Bid Specification Committee HOD
4	Evaluate tender offers	4.2 <b>PG5</b>	Obtain authorization to proceed with next phase of tender process in the qualified, proposal or competitive negotiations procedure	Review evaluation report, ratify recommendations and authorize progression to the next stage of the tender process	Bid Evaluation Committee HOD or delegated official from department
		4.7 <b>PG6</b>	Confirm recommendations contained in the tender evaluation	Review recommendations of the evaluation committee and refer	Bid Adjudication Committee

**Table 2: Procurement activities and associated with the formation and conclusion of contracts above the quotation threshold**

			report	back to evaluation committee for reconsideration or make recommendation for award	
5	Award contract	5.3 PG7	Award contract	Formally accept the tender offer in writing and issue the contractor with a signed copy of contract	Accounting Officer HOD
		5.5 PG1	Upload data in financial management and payment system	Verify data and upload contractor's particulars and data associated with the contract or order	HOD SCM
		6.4 PG8A	Obtain approval to waive penalties or low performance damages	Approve waiver of penalties or low performance damages	CFO HOD SCM HOD
		6.5 PG8B	Obtain approval to notify and refer a dispute to an adjudicator	Grant permission for the referral of a dispute to an adjudicator or for final settlement to an arbitrator or court of law	Accounting Officer
		6.6 PG8C	Obtain approval to increase the	Approve amount of time and cost	Accounting Officer

**Table 2: Procurement activities and associated with the formation and conclusion of contracts above the quotation threshold**

			total of prices, excluding contingencies and price adjustments for inflation, or the time for completion at the award of a contract or the issuing of an order up to a specified percentage	overruns up to the threshold	
		6.7 PG8D	Obtain approval to exceed the total prices, excluding contingencies and price adjustments for inflation, or the time for completion at the award of a contract or the issuing of an order by more than 20% and 30%, respectively	Approve amount of time and cost overruns above the threshold	Accounting Officer
		6.8	Obtain approval	Approve the amount	Accounting Officer

<b>Table 2: Procurement activities and associated with the formation and conclusion of contracts above the quotation threshold</b>					
		PG8E	to cancel or terminate a contract		
		6.9 PG8F	Obtain approval to amend a contract	Approve proposed amendments to contract	Accounting Officer

8.2 The responsibilities for taking the key actions associated with the quotation procedure and the negotiation procedure where the value of the contract is less than the threshold set for the quotation procedure shall be as follows:

8.2.1 Municipal Manager or delegate person shall grant approval for the issuing of the procurement documents, based on the contents of a documentation review report developed in accordance with the provisions of the standard

8.2.2 the authorised person may award the contract if satisfied with the recommendations contained in the evaluation report prepared in accordance with the provisions of the standard

8.3 The responsibilities for taking the key actions associated with issuing an order in terms of a framework agreement shall be as stated in Table-3.

<b>Table 3: Procurement activities associated with the issuing of an order above the quotation threshold in terms of a framework agreement</b>			
<b>Activity</b>		<b>Key action</b>	<b>Person assigned responsibility to perform key action</b>
1 FG1	Confirm justifiable reasons for selecting a framework	Confirm reasons submitted for not requiring competition	Bid adjudication Committee



<b>Table 3: Procurement activities associated with the issuing of an order above the quotation threshold in terms of a framework agreement</b>			
	contractor where there is more than one framework agreement covering the same scope of work	amongst framework contractors or instruct that quotations be invited	
3 FG2	Obtain approval for procurement documents	Grant approval for the issuing of the procurement documents	Bid adjudication committee
4 FG3	Confirm that budget are in place	Confirm that finance is available so that the order may be issued	CFO
6 FG4	Authorise the issuing of the order	If applicable, review evaluation report and confirm or reject recommendations. Formally accept the offer in writing and issue the contractor with a signed copy of the order	HOD SCM

## **9. INSTITUTIONAL ARRANGEMENTS FOR INFRASTRUCTURE DELIVERY MANAGEMENT**

### **9.1 Committee system for procurement**

9.1.1 The committee system for procurement shall be followed as described in the Supply Chain Management Policy. The following additional determinations shall apply to infrastructure procurement:

- a) The bid evaluation committee shall comprise not less than three people. The chairperson shall be an employee of ODM with requisite skills.

9.1.2 The existing bid adjudication committee members appointed by the municipal manager in terms of the supply chain management regulations will deal with tenders with both the supply chain for general goods and services and for infrastructure.

