

CAPE WINELANDS DISTRICT MUNICIPALITY



SUPPLY CHAIN MANAGEMENT POLICY

THIS POLICY CONSISTS OF FIVE PARTS:

- PART 1: SUPPLY CHAIN MANAGEMENT POLICY FOR GOODS AND SERVICES**
- PART 2: PREFERENTIAL PROCUREMENT POLICY FRAMEWORK**
- PART 3: INFRASTRUCTURE PROCUREMENT AND DELIVERY MANAGEMENT**
- PART 4: GENERAL CONDITIONS OF CONTRACT**
- PART 5: CODE OF CONDUCT FOR SUPPLY CHAIN MANAGEMENT PRACTITIONERS AND OTHER ROLE PLAYERS**

The **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 the CAPE WINELANDS DISTRICT MUNICIPALITY.

OBJECTIVE OF THE SUPPLY CHAIN MANAGEMENT POLICY

The objective of this policy is to provide a policy framework within which the municipal manager and chief financial officer can institute and maintain a supply chain management system which is transparent, efficient, equitable, competitive, which ensures best value for money for the municipality, applies the highest possible ethical standards, and promotes local economic development.

The aim of this policy is to enhance procurement and provisioning practises into an integrated SCM function and to ensure that SCM forms an integral part of the financial management system of the Cape Winelands District Municipality. This policy further aims to promote consistency in respect of supply chain management policy and other related policy initiatives in Government as well as aligning with global trends and ensure that South Africa adheres to international best practices.

By adopting this policy the council further pledges itself and the municipal administration, to the full support of the Proudly SA campaign and to the observance of all applicable national legislation, including specifically the:

- Preferential Procurement Policy Framework Act No. 5 of 2000 and its regulations;
- Broad Based Black Economic Empowerment Act No. 53 of 2003 and any applicable code of practice promulgated in terms of that Act; and
- Municipal Finance Management Act No. 56 of 2003, including the regulations relating to the prescribed framework for supply chain management.
- The Construction Industry Development Board Act No. 38 of 2000 and its regulations.

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1. Definitions

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

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

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

“Council” means the elected Council of the Cape Winelands District Municipality;

“emergency” An emergency is considered an unforeseeable and sudden event with materially harmful or potentially materially harmful consequences for the municipality which requires urgent action to address.

“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 three quotations for procurement above R 10,000 and must be advertised. Refer to paragraph 12(1) and 18(b) of this Policy;

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

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

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

“list of accredited prospective providers” means the list of accredited prospective providers which the Cape Winelands District Municipality must keep in terms of paragraph 14 of this policy;

“manager” an official directly accountable to the chief financial officer or a senior manager (par.5(2)(c)(iii));

“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);

“senior manager” means a manager referred to in section 56 of the Municipal Systems Act and who is directly accountable to the municipal manager (Executive Director);

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

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

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

“written quotations” means three quotations for procurement of R 2,000 and above but not exceeding R 10,000 as referred to in paragraph 12(1) & 16(a) of this Policy.

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 Cape Winelands District 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 Cape Winelands District Municipality –
 - (a) procures goods or services;
 - (b) disposes goods no longer needed;
 - (c) selects contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
 - (d) selects external mechanisms referred to in section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.
- (3) This Policy, except where provided otherwise, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –

- (a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
- (b) electricity from Eskom or another public entity, another municipality or a municipal entity.

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 Cape Winelands District Municipality
- (2) If the accounting officer submits proposed amendments to the Cape Winelands District Municipality 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 delegate such additional powers and duties to the accounting officer so as to enable the accounting officer –
 - (a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
 - (i) Chapter 8 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) The Council hereby specifically delegate to the following Officials the power to make a final award, **not exceeding** the amount of R200,000-00 (VAT included). Provided that at least three (3) of the Officials, but not more than one (1) per Department, jointly makes the award: –
- (a) Chief Financial Officer;
 - (b) Executive Directors;
 - (c) Directors; and
 - (d) Deputy Directors.
- (3) The Council hereby specifically delegate the power to make a final award - **not exceeding** the following amounts (VAT included);
- (a) R 80,000-00 to the Chief Financial Officer;
 - (b) R 80,000-00 to the Director: Budget & Treasury Office;
 - (c) R 80,000-00 to the Deputy Director: Supply Chain Management;
 - (d) R 30,000-00 to the Manager: Supply Chain Management;
 - (e) R 30,000-00 to the Senior Buyer;
 - (f) R 30,000-00 to the Senior Accountant: Expenditure;
 - (g) R 10,000-00 to the Senior Storekeeper/Buyer; and
 - (h) R 2,000-00 to the Storekeeper/Buyer.
- (4) Sections 79 of the Act apply to the sub delegation of powers and duties delegated to an accounting officer in terms of subparagraph (1).
- (5) The accounting officer may not sub delegate any supply chain management powers or duties to a person who is not an official of Cape Winelands District Municipality or to a committee which is not exclusively composed of officials of the Cape Winelands District Municipality;
- (6) This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.

5. Subdelegations

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

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

6. Oversight role of council

- (1) The Cape Winelands District Municipality reserves its right to maintain oversight over the implementation of this Policy.
- (2) For the purposes of such oversight the accounting officer must –
 - (a) (i) within 30 days of the end of each financial year, submit a report on the implementation of this Policy 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 council.
- (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.
- (3) The procurement section is responsible for the co-ordination and oversight of the supply chain management function. It is headed by a Procurement Manager and comes under the management of the municipality's Chief Financial Officer.

8. Training of supply chain management officials

The training of officials involved in implementing this Policy should be in accordance with any Treasury guidelines on supply chain management training.

CHAPTER 2

SUPPLY CHAIN MANAGEMENT SYSTEM

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

An effective system of demand management will be achieved through the successful implementation of the strategic operational commitments of the municipality, as identified in the Integrated Development Plan (IDP). Council's Performance Management System (PMS) must give the necessary support to ensure that the resources required to support the strategic and operational commitments of the municipality are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy the needs of the municipality or municipal entity.

Part 2: Acquisition management

11. System of acquisition management

- (1) This policy provides for an effective system of acquisition management to ensure that–
 - (a) goods and services are procured by the Cape Winelands District Municipality in accordance with authorised processes only;
 - (b) expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
 - (c) the threshold values for the different procurement processes are complied with;
 - (d) bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
 - (e) any Treasury guidelines on acquisition management are properly taken into account.
- (2) This Policy, except where provided otherwise in the Policy, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –
 - (a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
 - (b) electricity from Eskom or another public entity, another municipality or a municipal entity.
- (3) When procuring goods or services through another organ of state as contemplated in section 110(2) of the Act, the municipality must make public the fact that such goods or services are procured otherwise than through the Cape Winelands District Municipality supply chain management system, including -
 - (a) the kind of goods or services; and
 - (b) the name of the supplier.
- (4) All requests for the procurement of goods and services shall be submitted to the Procurement Manager within the Financial Services Department and must be:
 - (a) in writing, clearly specifying the nature and quantity/duration of the goods and services required. Preparation of specifications aimed at procuring goods or services of specific suppliers and brand names should be avoided.
 - (b) certified by a senior official or person with delegated authority in the Finance Department, that:-

- (i) there is sufficient provision in the relevant budget for the procurement;
 - (ii) the correct vote was used.
- (5) If the procurement is for a capital project, Section 19 of the MFMA regarding budgeting and costing of capital projects must also be complied with.
- (6) Where the procurement will have budgetary implications for future years (depreciation; contracts longer than one year, etc.), Section 33 of the MFMA regarding contracts must be complied with.