9.2 Conduct of those engaged in infrastructure delivery

9.2.1 All personnel and agents of ODM shall comply with the requirements of the CIDB Code of Conduct for all Parties engaged in Construction Procurement. They shall:

9.2.1.1 Behave equitably, honestly and transparently;

9.2.1.2 Discharge duties and obligations timeously and with integrity;

9.2.1.3 Comply with all applicable legislation and associated regulations;

9.2.1.4 Satisfy all relevant requirements established in procurement documents;

9.2.1.5 Avoid conflicts of interest; and

9.2.1.6 Not maliciously or recklessly injure or attempt to injure the reputation of another party

9.2.2 All personnel and agents engaged in ODM's infrastructure delivery management system shall:

9.2.2.1 Not perform any duties to unlawfully gain any form of compensation, payment or gratification from any person for themselves or a family member or an associate;

9.2.2.2 Perform their duties efficiently, effectively and with integrity and may not use their position for private gain or to improperly benefit another person;

9.2.2.3 Strive to be familiar with and abide by all statutory and other instructions applicable to their duties

9.2.2.4 Furnish information in the course of their duties that is complete, true and fair and not intended to mislead

9.2.2.5 Ensure that resources are administered responsibly

9.2.2.6 Be fair and impartial in the performance of their functions

- 9.2.2.7 At no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual;
- 9.2.2.8 Not abuse the power vested in them;
- 9.2.2.9 Not place themselves under any financial or other obligation to external individuals or firms that might seek to influence them in the performance of their duties
- 9.2.2.10 Assist ODM in combating corruption and fraud within the infrastructure procurement and delivery management system
- 9.2.2.11 Not disclose information obtained in connection with a project except when necessary to carry out assigned duties
- 9.2.2.12 Not make false or misleading entries in reports or accounting systems and
- 9.2.2.13 Keep matters of a confidential nature in their possession confidential unless legislation, the performance of duty or the provision of the law require otherwise.
- 9.2.2.14 An employee or agent may not amend or tamper with any submission, tender or contract in any manner whatsoever.

### 9.2.3 Conflicts of interest

9.2.3.1 The employees and agents of ODM who are connected in any way to procurement and delivery management activities which are subject to this policy, shall

- a) disclose in writing to the employee of the ODM to whom they report, or to the person responsible for managing their contract, if they have, or a family member or associate has, any conflicts of interest and

- b) not participate in any activities that might lead to the disclosure of ODM proprietary information.

9.2.3.2 The employees and agents of ODM shall declare and address any perceived or known conflict of interest, indicating the nature of such conflict to whoever is responsible for overseeing the procurement process at the start of any deliberations relating to a procurement process or as soon as they become aware of such conflict, and abstain from any decisions where such conflict exists or recuse themselves from the procurement process, as appropriate.

9.2.3.3 Agents who prepare a part of a procurement document may in exceptional circumstances, where it is in ODM's interest to do so, submit a tender for work associated with such documents provided that:

- a) ODM states in the tender data that such an agent is a potential tenderer
- b) All the information which was made available to, and the advice provided by that agent which is relevant to the tender, is equally made available to all potential tenderers upon request, if not already included in the scope of work and
- c) The procurement documentation committee is satisfied that the procurement document is objective and unbiased having regard to the role and recommendations of that agent

9.2.4 Evaluation of submissions received from respondents and tenderers

9.2.4.1 The confidentiality of the outcome of the processes associated with the calling for expressions of interest, quotations or tenders shall be preserved. Those engaged in the evaluation process shall:

- a) not have any conflict between their duties as an employee or an agent and their private interest;
- b) may not be influenced by a gift or consideration (including acceptance of hospitality) to show favour or disfavour to any person
- c) deal with respondents and tenderers in an equitable and even-handed manner at all times and
- d) not use any confidential information obtained for personal gain and may not discuss with, or disclose to outsiders, prices which have been quoted or charged to ODM

9.2.4.2 The evaluation process shall be free of conflicts of interest and any perception of bias. Any connections between the employees and agents of ODM and a tenderer or respondent shall be disclosed and recorded in the tender evaluation report.

9.2.4.3 ODM personnel and their agents shall immediately withdraw from participating in any manner whatsoever in a procurement process in which they, or any close family member, partner or associate, has any private or business interest.