12. Range of procurement processes

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

Value of purchase (VAT Inclusive)	Cape Winelands District Municipality RANGE OF PROCUREMENT PROCESSES	Delegated authority
0 – R 2,000	Petty Cash (Refer to Policy: ANNEXURE “A”)	Municipal Manager Chief Financial Officer
0 – R 300	Petty Cash (Refer to Policy: ANNEXURE “A”)	As per CFO sub delegation
R 0 – R 2,000	Direct purchases – no quotations needed (Order to be obtained & Invoice to be submitted)	Storekeeper/Buyer
R 2,001 up to R 10,000	Three written quotations	Senior Storekeeper/Buyer
R 10,001 up to R 30,000	Three formal written price quotations	Deputy Director: SCM & Manager: SCM Senior Accountant: Expenditure
R 30,001 up to R 80,000	Three formal written price quotations and; (i) complying with the PPPFA; (<i>Specifically reg.16 - TAX Clearance for amounts above R30,000 - Treasury circular No:29 of 31 January 2006</i>) and;	Chief Financial Officer Director: Budget & Treasury Office Deputy Director: SCM Manager: SCM
R 80,001 up to R 200,000	(ii) suppliers to be used on a rotational basis; and (iii) advertised for 7 (seven) days on notice boards and website of council.	Any three (3) but not more than one (1) per Dept: CFO /Executive Directors / Directors / Dep. Directors
R 200,001 up to R 10 million	A competitive bidding process:- (i) advertised for 14 (fourteen) days on notice boards and website of council; and (ii) advertised for 14 (fourteen) days in news-papers commonly circulating locally but not limited thereto.	Bid Adjudication Committee

Value of purchase (VAT Inclusive)	Cape Winelands District Municipality RANGE OF PROCUREMENT PROCESSES	Delegated authority
Above R 10 million and Long term contracts.	A competitive bidding process:- (i) advertised for 30 (thirty) days on notice boards and website of council; and (ii) advertised for 30 (thirty) days in newspapers commonly circulating locally but not limited thereto.	Accounting Officer and Bid Adjudication Committee for Long term contracts up to R 10 million

- (2) The accounting officer may, in writing, lower but not increase, the different threshold values in subparagraph (1) as specified in regulation 12 (1).
- (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) Transferring of municipal funds to an organisation or body outside any sphere of government otherwise than in compliance with a commercial or other business transaction must comply with Sec.67 of the MFMA (Act No.56 of 2003) and be in accordance with Council's Community Support Policy. In terms of Sec.67(4) Council determined a prescribed limit of R30,000-00 (Approved as per point C.14.2 dated 29 September 2005).

13. General preconditions for consideration of written quotations or bids

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 and address;
 - (ii) identification number or company- or other registration number; and
 - (iii) tax reference number and VAT registration number, if any;
- (b) has authorised the Cape Winelands District Municipality to obtain a tax clearance from the South African Revenue Services that the provider's tax matters are in order; and
- (c) has indicated –
 - (i) whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;

- (ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
- (iii) whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to in subparagraph (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.

14. Lists of accredited prospective providers

- (1) The accounting officer must –
 - (a) keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements through written quotations and formal written price quotations; and
 - (b) at least once a year through newspapers commonly circulating locally, but not limited thereto, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
 - (c) specify the listing criteria for accredited prospective providers; and
 - (d) disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.
- (2) The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.
- (3) The list should be used to promote participation of Black-owned Small, Medium and Micro Enterprises (SMMEs). The prescripts of the Preferential Procurement Policy Framework Act, Act No.5 of 2000 will be applied for procurement requirements above R30 000 (and with a lesser value where appropriate).
- (4) Once a list has been compiled per commodity and per type of service, price quotations will be invited from the suppliers in a manner that promotes ongoing competition, including on a rotation basis, up to R 30,000 to be prepared by the Procurement Manager and approved by the senior manager on an annual basis.
- (5) The inclusion of any supplier in the database of suppliers does not exempt the supplier from the obligation to respond in the prescribed manner to notices of the municipality's supply chain management requirements.
- (6) Suppliers who wish to be included in the list of accredited suppliers without waiting for the next invitation may approach the Procurement Section for inclusion, provided that they supply the necessary documentation and information for evaluation. Once

these requirements have been satisfied, the Procurement Section will ensure that the prospective supplier is evaluated and will provide a response as to approval or not within 14 days. Prospective suppliers will not be eligible to provide quotations until they have been approved as an accredited supplier, except where the prospective supplier provides a type of commodity or service for which no supplier is available from the list of accredited suppliers.

(7) The list must be compiled per commodity and per type of service.

(8) Suppliers who intend to do business with this municipality **MUST** provide its Central Supplier Database (CSD) Registration Number “MAAA”

15. Petty cash purchases

Where there is a need to purchase any goods or services using a petty cash system, which involves an amount of less than or equal to R300 (three hundred rand), the Procedures and Guidelines for Petty Cash Purchases must be adhered to.

16. Written quotations

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

- (a) Quotations must be obtained from at least **three** different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the Cape Winelands District Municipality, provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria set out in paragraph 14(1)(b) and (c) of this Policy;
- (b) 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;
- (c) the names of the potential providers requested to provide such quotations, with their quoted prices, must be recorded.

17. Formal written price quotations

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

- (a) quotations must be obtained in writing from at least **three** different providers whose names appear on the list of accredited prospective providers of the Cape Winelands District Municipality. All quotations must be inclusive of carriage/freight costs.

- (b) quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria set out in paragraph 14(1)(b) and (c) of this Policy;
 - (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer, and
 - (d) the accounting officer must record the names of the potential providers and their written quotations.
- (2) A designated official referred to in subparagraph (1) (c) must within three days of the end of each month report to the chief financial officer on any approvals given during that month by that official in terms of that subparagraph.

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

- (1) The procedure for the procurement of goods or services through written quotations or formal written price quotations, is as follows:
- (a) when using the list of accredited prospective providers the accounting officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;
 - (b) all requirements 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 Cape Winelands District Municipality;
 - (c) offers received must be evaluated on a comparative basis taking into account unconditional discounts;
 - (d) the accounting officer or chief financial officer must on a monthly basis be notified in writing of all written quotations and formal written price quotations accepted by an official acting in terms of a sub delegation;
 - (e) offers below R30,000 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;
 - (f) acceptable offers, which are subject to the preference points system (PPPFA and associated regulations), must be awarded to the bidder who scored the highest points;
 - (g) the accounting officer must take all reasonable steps to ensure that the procurement of goods and services through written quotations or formal written price quotations is not abused.

- (h) the supply chain management unit is responsible for proper record keeping and all
- (2) Notwithstanding the above requirements for consideration, quotations not to specification may not be accepted.
- (3) All quotations above the value of R 2,000 and up to R 30,000 shall be adjudicated by the relevant senior manager or his approved delegate,
- (4) Only quotations complying with the specifications will be considered to be accepted, provided that there are sufficient funds within the appropriate budget.
- (5) Where no quotation complies with the specification, as determined by the senior manager, the senior manager must recall for quotations.
- (6) Where the relevant senior manager has a direct or indirect interest in the procurement requirements, another senior manager must adjudicate in the manner specified above. An interest is where the relevant senior manager has direct or indirect personal advantage in the specific procurement of goods or services.

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) The bid documentation will be prepared by the Procurement Manager in consultation with the relevant department and displayed on notice boards, placed on the council's website, and advertised in commonly circulated local newspapers, but not limited thereto, with a closing date of at least 14 after the date that the advertisement first appears.
- (3) No requirement for goods or services above an estimated transaction value of R200,000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

20. Process for competitive bidding

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

- (a) Compilation of bidding documentation as detailed in paragraph 21;
- (b) Public invitation of bids as detailed in paragraph 22;
- (c) Site meetings or briefing sessions as detailed in paragraph 22;
- (d) Handling of bids submitted in response to public invitation as detailed in paragraph 23;

- (e) Evaluation of bids as detailed in paragraph 28;
- (f) Award of contracts as detailed in paragraph 29;
- (g) Administration of contracts;
 - (i) After approval of a bid, the accounting officer and the bidder must enter into a written agreement.
- (h) Proper record keeping;
 - (i) Original / legal copies of written contract agreements should be kept in a secure place for reference purposes.

21. 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 general conditions of contract (**PART 4**) and any special conditions of contract, if specified;
 - (ii) any Treasury guidelines on bid documentation; and
 - (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
- (b) include the preference points system to be used, goals as contemplated in the Preferential Procurement Regulations and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- (c) include evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- (d) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (e) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish–
 - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
 - (aa) for the past three years; or
 - (bb) since their establishment if established during the past three years;

- (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
 - (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
 - (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality is expected to be transferred out of the Republic; and
- (f) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.
 - (g) a requirement to supply tax references, tax clearance certificates, VAT registration numbers and identification or registration numbers;
 - (h) details of any contracts above R200,000 carried out on behalf of the municipality within the last five years;
 - (i) A contract management processes and procedures including provision for the Accounting Officer to cancel the contract on the grounds of unsatisfactory performance;
 - (j) any other matters as required by the MFMA and the Supply Chain Management Regulations;
 - (k) performance guarantees and retention.

22. Public invitation for competitive bids

- (1) The procedure for the invitation of competitive bids, is as follows:
 - (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, but not limited thereto, the website of the Cape Winelands District Municipality or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and
 - (b) the information contained in a public advertisement, must include –
 - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2);

- (ii) a statement that bids may only be submitted on the bid documentation provided by the Cape Winelands District Municipality ;and
 - (ii) 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) For a bid to be considered it must comply with all the requirements of the bid documentation and be placed in the official tender box of the Cape Winelands District Municipality.
- (5) The council may charge a non-refundable deposit for provision of bid documents. This is subject to annual review. Values of the deposits will be determined annually and included in the official lists of tariffs.
- (6) The Chief Financial Officer or delegated official will ensure that tender boxes are sealed until the time of their official opening, and ensure that they are properly secured.
- (7) At the advertised time, the tender box will be unlocked and opened by three officials – one from the Financial Services Department and one from Corporate Services and, where possible, an officer from the relevant Department for which the bid is being made. This will be done in public i.e. in the presence of the bidders or other interested parties. A Supply Chain Management official will open bid documents (usually in the council chamber or committee room) in the presence of an officer from Corporate Services, the relevant Department, and any other interested parties. The tender box can be opened without any members of public being present provided that the appropriate procedure for advertising the time and venue has been followed. Unmarked or incorrectly marked tenders will not be opened.
- (8) The names and total bid amounts will be read out and recorded in the tender register, which will be available for public inspection on request. A copy of the record must be kept in the Procurement Manager's office and the original must be retained by Corporate Services in Council's official filing system. In instances of bulk tender amounts that are too time-consuming to read out, only those requested by bidders will be read, and a complete schedule provided as soon as is practical. Bid results will be published on the municipality's web site.
- (9) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

23. Procedure for handling, opening and recording of bids

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

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

24. Negotiations with preferred bidders

- (1) The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation –
 - (a) does not allow any preferred bidder a second or unfair opportunity;
 - (b) is not to the detriment of any other bidder; and
 - (c) does not lead to a higher price than the bid as submitted.
- (2) Minutes of such negotiations must be kept for record purposes.

25. Two-stage bidding process

- (1) A two-stage bidding process is allowed for –
 - (a) large complex projects;
 - (b) projects where it may be undesirable to prepare complete detailed technical specifications; or

- (c) long term projects with a duration period exceeding three years.
- (2) In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.
- (3) In the second stage final technical proposals and priced bids should be invited.

26. Committee system for competitive bids

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

27. Bid specification committees

- (1) A bid specification committee must compile the specifications for each procurement of goods or services by the Cape Winelands District Municipality.
- (2) Specifications –
 - (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
 - (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited

or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;

- (c) must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
 - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification;
 - (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word "equivalent";
 - (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2001; and
 - (g) must be approved by the accounting officer prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.
- (3) The bid specification committee must be composed of the following members:
- Standing members
- Two members from within the relevant department;
- Other members
- professionals with required technical expertise from the department for whom the goods or services are to be procured, as may be required for each committee meeting
 - external specialists (consulting engineers, architects, etc.) as deemed necessary, provided that 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.
 - Statutory compliance officer of the Cape Winelands district municipality.
- (4) The quorum for each meeting of the specification committee is two standing members.
- (5) A member of the specification committee can also be a member of either the bid evaluation or bid adjudication committee, but not both committees, that considers any of the bids for the same goods or services
- (6) 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.
- (7) The specifications must be approved by the Accounting Officer, or the official

delegated by the Accounting Officer, prior to advertisement of the bid. In the absence of the Accounting Officer this may be delegated to the Acting Municipal Manager or the Chief Financial Officer.

28. Bid evaluation committees

(1) A bid evaluation committee must –

(a) evaluate bids in accordance with –

- (i) the specifications for a specific procurement;
- (ii) compliant with requirements of the Supply Chain Management Framework including the supplier being up to date with all fees and charges due to the district municipality;
- (iii) in accordance with the best value for money to the municipality; and
- (iv) the points system set out in terms of paragraph 27(2)(f).

(b) evaluate each bidder's ability to execute the contract and consider the prescripts of the Broad-Based Black Economic Empowerment Act.;

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

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

(2) The bid evaluation committee must as far as possible be composed of –

Standing members;

- two officials from the relevant department requiring the goods or services;
- At least one supply chain management practitioner.

Other members;

- One technical expert, consultant or advisor, provided that these experts can only actively contribute to discussions, and not vote on the items evaluated.
- Statutory compliance officer of the Cape Winelands District Municipality.

(3) The chairmanship of the bid evaluation committee is to be rotated as agreed by the standing members.

(4) The quorum for each meeting of the bid evaluation committee is two standing members, provided that one is the supply chain management practitioner.

- (5) Members cannot serve on any adjudication committee(s) that adjudicates on any of the same items that they have considered on the evaluation committee(s).
- (6) Notwithstanding the above requirements for consideration, bids not to specification may not be accepted and the evaluation committee must recall for tenders.
- (7) All bid documents must be submitted before closure of tender.

29. Bid adjudication committees

- (1) A bid adjudication committee must –
 - (a) consider the report and recommendations of the bid evaluation committee; and
 - (b) either –
 - (i) depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or
 - (ii) make another recommendation to the accounting officer how to proceed with the relevant procurement.

- (2) The committee shall be composed of the following members:

Standing members;

- the chief financial officer or, if the chief financial officer is not available, another official in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer;
- At least one senior supply chain management practitioner who is an official of the municipality;
- Managers appointed by the Accounting Officer.

Other members

- any technical experts in the relevant field, when deemed necessary by the chairperson provided that these experts can only actively contribute to discussions, and not vote on the items being adjudicated.
- Statutory compliance officer of the Cape Winelands District Municipality.

The quorum for each meeting of the bid adjudication committee is:

- 4 standing members

- (3) Members of the adjudication committee(s) cannot be members on the evaluation committee(s) that consider any of the same items to be adjudicated on. This includes any members who are appointed by nomination or delegation.

- (4) Members of the Bid Evaluation Committee may present their reports to the Bid Adjudication Committee and clarify any uncertainties. However, such members will not have any voting power on the Bid Adjudication Committee.
- (5) The accounting officer must appoint the chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.
- (6) 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.
- (7) (a) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid-
 - (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;
 - (ii) notify the accounting officer.
 (b) The accounting officer may –
 - (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.
- (8) The accounting officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (9) The accounting officer must comply with section 114 of the Act (Approval of tenders not recommended) within 10 working days.
- (10) Preference points will be allocated as per **PART 2**, paragraphs 6 and 7.
- (11) Bid invitations may be cancelled in terms of **PART 2**, paragraph 13.
- (12) All approved bids will be listed on the municipality's website and on the official notice board in the week following their approval, for a period of 7 days.

30. Procurement of banking services

- (1) A contract for banking services –
 - (a) must be procured through competitive bids;
 - (b) must be consistent with section 7 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).

31. Procurement of IT related goods or services

- (1) The accounting officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.
- (2) Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.
- (3) The accounting officer must notify SITA together with a motivation of the IT needs if;
 -
 - (a) the transaction value of IT related goods or services required in any financial year will exceed R50 million (VAT included); or
 - (b) the transaction value of a contract to be procured whether for one or more years exceeds R50 million (VAT included).
- (4) If SITA comments on the submission and the Cape Winelands District 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.