#### 9.2.5 Non-disclosure agreements

Confidentiality agreements in the form of non-disclosure agreements shall, where appropriate, be entered into with

agents and potential-contractors to protect ODM's confidential information and interests.

#### 9.2.6 Gratifications, hospitality and gifts

9.2.6.1 The employees and agents of ODM shall not, directly or indirectly, accept or agree or offer to accept any gratification from any other person including a commission, whether for the benefit of themselves or for the benefit of another person, as an inducement to improperly influence in any way a procurement process, procedure or decision

9.2.6.2 The employees and agents of ODM as well as their family members of associates shall not receive any of the following from any tenderer, respondent or contractor or any potential contractor

- a) money, loans, equity, personal favours, benefits or services;
- b) overseas trips; or
- c) any gifts or hospitality irrespective of value from tenderers or respondents prior to the conclusion of the processes associated with a call for an expression of interest or a tender

9.2.6.3 The employees and agents of ODM shall not purchase any items at artificially low prices from any tenderer, respondent or contractor or any potential contractor at artificially low prices which are not available to the public

9.2.6.4 All employees and agents of ODM may for the purpose of fostering inter-personal business relations accept the following:

- a) promotional material of small intrinsic value such as pens, paper-knives, diaries, and calendars.
- b) incidental business hospitality such as business lunches or dinners, which the employee is prepared to reciprocate
- c) gifts in kind other than those listed in a) and b) which have an intrinsic value greater than R350 unless they have declared them to the municipal manager

9.2.6.5 Under no circumstances shall gifts be accepted from prospective contractors during the evaluation of calls for expressions of interest, quotations or tenders that could be perceived as undue and improper influence of such processes

9.2.6.6 Employees and agents of ODM shall without delay report to the municipal manager or chief financial officer or appropriately delegated authority any incidences of a respondent, tenderer or contractor who directly or indirectly offers a gratification to them or any other person to improperly influence in any way a procurement process, procedure or decision

### 9.3 Reporting of breaches

9.3.1 Employees and agents of ODM shall promptly report to the municipal manager or appropriately delegated authority any alleged improper conduct which they may become aware of, including any alleged fraud or corruption

9.4 Measures to prevent abuse of the infrastructure delivery system

9.4.1 The municipal manager or chief financial officer or appropriately delegated authority shall investigate all allegations of corruption, improper conduct or failure to comply with the requirements of this policy against an employee or an agent, a contractor or other role player and, where justified:

9.4.1.1 Take steps against an employee or role player and inform the National Treasury and [name of applicable provincial treasury of those steps

9.4.1.2 Report to the South African Police Service any conduct that may constitute a criminal offence

9.4.1.3 Lodge complaints with the Construction Industry Development Board or any other relevant statutory council where a breach of such council's code of conduct or rules of conduct are considered to have been breached

9.4.1.4 Cancel a contract if:

- a) it comes to light that the contractor has made a misrepresentation, submitted falsified documents or has been convicted of a corrupt or fraudulent act in competing for a particular contract or during the execution of that contract or
- b) an employee or other role player committed any corrupt or fraudulent act during the tender process or during the execution of that contract

9.5 Awards to persons in the service of the state

9.5.1 Any submissions made by a respondent or tenderer who declares in the Compulsory Declaration that a principal is one of the following shall be rejected:



- 9.5.1.1 A member of any municipal council, any provincial legislature, or the National Assembly or the National Council of Provinces
- 9.5.1.2 An official of any municipality
- 9.5.1.3 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)
- 9.5.1.4 A member of the accounting authority of any national or provincial public entity or
- 9.5.1.5 An employee of Parliament or a provincial legislature
- 9.5.1.6 The notes to the annual financial statements of the municipality shall disclose particulars of an award of more than R 2000 to a person who is a family member of a person identified in 9.5.1 or who has been in the previous 12 months. Such notes shall include the name of the person, the capacity in which such person served and the amount of the award.

## 9.6 Collusive tendering.

9.6.1 Any submissions made by a respondent or tenderer who fails to declare in the Compulsory Declaration that the tendering entity:

9.6.1.1 Is not associated, linked or involved with any other tendering entity submitting tender offers or

9.6.1.2 Has not engaged in any prohibited restrictive horizontal practices including consultation, communication, agreement, or arrangement with any competing or potential tendering entity regarding prices, geographical areas in which goods and services will be rendered, approaches to determining prices or pricing parameters, intentions to submit a tender or not, the content of the submission (for example, but not limited to specification,

timing, conditions of contract) or intention to not win a tender shall be rejected.