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

- (1) The accounting officer may procure goods or services under a contract secured by another organ of state, but only if –
 - (a) the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
 - (b) there is no reason to believe that such contract was not validly procured;
 - (c) there are demonstrable discounts or benefits to do so; and
 - (d) that other organ of state and the provider have consented to such procurement in writing.

(2) Subparagraphs (1)(c) and (d) do not apply if –

- (a) a municipal entity procures goods or services through a contract secured by its parent municipality; or
- (b) a municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.

33. Procurement of goods necessitating special safety arrangements

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

34. Proudly SA Campaign

The Cape Winelands District Municipality supports the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services from:

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

35. 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. (Detailed guidelines are available in the National Treasury's Supply Chain Management Office, Practice Note Number SCM 3 of 2003. This incorporates the provision to establish a panel of consultants/list of approved service providers for the rendering of services required on a recurring basis. This panel should be reviewed at least every two years). **Chapter 5: "A Guide for Accounting Officers of Municipalities" issued by National Treasury (Circular 25 – October 2005).**
- (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 Cape Winelands District Municipality.
- (5) The appointment of advisors must also follow the same competitive bidding process as set out in this Policy.
- (6) No advisor will take any part in the final decision-making process regarding the award of bids.
- (7) No decision-making authority can be delegated to an advisor.

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

- (1) The accounting officer may –
 - (a) dispense with the official procurement processes established by this Policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only –
 - (i) in an emergency;
 - (ii) Where the accounting officer determines that it is impractical to invite competitive bids for specific procurement such as urgent or emergency cases, or in the case of a sole supplier, he may in consultation with the Chief Financial Officer procure the goods or services by other means such as price quotations or negotiations, or reduce the required advertising period from 14 days to an appropriately deemed period. The reasons for deviation from inviting competitive bids must be recorded and approved by the Accounting Officer.
 - (iii) Where it can be demonstrated that only one service provider can supply a particular service then a contract can be awarded by the Accounting Officer to that service provider subject to approval by the Bid Adjudication Committee
 - (iv) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
 - (v) acquisition of animals for zoos and/or nature and game reserves; or

- (vi) 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.

37. Unsolicited bids

- (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- (2) The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if –
 - (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
 - (b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
 - (c) the person who made the bid is the sole provider of the product or service; and
 - (d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
- (3) If the accounting officer decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with –
 - (a) reasons as to why the bid should not be open to other competitors;
 - (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
 - (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) 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 Cape Winelands District Municipality to the bid may be entered into or signed within 30 days of the submission.

38. Combating of abuse of supply chain management system

- (1) The accounting officer must–
 - (a) take all reasonable steps to prevent abuse of the supply chain management system;
 - (b) investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this Policy, and when justified –
 - (i) take appropriate steps against such official or other role player; or
 - (ii) report any alleged criminal conduct to the South African Police Service;
 - (c) check the National Treasury’s database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
 - (d) reject any bid from a bidder–
 - (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the Cape Winelands District Municipality, or to any other municipality or municipal entity, are in arrears for more than three months; or
 - (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the Cape Winelands District Municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;

- (e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
 - (f) cancel a contract awarded to a person if –
 - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
 - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
 - (g) reject the bid of any bidder if that bidder or any of its directors –
 - (i) has abused the supply chain management system of the Cape Winelands District 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).
 - (h) No person placing a procurement requisition for goods or services shall understate the requirements of the estimated value with the intention of avoiding a more stringent procurement process. This includes the deliberate splitting of requirements to reduce individual order values. Procurement is limited to R 200,000 per commodity type per month unless a competitive bidding process has been undertaken. The Municipal Manager shall promptly institute disciplinary action against any person infringing this requirement.
 - (i) No official shall engage in contact with a prospective supplier in respect of a quotation or tender which the supplier intends to submit except where clarification of requirements is required from either party, or where the accounting officer may negotiate with identified preferred bidders. Any such communication must be recorded and appropriately filed with the bid documentation.
- (2) The accounting officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) of this policy.

Part 3: Logistics, Disposal, Risk and Performance Management

39. 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.

40. Disposal management

- (1) The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act, and council's GRAP policy and procedures.
- (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.
- (4) In disposing of movable assets the adjudication committee will determine the most advantageous method for sale and adhere to the communication requirements prescribed for quotations. If deemed necessary notification may also be by advertisement in a widely circulated local newspaper, but not limited thereto. In sales by private treaty the adjudication committee will adjudicate and approve quotations received. Adjudication will include provision for the Preferential Procurement Points as per the attached scorecard for assets with a value greater than R30 000. The adjudication committee reserves the right not to accept any bids offered.

41. 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.

42. 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 authorised supply chain management processes were followed and whether the objectives of this Policy were achieved.

Part 4: Other matters

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

- (1) No award above R30 000 may be made in terms of this Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order. (NT Circular No.29 shall apply)
- (2) Before making an award to a person the accounting officer must first check with SARS whether that person's tax matters are in order. The municipality shall apply the "eFiling-System" of SARS.
- (3) If SARS does not respond within 7 days such person's tax matters may for purposes of subparagraph (1) be presumed to be in order.

44. 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; (PART 2 paragraph (2).)
- (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 Cape Winelands District Municipality.

45. 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 R2000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –

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

46. Ethical standards

- (1) A code of ethical standards as set out in subparagraph (2) is hereby established for officials and other role players in the supply chain management system of the Cape Winelands District Municipality in order to promote –
 - (a) mutual trust and respect; and
 - (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
- (2) An official or other role player involved in the implementation of this Policy –
 - (a) must treat all providers and potential providers equitably;
 - (b) may not use his or her position for private gain or to improperly benefit another person;
 - (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
 - (d) notwithstanding subparagraph (2) (c), must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
 - (e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the Cape Winelands District 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 Cape Winelands District Municipality;
 - (h) 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.
- (i) 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 Cape Winelands District Municipality who must ensure that such declarations are recorded in the register.
- (4) The National Treasury's code of conduct (**PART 5**) must also be taken into account by supply chain management practitioners and other role players involved in supply chain management.
- (5) A breach of the code of ethics must be dealt with as follows -
- (a) in the case of an employee, in terms of the disciplinary procedures of the Cape Winelands District Municipality envisaged in section 67(1)(h) of the Municipal Systems Act;
 - (b) in the case a role player who is not an employee, through other appropriate means in recognition of the severity of the breach.
 - (c) In all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act.

47. Inducements, rewards, gifts and favours to the Cape Winelands District Municipality, officials and other role players

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

- (a) any inducement or reward to the Cape Winelands District Municipality for or in connection with the award of a contract; or
 - (b) any reward, gift, favour or hospitality to –
 - (i) any official; or
 - (ii) any other role player involved in the implementation of this Policy.
- (2) The accounting officer must promptly report any alleged contravention of subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
- (3) Subparagraph (1) does not apply to gifts less than R350 in value.

48. Sponsorships

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

- (a) a provider or prospective provider of goods or services; or
- (b) a recipient or prospective recipient of goods disposed or to be disposed.

49. Objections and complaints

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

50. Resolution of disputes, objections, complaints and queries

- (1) The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes –
- (a) to assist in the resolution of disputes between the Cape Winelands District Municipality and other persons regarding -
 - (i) any decisions or actions taken in the implementation of the supply chain management system; or
 - (ii) any matter arising from a contract awarded in the course of the supply chain management system; or

- (b) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.
 - (c) Suppliers must provide details of the reasons for their appeal including any non-compliance with this Policy, the MFMA and related legislation. The Accounting Officer shall provide written acknowledgement of the receipt of appeals to the appellant and endeavour to finalise appeals within 10 working days of their receipt. Where this is not possible, the Accounting Officer shall advise the appellant in writing of the reasons for the delay.
 - (d) If the appeal is based on a technically complex matter, the Accounting Officer may engage an impartial external advisor, provided that their engagement is compliant with this Policy and sufficient budgetary provision exists. The Accounting Officer is not bound by any opinion provided.
 - (e) The Accounting Officer will decide if an appeal constitutes sufficient grounds for delay of procurement from the approved supplier, and if a delay is practical. If the Accounting Officer determines there are grounds for delay, the approved supplier will be advised in writing of the reasons for the delay.
 - (f) When a ruling on an appeal has been made, the Accounting Officer will advise the appellant in writing of the outcome.
- (2) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.
 - (3) The person appointed must –
 - (a) strive to resolve promptly all disputes, objections, complaints or queries received; and
 - (b) submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.
 - (4) A dispute, objection, complaint or query may be referred to the relevant provincial treasury if –
 - (a) the dispute, objection, complaint or query is not resolved within 60 days; or
 - (b) no response is forthcoming within 60 days.
 - (5) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.
 - (6) This paragraph must not be read as affecting a person's rights to approach a court at any time.

51. Contracts providing for compensation based on turnover

If a service provider acts on behalf of the Cape Winelands District 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 Cape Winelands District Municipality must stipulate –

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

52. Commencement

This Policy takes effect on 1st April 2017.

53. Relevant sections from the MFMA

The following sections form part of this policy and must be applied directly from the Act.

- (a) SECTION 33: CONTRACTS HAVING FUTURE BUDGETARY IMPLICATIONS
- (b) SECTION 116: CONTRACTS AND CONTRACT MANAGEMENT

Notes:

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Cape Winelands District Municipality



PART 2

PREFERENTIAL PROCUREMENT POLICY FRAMEWORK

This policy regulates the Preferential Procurement Regulations, 2017 as promulgated by the Minister of Finance, in terms of section 5 of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

(Government Gazette: No. 40553 (R.32) dated 20 January 2017)

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1. Definitions - In this policy, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act must bear the meaning so assigned-

“**B-BBEE**” 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;

“**Broad-Based Black Economic Empowerment Act**” means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

“**co-operative**” means a co-operative registered in terms of section 7 of the Cooperatives Act, 2005 (Act No. 14 of 2005);

“**designated group**” means-

(a) black designated groups;

(b) black people;

(c) women;

(d) people with disabilities; or

(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 exempted micro enterprise 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;

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

“**military veteran**” has the meaning assigned to it in section 1 of the Military Veterans Act, 2011 (Act No. 18 of 2011);

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

“**people with disabilities**” has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998);

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

“**proof of B-BBEE status level of contributor**” means-

- (a) the B-BBEE status level certificate issued by an authorised body or person;
- (b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
- (c) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act;

“QSE” means a qualifying small business enterprise 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;

“Rand value” means the total estimated value of a contract in Rand, calculated at the time of the tender invitation;

“rural area” means-

- (a) a sparsely populated area in which people farm or 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 on 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);

“the Act” means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);

“township” means an urban living area that any time from the late 19th century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994;

“treasury” has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and

“youth” has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).

2. Application – This policy applies to the municipality as envisaged in the definition of organ of state in section 1 of the Act. nl.;

The definition of “organ of state” in section 1 of the Act in paragraph (a) to (e) includes-

- a national or provincial department as defined in the Public Finance Management Act, 1999;
- a municipality as contemplated in the Constitution;
- a constitutional institution as defined in the Public Finance Management Act;
- Parliament;
- a provincial legislature.

Paragraph (f) of the definition of organ of state in section 1 of the Act includes any other institution or category of institutions included in the definition of “organ of state” in section 239 of the Constitution and recognised by the Minister by notice in the *Government Gazette* as an institution or category of institutions to which the Act

applies. Government Notice R. 501 of 8 June 2011 recognises, with effect from 7 December 2011, all public entities listed in Schedules 2 and 3 to the Public Finance Management Act, 1999, as institutions to which the Act applies. Note should be taken of notices issued from time to time in terms of paragraph (f) of this definition. The application of these Regulations is also subject to applicable exemptions approved in terms of section 3 of the Act.

3. Identification of preference point system, designated sector, pre-qualification criteria, objective criteria and subcontracting

The municipality must-

- (a) determine and stipulate in the tender documents-
 - (i) the preference point system applicable to the tender as envisaged in regulation 6 or 7; or
 - (ii) if it is unclear which preference point system will be applicable, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system;
- (b) determine whether pre-qualification criteria are applicable to the tender as envisaged in regulation 4;
- (c) determine whether the goods or services for which a tender is to be invited, are in a designated sector for local production and content as envisaged in regulation 8;
- (d) determine whether compulsory subcontracting is applicable to the tender as envisaged in regulation 9; and
- (e) determine whether objective criteria are applicable to the tender as envisaged in regulation 11.

4. Pre-qualification criteria for preferential procurement

- (1) If the municipality decides to apply pre-qualifying criteria to advance certain designated groups, that municipality must advertise the tender with a specific tendering condition that only one or more of the following tenderers may respond-
 - (a) a tenderer having a stipulated minimum B-BBEE status level of contributor;
 - (b) an EME or QSE;
 - (c) a tenderer subcontracting a minimum of 30% to-
 - (i) an EME or QSE which is at least 51% owned by black people;
 - (ii) an EME or QSE which is at least 51% owned by black people who are youth;
 - (iii) an EME or QSE which is at least 51% owned by black people who are women;
 - (iv) an EME or QSE which is at least 51% owned by black people with disabilities;
 - (v) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
 - (vi) a cooperative which is at least 51% owned by black people;

- (vii) an EME or QSE which is at least 51% owned by black people who are military veterans;
 - (viii) an EME or QSE.
- (2) A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender.

5. Tenders to be evaluated on functionality

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

6. 80/20 preference point system for acquisition of goods or services for Rand value equal to or above R30 000 and up to R50 million

- (1) The following formula must be used to calculate the points out of 80 for price in respect of a tender with a Rand value equal to or above R30 000 and up to a Rand value of R50 million, inclusive of all applicable taxes:

Where-

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

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

P_{min} = Price of lowest acceptable tender.

(2) The following table must be used to calculate the score out of 20 for BBEE

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

- (3) A tenderer must submit proof of its B-BBEE status level of contributor.
- (4) A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but-
- (a) may only score points out of 80 for price; and
 - (b) scores 0 points out of 20 for B-BBEE.
- (5) A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.
- (6) The points scored by a tenderer for B-BBEE in terms of subregulation (2) must be added to the points scored for price under subregulation (1).
- (7) The points scored must be rounded off to the nearest two decimal places.
- (8) Subject to subregulation (9) and regulation 11, the contract must be awarded to the tenderer scoring the highest points.
- (9) (a) If the price offered by a tenderer scoring the highest points is not market related, the municipality may not award the contract to that tenderer.
- (b) The organs of state may-
- (i) negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
 - (ii) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
 - (iii) if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.
- (c) If a market-related price is not agreed as envisaged in paragraph (b)(iii), the must cancel the tender.

7. 90/10 preference point system for acquisition of goods or services with Rand value above R50 million

- (1) The following formula must be used to calculate the points out of 90 for price in respect of a tender with a Rand value above R50 million, inclusive of all applicable taxes:

Where-

$$P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

P_{min} = Price of lowest acceptable tender.

- (2) The following table must be used to calculate the points out of 10 for BBEE

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

- (3) A tenderer must submit proof of its B-BBEE status level of contributor.
- (4) A tenderer failing to submit proof of B-BBEE status level of contribution or is a non-compliant contributor to B-BBEE may not be disqualified, but-
- (a) may only score points out of 90 for price; and
 - (b) scores 0 points out of 10 for B-BBEE.
- (5) A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.
- (6) The points scored by a tenderer for B-BBEE contribution in terms of subregulation (2) must be added to the points scored for price under subregulation (1).
- (7) The points scored must be rounded off to the nearest two decimal places.
- (8) Subject to subregulation (9) and regulation 11, the contract must be awarded to the tenderer scoring the highest points.

- (9) (a) If the price offered by a tenderer scoring the highest points is not market-related, the municipality may not award the contract to that tenderer.
- (b) The organs of state may-
- (i) negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
 - (ii) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
 - (iii) if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.
- (c) If a market-related price is not agreed as envisaged in paragraph (b)(iii), the organ of state must cancel the tender.