9.7 Placing of contractors under restrictions

9.7.1 The Manager Supply Chain shall prepare a report on the following matters and make a recommendation to the municipal manager for placing the contractor or any of its principals under restrictions from doing business with the ODM if any tenderer that has submitted a tender offer or a contractor that has concluded a contract has, as relevant:

9.7.1.1 Withdrawn such tender or quotation after the advertised closing date and time for the receipt of submissions

9.7.1.2 After having been notified of the acceptance of his tender, failed or refused to commence the contract

9.7.1.3 Had their contract terminated for reasons within their control without reasonable cause

9.7.1.4 Offered, promised or given a bribe in relation to the obtaining or the execution of such contract

9.7.1.5 Acted in a fraudulent, collusive or anti-competitive or improper manner or in bad faith towards ODM or

9.7.1.6 Made any incorrect statement in any affidavit or declaration with regard to a preference claimed and is unable to prove to the satisfaction of ODM that the statement was made in good faith or reasonable steps were taken to confirm the correctness of the statements

9.7.2 The municipal manager may, as appropriate, upon the receipt of a recommendation made in terms of 9.7.1 and after notifying the contractor of such intention in writing and giving written reasons for such action, suspend a contractor or any principal of that contractor from submitting a tender offer to ODM for a period of time.

9.7.3 The Manager Supply Chain Management shall:

9.7.3.1 Record the names of those placed under restrictions in an internal register which shall be accessible to employees and agents of ODM who are engaged in procurement processes and

9.7.3.2 Notify the National Treasury and western cape provincial treasury and , if relevant, the Construction Industry Development Board, of such decision and provide them with the details associated therewith.

9.8 Complaints

9.8.1 All complaints regarding the ODM's infrastructure delivery management system shall be addressed to the Municipal Manager and such complaints shall be in writing

9.8.2 The technical department shall investigate all complaints regarding the infrastructure procurement and delivery management system and report on actions taken to the Head of Infrastructure Services who will decide on what action to take

## 10. ACQUISITION MANAGEMENT

10.1 SARS tax clearance compliance

10.1.1 No contract may be awarded or an order issued where the value of such transaction exceeds R 15 000, unless a tenderer or contractor's tax clearance status on the National Treasury's Central Supplier Database shows that their tax compliance status as "Compliant".

- 10.1.2 In the case of a partnership, each partner shall comply with the requirements of 10.1.1.
- 10.1.3 No payment shall be made to a contractor who does not satisfy the requirements of 10.1.1 and 10.1.2. An employee of ODM shall upon detecting that a tenderer or contractor is not tax compliant, immediately notify such person of such status
- 10.1.4 Notwithstanding the requirements of 10.1.1 and 10.1.3 the following shall apply, unless a person who is not tax compliant indicates to the designated person that it intends challenging its tax compliance status with SARS:
- 10.1.4.1 A contract may be awarded to a non-compliant tenderer if such a tenderer is able to remedy its tax compliance status within a period not exceeding 10 working days after being duly notified of its non-compliant status
  - 10.1.4.2 An order may be awarded to a non-compliant contractor if such a contractor is able to remedy its tax compliance status within a period not exceeding 10 working days after being duly notified of its non-compliant status
  - 10.1.4.3 A non-compliant contractor shall be issued with a first warning that payments in future amounts due in terms of the contract may be withheld, before the authorising of any payment due to such contractor;
  - 10.1.4.4 Before authorising a further payment due to a non-compliant contractor who has failed to remedy its tax compliance status after receiving a first warning, a second and final warning shall be issued to such contractor
  - 10.1.4.5 No payments may be released for any amounts due in terms of the contract due to a non-compliant contractor if, after a period of 30 calendar days have lapsed since the second warning was issued, the non-compliant contractor has failed to remedy its tax compliance status

10.1.5 The ODM may cancel a contract with a non-compliant contractor if such a contractor fails to remedy its tax compliance status after a period of 30 calendar days have lapsed since the second warning was issued in terms of 10.1.4.5.

10.2 Municipal rates and taxes compliance

10.2.1 No contract may be awarded to a tenderer who, of the principals of that tenderer, owes municipal rates and taxes or municipal service charges to any municipality or a municipal entity and are in arrears for more than 3 months.