8. Local production and content

- (1) The Department of Trade and Industry may, in consultation with the National Treasury-
- (a) designate a sector, sub-sector or industry or product in accordance with national development and industrial policies for local production and content, where only locally produced services or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content, taking into account economic and other relevant factors; and
 - (b) stipulate a minimum threshold for local production and content.
- (2) An organ of state must, in the case of a designated sector, advertise the invitation to tender with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered.
- (3) The National Treasury must inform organs of state of any designation made in terms of regulation 8(1) through a circular.
- (4) (a) If there is no designated sector, the municipality may include, as a specific condition of the tender, that only locally produced services or goods or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered.
- (b) The threshold referred to in paragraph (a) must be in accordance with the standards determined by the Department of Trade and Industry in consultation with the National Treasury.
- (5) A tender that fails to meet the minimum stipulated threshold for local production and content is an unacceptable tender.

9. Subcontracting as condition of tender

- (1) If feasible to subcontract for a contract above R30 million, an organ of state must apply subcontracting to advance designated groups.

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

10. 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.

11. 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 the municipality 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.

12. Subcontracting after award of tender

- (1) A person awarded a contract may only enter into a subcontracting arrangement with the approval of the organ of state.
- (2) A person awarded a contract in relation to a designated sector, may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

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

13. Cancellation of tender

- (1) The municipality may, before the award of a tender, cancel a tender invitation if-
- (a) due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;
 - (b) funds are no longer available to cover the total envisaged expenditure;
 - (c) no acceptable tender is received; or
 - (d) there is a material irregularity in the tender process.
- (2) The decision to cancel a tender invitation in terms of subregulation (1) must be published in the same manner in which the original tender invitation was advertised.
- (3) The municipality may only with the prior approval of the relevant treasury cancel a tender invitation for the second time.

14. Remedies

- (1) Upon detecting that a tenderer submitted false information regarding its BBEE status level of contributor, local production and content, or any other matter required in terms of these Regulations which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any subcontracting arrangements, the organ of state must-
- (a) inform the tenderer accordingly;
 - (b) give the tenderer an opportunity to make representations within 14 days as to why-
 - (i) the tender submitted should not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part;
 - (ii) if the successful tenderer subcontracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and
 - (iii) the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state; and
 - (c) if it concludes, after considering the representations referred to in subregulation (1)(b), that-
 - (i) such false information was submitted by the tenderer-
 - (aa) disqualify the tenderer or terminate the contract in whole or in part; and
 - (bb) if applicable, claim damages from the tenderer; or
 - (ii) the successful tenderer subcontracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.

- (2) (a) The municipality must-
- (i) inform the National Treasury, in writing, of any actions taken in terms of subregulation (1);
 - (ii) provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and
 - (iii) submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.
- (b) The National Treasury may request the municipality to submit further information pertaining to subregulation (1) within a specified period.
- (3) The National Treasury must-
- (a) after considering the representations of the tenderer and any other relevant information, decide whether to restrict the tenderer from doing business with any organ of state for a period not exceeding 10 years; and
 - (b) maintain and publish on its official website a list of restricted suppliers.

15. Circulars and guidelines

The National Treasury may issue-

- (a) a circular to inform municipalities of any matter pertaining to this policy; or
- (b) a guideline to assist municipalities with the implementation of any provision of this policy.

16. Repeal of policy

- (1) Subject to this policy and the Preferential Procurement Regulations, 2011, published in Government Notice No R. 502 of 8 June 2011, and any reference thereto in the Cape Winelands District Municipality's Supply Chain Management Policy, as adopted on 23 January 2006, (C.14.3), are hereby repealed with effect from the date referred to in paragraph 17.
- (2) Any sector designated and minimum threshold determined for local production and content for purposes of regulation 9 of the Preferential Procurement Regulations, 2011, and in force immediately before the repeal of said Regulations, are regarded as having been done under paragraph 8(1) of this policy.
- (3) Any tender advertised before the date referred to in paragraph 17 must be dealt with in terms of the Preferential Procurement Regulations, 2011 Regulations.

17. Commencement

This Preferential Procurement Policy Framework will take effect on 1 April 2017.

Notes:


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Cape Winelands District Municipality



PART 3

SUPPLY CHAIN MANAGEMENT POLICY FOR INFRASTRUCTURE PROCUREMENT AND DELIVERY MANAGEMENT

This policy is in terms of National Treasury Circular No.77 dated 26 October 2015 


and

Instruction Note 4 dated 6 November 2015 

It must be read with;

National Treasury: Standard for Infrastructure Procurement and Delivery Management. (SIPDM) 

Focus on: National Treasury Standard for Infrastructure Procurement and Delivery Management. (First edition – October 2015) 

CIDB: Standard for Uniformity in Construction Procurement (July 2015) 

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1 Scope

This policy establishes the Cape Winelands District Municipality's policy for infrastructure procurement and delivery management in accordance with the provisions of the regulatory frameworks for procurement and supply chain management. It includes the procurement of goods and services necessary for a *new facility* to be occupied and used as a functional entity but **excludes**: -

- a) the storage of goods and equipment following their delivery which are stored and issued to contractors or to employees;
- b) the disposal or letting of land;
- c) the conclusion of any form of land availability agreement;
- d) the leasing or rental of moveable assets; and
- e) public private partnerships.

2 Terms, definitions and abbreviations

2.1 Terms and definitions

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

agent: person or organisation that is not an employee of the municipality that acts on the municipality'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.

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 which employs that employee.

contract manager: A person responsible for administering a package on behalf of the employer and performing duties relating to the overall management of such contract from the implementer's point of view.

designated person: A designated person in this policy is an official of the municipality appointed by the Accounting Officer to manage and conclude a specific contract and/or activity related to a specific contract.

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.

gate: A control point at the end of a process where a decision is required before proceeding to the next process or activity.

gateway review: An independent review of the available information at a gate upon which a decision to proceed or not to the next process is based.

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.

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).

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.

2.2 Abbreviations

For the purposes of this document, the following abbreviations apply

CIDB: Construction Industry Development Board

SARS: South African Revenue Services

3 General requirements

3.1 Delegations

3.1.1 The Council of the Cape Winelands District Municipality hereby delegates all powers and duties to the Accounting Officer which are necessary to enable the Chief Financial Officer to: -

- a) discharge the supply chain management responsibilities conferred on accounting officers in terms of Chapter 8 or 10 of the Local Government Municipal Finance Management Act of 2003 and this policy;
- b) maximise administrative and operational efficiency in the implementation of this policy;
- c) 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) comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Local Government Municipal Finance Management Act of 2003.

3.1.2 No departure shall be made from the provisions of this policy without the approval of the Accounting Officer of Cape Winelands District Municipality. ¹

3.1.3 The Accounting Officer shall for oversight purposes: -

- a) within 30 days of the end of each financial year submit a report on the implementation of this policy to the council;
- b) whenever there are serious and material problems in the implementation of this policy, the Accounting Officer must immediately submit a report to the Council;
- a) within 10 days of the end of each quarter, submit a report on the implementation of the policy to the Executive Mayor; and
- b) make the reports public in accordance with section 21A of the Municipal Systems Act of 2000.

3.2 Implementation of the Standard for Infrastructure Procurement and Delivery Management

3.2.1 Infrastructure procurement and delivery management shall be undertaken in accordance with all applicable legislation and the relevant requirements of the latest edition of the National Treasury Standard for Infrastructure Procurement and Delivery Management. ²

3.2.2 Pre-feasibility and feasibility reports may be required/ not be required in terms of Sub-clause 4.1.1.4 c) of the standard.

3.2.3 Stage 3 to 7 may be required/ not be required in terms of Sub-clause 4.1.1.1 of the standard.

¹ SCM Regulation 36 of the MFMA permits deviations from, and ratification of minor breaches or procurement processes.

² Any deviation to the provisions of this standard must be reported to National Treasury and the relevant treasury.

3.3 Supervision of the infrastructure delivery management unit ³

The Infrastructure Delivery Management Unit shall be directly supervised by the Chief Financial Officer.