10.3 Declarations of interest

10.3.1 Tenders and respondents making submissions in response to an invitation to submit a tender or a call for an expression of interest, respectively shall declare in the Compulsory Declaration whether or not any of the principals:

10.3.1.1 Are an employee of the ODM or in the employ of the state; or

10.3.1.2 Have a family member or a business relation with a person who is in the employ of the state.

10.4 Invitations to submit expressions of interest or tender offers

10.4.1 Refer to the Supply Chain Management Policy for all invitations to submit tenders

10.4.2 Advertisements relating to construction works which are subject to the Construction Industry Development Regulations issued in terms of the Construction Industry Development Act of 2000 shall in addition to the requirements of 10.4.1 be advertised on the

CIDB website. Advertisements shall be placed by the Manager Supply Chain Management.

- 10.4.3 Where deemed appropriate by Manager Technical Services an invitation to tender and a call for an expression of interest shall be advertised in suitable local and national newspapers and the Government Tender Bulletin as directed by such person. Advertisements shall be placed by Manager Supply Chain Management
  - 10.4.4 Such advertisements shall be advertised for a period of at least 30 days before closure, except in urgent cases when the advertisement period may be shortened as determined by the municipal manager or the appropriately delegated authority.
  - 10.4.5 Invitations to submit expressions of interest or tender offers shall be issued not less than 10 working days before the closing date for tenders and at least 5 working days before any compulsory clarification meeting. Procurement documents shall be made available not less than 7 days before the closing time for submissions.
- 10.5 Publication of submissions received and the award of contracts
- 10.5.1 Refer to the Supply Chain Management Policy for the publication of submissions received and the award of contracts.
  - 10.5.2 The Manager Supply Chain Management shall publish within 7 working days of the award of a contract the following on the ODM's website:
    - 10.5.2.1 The contract number;
    - 10.5.2.2 Contract title;
    - 10.5.2.3 Brief description of the goods, services or works;

- 10.5.2.4 The total of the prices, if practical;
- 10.5.2.5 The names of successful tenderers and their B-BBEE status level of contribution;
- 10.5.2.6 Duration of the contract; and
- 10.5.2.7 Band names, if applicable.

10.5.3 The Manager Supply Chain shall submit within 7 working days of the award of a contract the information required by National Treasury on the National Treasury e-Tender Publication Portal regarding the successful and unsuccessful tenders. Submissions shall be made by Manager Supply Chain Management.

10.5.4 The award of contracts relating to construction works which are subject to the Construction Industry Development Regulations issued in terms of the Construction Industry Development Act of 2000 shall in addition to the requirements of 10.5.3 be notified on the CIDB website. The notification shall be made by placed by Manager Supply Chain Management

## **11. DISPOSAL COMMITTEE**

- 11.1 The municipal manager or the appropriately delegated authority shall appoint on a disposal by disposal basis in writing the members of the disposal committee to decide on how best to undertake disposals in accordance with the provisions of clause 10 of the standard
- 11.2 The disposal panel shall comprise not less than three people. The chairperson shall be an employee of ODM.
- 11.3 The disposal committee shall make recommendations to Municipal Manager who shall approve the recommendations, refer the disposal strategy back to the disposal committee for their reconsideration, decide not to proceed or to start afresh with the process.

**12. REPORTING OF INFRASTRUCTURE DELIVERY MANAGEMENT INFORMATION**

12.1 Manager Supply Chain Management shall submit any reports required in terms of the standard to the National Treasury or Western Cape Provincial Treasury

**13. INFRASTRUCTURE PROCUREMENT**

13.1 Procurement documents

13.1.1 The forms of contract that may be used are as follows:

Form of Contract	Code	Usage

13.1.2 The ODM's preapproved templates for Part C1 (Agreements and contract data) of procurement documents shall be utilised to obviate the need for legal review prior to the awarding of a contract. All modifications to the standard templates shall be approved by Manager Supply Chain Management prior to being issued for tender purposes.

13.1.3 Disputes arising from the performance of a contract shall be finally settled in a South African court of law

13.1.4 The Municipal Declaration and returnable documents contained in the standard shall be included in all tenders for:

13.1.4.1 Consultancy services and

13.1.4.2 Goods and services or any combination thereof where the total of the prices is expected to exceed R10 m including VAT



13.2 Developmental procurement policy

13.2.1 The following specific goals shall be proposed:

13.2.1.1 Organs of state shall utilise procurement to promote Broad-Based Black Economic Empowerment in accordance with the provisions of the Broad-Based Black Economic Empowerment Act and, where appropriate, to promote:

- a) work opportunities for target groups and
- b) national development goals, such as those identified by the Presidential Infrastructure Coordinating Commission.