3.4 Objections and complaints ⁴

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.

3.5 Resolution of disputes, objections, complaints and queries ⁵

3.5.1 The Accounting Officer 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 municipality'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.

3.5.2 The Chief Financial Officer shall assist the person appointed in terms of 3.5.1 to perform his or her functions effectively.

3.5.3 The person appointed in terms of 3.5.1 shall: -

- 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.

3.5.4 A dispute, objection, complaint or query may be referred to the Provincial Treasury of the Western Cape if: -

- a) the dispute, objection, complaint or query is not resolved within 60 days; or

³ SCM Regulation 7 which is issued in terms of the MFMA requires each municipality to establish a supply chain management unit to implement its supply chain management policy, which where possible, should operate under the direct supervision of the chief financial officer or an official to whom this duty has been delegated in terms of Section 82 of the MFMA. There are benefits in establishing SCM units for general goods and services and infrastructure and to delegate the supervision to a person other than the chief financial officer.

⁴ This clause aligns with SCM Regulation 49 issued in terms of the MFMA.

⁵ This clause aligns with SCM Regulation 50 issued in terms of the MFMA.

b) no response is forthcoming within 60 days.

3.5.5 If the Provincial Treasury of the Western Cape does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.

4 Control framework for infrastructure delivery management ⁶

4.1 Assignment of responsibilities for approving or accepting end of stage deliverables ⁷

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

4.2 Additional gates

Additional gates may be applicable to specific works and be added in terms of Sub-clause 4.1.1.7 of the standard.

4.3 Additional requirements

Any additional requirements of the stages may be included in terms of Sub-clause 4.1.1.4 of the standard.

4.4 Gateway reviews

4.4.1 Gateway reviews for major capital projects above a threshold

4.4.1.1 The Chief Financial Officer shall appoint a gateway review team in accordance with the provisions of clause 4.1.13.1.2 of the standard to undertake gateway reviews for major capital projects.

4.4.1.2 Additional gateway review requirements may be set above those contained in section 4.1.13 of the standard.

4.4.2 Elective gateway reviews

Elective gateway reviews may be undertaken by a gateway review team of the deliverables associated with any of the gates in the control framework. Such reviews should preferably take place at gates 4, 5 or 8. They can also be conducted on a random sample basis after the end of stage deliverable has been accepted. Such

⁶ This clause is required to ensure compliance with the requirements of the standard.

⁷ The terms “approve” and “accept” have the meanings “officially agree to” and “receive as adequate, valid, or suitable give an affirmative answer to a proposal”, respectively. Approvals will typically take place at a senior management level whilst acceptances can be made at a lower level. Approvals and acceptances can be granted by individuals or committees. Where a municipality or municipal entity implements a project on behalf of an organ of state, acceptance / approval of end of stage deliverables may have to be granted in consultation with such an organisation. Alternatively, it may be assigned to a party to an agency agreement developed in accordance with the provisions of clauses 5.2 of the standard. As a result, Table 1 may have to differentiate between own infrastructure and client institution’s infrastructure. It may also have to differentiate between the value and type of projects.

reviews can capture lessons learned and in so doing improve the quality of future deliverables.

Table 1: Responsibilities for approving or accepting end of stage deliverables in the control framework for the management of infrastructure delivery

Stage		Person assigned the responsibility for approving or accepting end of stage deliverables	
No	Name		
0	Project initiation	<i>[Designated person]</i> accepts the initiation report	
1	Infrastructure planning	<i>[Designated person]</i> approves the infrastructure plan	
2	Strategic resourcing	<i>[Designated person]</i> approves the delivery and / or procurement strategy	
3	Pre-feasibility	<i>[Designated person]</i> accepts the pre-feasibility report	
	Preparation and briefing	<i>[Designated person]</i> accepts the strategic brief	
4	Feasibility	<i>[Designated person]</i> accepts the feasibility report	
	Concept and viability	<i>[Designated person]</i> accepts the concept report	
5	Design development	<i>[Designated person]</i> accepts the design development report	
6	Design documentation	6A Production information	<i>[Designated person]</i> accepts the parts of the production information which are identified when the design development report is accepted as requiring acceptance
		6B Manufacture, fabrication & construction information	The contract manager accepts the manufacture, fabrication and construction information
7	Works	The contract manager certifies completion of the works or the delivery of goods and associated services	
8	Handover	The owner or end user accepts liability for the works	
9	Package 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 <i>[Designated person]</i> accepts the close out report	

5 Control framework for infrastructure procurement

5.1 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.

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

Activity		Sub-Activity (see Table 3 of the standard)		Key action	Person assigned responsibility to perform key action
1*	Establish what is to be procured	1.3 PG1	Obtain permission to start with the procurement process	Make a decision to proceed / not to proceed with the procurement based on the broad scope of work and the financial estimates.	<i>[designated person e.g. project director or programme manager]</i>
2*	Decide on procurement strategy	2.5 PG2	Obtain approval for procurement strategies that are to be adopted including specific approvals to approach a confined market or the use of the negotiation procedure	Confirm selection of strategies so that tender offers can be solicited	<i>[designated person e.g. project director]</i>
3	Solicit tender offers	3.2 PG3	Obtain approval for procurement documents	Grant approval for the issuing of the procurement documents	Procurement documentation committee
		3.3 PG4	Confirm that budgets are in place	Confirm that finance is available for the procurement to take place	<i>[designated person e.g. programme or financial manager]</i>
4	Evaluate tender offers	4.2 PG5	Obtain authorisation to proceed with next phase of tender process in the qualified, proposal or competitive negotiations procedure	Review evaluation report, ratify recommendations and authorise progression to the next stage of the tender process	<i>[designated person]</i>
		4.7 PG6	Confirm recommendations contained in the tender evaluation report	Review recommendations of the evaluation committee and refer back to evaluation committee for reconsideration or make recommendation for award	Tender committee <i>[or bid adjudication committee]</i>
5	Award contract	5.3 PG7	Award contract	Formally accept the tender offer in writing and issue the contractor with a signed copy of the contract	<i>[authorised person]⁸</i>
		5.5 GF1	Upload data in financial management and payment system	Verify data and upload contractor's particulars and data associated with the contract or order	<i>[designated person]</i>

* Applies only to goods and services not addressed in a procurement strategy developed during stage 2 (strategic resourcing) of the control framework for infrastructure delivery management

⁸ The award of a contract can be linked to contract value. For example, high value contracts may be awarded by the municipal manager or chief executive and lower amounts by different appropriately delegated authorities.

Table 2 (continued)

Activity	Sub-Activity	Key action	Person assigned responsibility to perform key action	
6 Administer contracts and confirm compliance with requirements	6.4 PG8A	Obtain approval to waive penalties or low performance damages.	Approve waiver of penalties or low performance damages	<i>[designated person]</i>
	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	<i>[designated person]</i>
	6.6 PG8C	Obtain approval to increase the total of prices, excluding contingencies and price adjustment for inflation, or the time for completion at the award of a contract or the issuing of an order up to a specified percentage ⁹	Approve amount of time and cost overruns up to the threshold	<i>[designated person or designated persons]</i>
	6.7 PG8D	Obtain approval to exceed the total of prices, excluding contingencies and price adjustment for inflation, or the time for completion at 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	<i>[municipal manager or chief executive or, depending upon the value, an appropriately delegated authority]</i>
	6.8 PG8E	Obtain approval to cancel or terminate a contract	Approve amount	<i>[authorised person]</i>
	6.9 PG8F	Obtain approval to amend a contract	Approve proposed amendment to contract	<i>[authorised person]</i>

5.2 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:

- a) The Chief Financial Officer 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;
- b) The Bid Adjudication Committee may award the contract if satisfied with the recommendations contained in the evaluation report prepared in accordance with the provisions of the standard.