13.2.1.2 Not less than 50% of the points allocated to preference in a points scoring system in the evaluation of tenders shall be allocated to Broad-Based Black Economic Empowerment goals

13.2.1.3 Minimum local content shall be included in contracts in accordance with the Preferential Procurement Regulations issued in terms of the Preferential Procurement Policy Framework Act. Requirements shall be evaluated in tenders through declarations made by tenderers and shall be included in the scope of work associated with the contract.

13.3 Permitted targeted procurement procedures

13.3.1 The targeted procurement procedures that may be used to promote social and economic objectives shall include one or more of the following:

- 13.3.1.1 The granting of preferences
- 13.3.1.2 Accelerated rotations on electronic databases, where appropriate
- 13.3.1.3 The granting of up to 10% of the total number of evaluation points used to short-list tenderers following a call for expressions of interest
- 13.3.1.4 Financial incentives for the attainment of key performance indicators in the performance of the contract and
- 13.3.1.5 The creation of contractual obligations to engage target groups in the performance of the contract by establishing requirements for the tendering of subcontracts in terms of a specified procedure, or
- 13.3.1.6 Establishing obligations to attain contract participation goals in accordance with the relevant provisions of SANS 10845.

#### **14. PAYMENT OF CONTRACTORS**

- 14.1 The ODM shall settle all accounts within 30 days of invoice or statement as provided for in the contract.

#### **15 APPROVAL TO UTILISE SPECIFIC PROCUREMENT PROCEDURES**

- 15.1 Prior approval shall be obtained for the following procurement procedures from the following persons, unless such a procedure is already provided for in the approved procurement strategy:
  - 15.1.1 Municipal Manager shall authorise the use of the negotiated procedure above the thresholds provided in the standard.
  - 15.1.2 Municipal Manager shall authorise the approaching of a confined market except where a rapid response is required in the

presence of, or the imminent risk of, an extreme or emergency situation arising from the conditions set out in the standard and which can be dealt with or the risks relating thereto arrested within 48 hours; and

15.1.3 the proposal procedure using the two-envelope system, the proposal procedure using the two-stage system or the competitive negotiations procedure

15.2 The person authorised to pursue a negotiated procedure in an emergency is Municipal Manager.

## **16. RECEIPT AND SAFEGUARDING OF SUBMISSIONS**

16.1 A dedicated and clearly marked tender box shall be made available to receive all submissions made.

16.2 The tender box shall be fitted with two locks and the keys kept separately by two designated persons. Such personnel shall be present when the box is opened on the stipulated closing date for submissions.

## **17. OPENING OF SUBMISSIONS**

17.1 Submissions shall be opened by an opening panel comprising two people nominated by Municipal Manager who have declared their interest or confirmed that they have no interest in the submissions that are to be opened

17.2 The opening panel shall open the tender box at the stipulated closing time and:

17.2.1 Sort through the submissions and return those submissions to the box that are not yet due to be opened including those whose closing date has been extended

- 17.2.2 Return submissions unopened and suitably annotated where:
  - 17.2.2.1 Submissions are received late, unless otherwise permitted in terms of the submission data
  - 17.2.2.2 Submissions were submitted by a method other than the stated method,
  - 17.2.2.3 Submissions were withdrawn in accordance with the procedures contained in SANS 10845-3 and.
  - 17.2.2.4 Only one tender submission is received and it is decided not to open it and to call for fresh tender submissions
- 17.2.3 Record in the register submissions that were returned unopened;
- 17.2.4 Open submissions-if received in sealed envelopes and annotated with the required particulars and read out the name of and record in the register the name of the tenderer or respondent and, if relevant, the total of prices including VAT where this is possible
- 17.2.5 Record in the register the name of any submissions that is returned with the reasons for doing so
- 17.2.6 Record the names of the tenderer's representatives that attend the public opening
- 17.2.7 Sign the entries into the register and
- 17.2.8 Stamp each returnable document in each tender submission
- 17.3 Each member of the opening panel shall initial the front cover of the submission and all pages that are stamped in accordance with the requirements of 17.2.8.
- 17.4 Respondents and tenderers whose submissions are to be returned shall be afforded the opportunity to collect their submissions

17.5 Submissions shall be safeguarded from the time of receipt until the conclusion of the procurement process

**18. USE OF ANOTHER ORGAN OF STATE'S FRAMEWROK AGREEMENT**

18.1 The ODM may make use of another organ of state's framework contract which has been put in place by means of a competitive tender process and there are demonstrable benefits for doing so. The [municipal manager or chief executive or delegated official] shall make the necessary application to that organ of state to do so.

**19. INSURANCES**

19.1 Contractors shall be required to take out all insurances required in terms of the contract

19.2 The insurance cover in engineering and construction contracts for loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with a contract shall in general not be less than the value stated in Table 4, unless otherwise directed by Municipal Manager.

19.3 Lateral earth support insurance in addition to such insurance shall be take out on a case by case basis.

19.4 The insurance cover in professional services and service contracts for damage to property or death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with a contract shall not be less than the value stated in Table 4 for any one event unless otherwise directed by Municipal Manager

<b>Table 4: Minimum insurance cover</b>	
<b>Type of Insurance</b>	<b>Value</b>
Engineering and construction contracts – loss of or damage to property (except the works, plant and material and equipment) and liability for bodily injury to- or death of a person (not an employee of the contractor) caused by activity in connection with contract	Not less than R20-million
Professional services and services contracts – death of or bodily injury to employees of the contractor arising out of and in the course of their employment in connection with a contract or damage to property	Not Less than R10.Million
Professional indemnity insurance	Geotechnical, civil and structural engineering: R5 M Electrical, mechanical and engineering: R3 M Architectural: R5 M Other-R 3 M

19.5 SASRIA Special Risk Insurance in respect of riot and associated risk of damage to the works, Plant and Materials shall be taken out on-all engineering and construction works.

19.6 Professional service appointments shall as a general rule be subject to proof of current professional indemnity insurance being submitted by the contractor in an amount not less than the value stated in Table 4 in respect of each claim, without limit to the number of claims, unless otherwise directed by the CFO in relation to the nature of the service that they provide.

19.7 ODM shall take out professional indemnity insurance cover where it is deemed necessary to have such insurance at a level higher than the levels of insurance commonly carried by contractors.

19.8 Where payment is to be made in multiple currencies, either the contractor or ODM should be required to take out forward cover. Alternatively, the prices for the imported content should be fixed as soon as possible after the starting date for the contract.

## **20. WRITTEN REASONS FOR ACTIONS TAKEN**

20.1 Written reasons for actions taken shall be provided by the Municipal Manager

20.2 The written reasons for actions taken shall be as brief as possible and shall as far as is possible, and where relevant, be framed around the clauses in the following as to why a tenderer was not considered for the award of a contract or not awarded a contract:

20.2.1 SANS 10845-3, Construction procurement - Part 3: Standard conditions of tender, and, giving rise to the reason why a respondent was not short listed, prequalified or admitted to a data base; or

20.2.2 SANS 10845-4, Construction procurement - Part 4: Standard conditions for the calling for expressions of interest;

20.3 Requests for written reasons for actions taken need to be brief and to the point and may not divulge information which is not in the public interest or any information which is considered to prejudice the legitimate commercial interests of others or might prejudice fair competition between tenderers.

## **21. REQUEST FOR ACCESS TO INFORMATION**

21.1 Should an application be received in terms of Promotion of Access to Information Act of 2000 (Act 2 of 2000), the "requestor" should be referred to the ODM's Information Manual which establishes the procedures to be

followed and the criteria that have to be met for the "requester" to request access to records in the possession or under the control of ODM.

- 21.2 Access to technical and commercial information such as a comprehensive programme which links resources and prices to such programme should be refused as such information provides the order and timing of operations, provisions for time risk allowances and statements as to how the contractor plans to do the work which identifies principal equipment and other resources which he plans to use. Access to a bill of quantities and rates should be provided in terms of the Act.

## **22. RELATED POLICIES**

The following policies are related to this policy:

- 22.1 Supply chain management policy
- 22.2 Asset management policy
- 22.3 Preferential procurement Framework Policy

## **23. REVIEW**

- 23.1 This policy will be reviewed at least annually and updated if needed.

## **24. EFFECTIVE DATE**

- 24.1 This policy shall come into effect on 1 July 2017 and shall remain in full force and effect until it is reviewed, revoked or amended by Council.