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

⁹ Stepped thresholds leading up to the 20% and 30% values given in PG8D may be necessary to manage cost and time overruns, respectively, the principle being that approval to exceed these percentages needs to be granted at a more senior level with each increase. For example, the increases for cost overruns could be as follows:

- ≤ 2,5 % - contract manager;
- 2,5 to 10% - project director
- > 10% - appropriately delegated authority

Table 3: Procurement activities and gates associated with the issuing of an order above the quotation threshold in terms of a framework agreement

Activity		Key action	Person assigned responsibility to perform key action
1 FG1	Confirm justifiable reasons for selecting a framework contractor where there is more than one framework agreement covering the same scope of work	Confirm reasons submitted for not requiring competition amongst framework contractors or instruct that quotations be invited	[designated person]
3 FG2	Obtain approval for procurement documents	Grant approval for the issuing of the procurement documents	[designated person]
4 FG3	Confirm that budgets are in place	Confirm that finance is available so that the order may be issued	[designated person e.g. programme manager or financial director]
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	[authorised person]

6 Infrastructure delivery management requirements

6.1 Institutional arrangements

6.1.1 Committee system for procurement¹⁰

6.1.1.1 General

6.1.1.1.1 A committee system comprising the documentation committee, evaluation committee and tender committee shall be applied to all procurement procedures where the estimated value of the procurement exceeds the financial threshold for quotations and to the putting in place of framework agreements.

6.1.1.1.2 The evaluation committee shall, where competition for the issuing of an order amongst framework contractors takes place and the value of the order exceeds the financial threshold for quotations, evaluate the quotations received.

6.1.1.1.3 The persons appointed in writing as technical advisors and subject matter experts may attend any committee meeting.

¹⁰ SCM Regulation 26 of the MFMA requires that a committee system be established for procurement above the threshold for quotations. A municipality of a municipal entity may require that the tender committee (bid adjudication committee) also deal with quotations. The principle of segregation (an internal control designed to prevent error and fraud by ensuring that at least two individuals are responsible for the separate parts of any task) is dealt with the committee system in the standard as follows:

- procurement gate 3: a technical evaluation of procurement documents and an approval of such documentation;
- procurement gate 5: a technical evaluation of submissions and an authorization to proceed with the next phase of a procurement process; and
- procurement gate 6: a tender evaluation and a recommendation to award a contract.

6.1.1.1.4 No person who is a political officer bearer, a public office bearer including any councillor of a municipality, a political advisor or a person appointed in terms of section 12A of the Public Service Act of 1994 or who has a conflict of interest shall be appointed to a procurement documentation, evaluation or tender committee.

6.1.1.1.5 Committee decisions shall as far as possible be based on the consensus principle i.e. the general agreement characterised by the lack of sustained opposition to substantial issues. Committees shall record their decisions in writing. Such decisions shall be kept in a secured environment for a period of not less than five years after the completion or cancellation of the contract unless otherwise determined in terms of the National Archives and Record Services Act of 1996.

6.1.1.1.6 Committees may make decisions at meetings or, subject to the committee chairperson's approval, on the basis of responses to documents circulated to committee members provided that not less than sixty percent of the members are present or respond to the request for responses. Where the committee chairperson is absent from the meeting, the members of the committee who are present shall elect a chairperson from one of them to preside at the meeting.

6.1.1.2 Procurement documentation committee

6.1.1.2.1 The Accounting Officer shall appoint in writing on a procurement by procurement basis: -

- a) the persons to review the procurement documents and to develop a procurement documentation review report in accordance with clause 4.2.2.1 of the standard; and
- b) the members of the procurement documentation committee.

6.1.1.2.2 The procurement documentation committee shall comprise of one or more persons. The chairperson shall be an employee of the municipality with requisite skills. Other members shall, where relevant, include a representative of the end user or the department requiring infrastructure delivery.

6.1.1.2.3 No member of, or technical adviser or subject matter expert who participates in the work of the any of the procurement committees or a family member or associate of such a member, may tender for any work associated with the tender which is considered by these committees.

6.1.1.3 Evaluation committee

6.1.1.3.1 The Accounting Officer shall appoint on a procurement by procurement basis in writing: -

- a) the persons to prepare the evaluation and, where applicable, the quality evaluations, in accordance with clauses 4.2.3.2 and 4.2.3.4 of the standard, respectively; and
- b) the members of the evaluation committee.

6.1.1.3.2 The evaluation committee shall comprise not less than three people. The chairperson shall be an employee of the municipality with requisite skills. Other members shall include a supply chain management practitioner ¹¹ and, where relevant, include an official from the department requiring infrastructure delivery.

6.1.1.3.3 The evaluation committee shall review the evaluation reports prepared in accordance with sub clause 4.2.3 of the standard and as a minimum verify the following in respect of the recommended tenderer: -

- a) the capability and capacity of a tenderer to perform the contract;
- b) the tenderer's tax and municipal rates and taxes compliance status;
- c) confirm that the tenderer's municipal rates and taxes and municipal service charges are not in arrears;
- d) the Compulsory Declaration has been completed; and
- e) the tenderer is not listed in the National Treasury's Register for Tender Defaulters or the List of Restricted Suppliers.

6.1.1.3.4 No tender submitted by a member of, or technical adviser or subject matter expert who participates in the work of the procurement documentation committee or a family member or associate of such a member, may be considered by the evaluation committee.

6.1.1.3.5 The chairperson of the evaluation committee shall promptly notify the Accounting Officer of any respondent or tenderer who is disqualified for having engaged in fraudulent or corrupt practices during the tender process.

6.1.1.4 Tender committee

6.1.1.4.1 The tender committee shall encompass as per paragraph 29(2) of the Supply Chain Management Policy.

6.1.1.4.2 No member of the evaluation committee may serve on the tender committee. A member of an evaluation committee may, however, participate in the deliberations of a tender committee as a technical advisor or a subject matter expert.

6.1.1.4.3 The tender committee shall: -

- a) consider the report and recommendations of the evaluation committee and: -
 - 1) verify that the procurement process which was followed complies with the provisions of this document;
 - 2) confirm that the report is complete and addresses all considerations necessary to make a recommendation;

¹¹ A supply chain management practitioner in the context of infrastructure delivery includes a built environment professional

- 3) confirm the validity and reasonableness of reasons provided for the elimination of tenderers; and
 - 4) consider commercial risks and identify any risks that have been overlooked or fall outside of the scope of the report which warrant investigation prior to taking a final decision; and
- b) refer the report back to the evaluation committee for their reconsideration or make a recommendation to the authorised person on the award of a tender, with or without conditions, together with reasons for such recommendation.

6.1.1.4.4 The tender committee shall consider proposals regarding the cancellation, amendment, extension or transfer of contracts that have been awarded and make a recommendation to the authorised person on the course of action which should be taken.

6.1.1.4.5 The tender committee shall consider the merits of an unsolicited offer and make a recommendation to the Accounting Officer.

6.1.1.4.6 The tender committee shall report to the Accounting Officer any recommendation made to award a contract to a tenderer other than the tenderer recommended by the evaluation committee, giving reasons for making such a recommendation.

6.1.1.4.7 The tender committee shall not make a recommendation for an award of a contract or order if the recommended tenderer or framework contractor has: -

- a) made a misrepresentation or submitted false documents in competing for the contract or order; or
- b) been convicted of a corrupt or fraudulent act in competing for any contract during the past five years.

6.1.1.4.8 The tender committee may on justifiable grounds and after following due process, disregard the submission of any tenderer if that tenderer or any of its directors, members or trustees or partners has abused the delivery management system or has committed fraud, corruption or any other improper conduct in relation to such system. The National Treasury and the Provincial Treasury of the Western Cape shall be informed where such tenderers are disregarded.

6.1.2 Actions of an authorised person relating to the award of a contract or an order

6.1.2.1 Award of a contract

6.1.2.1 The authorised person shall, if the value of the contract inclusive of VAT, is within his or her delegation, consider the report(s) and recommendations of the tender committee, or in the case of the awards for contracts below the quotation threshold, the recommendation of the *[designated person]*, and either:

- a) award the contract after confirming that the report is complete and addresses all considerations necessary to make a recommendation and budgetary provisions are in place; or

- b) decide not to proceed or to start afresh with the process.

6.1.2.2 The authorised person shall immediately notify the *[designated person]* if a tender other than the recommended tender is awarded, save where the recommendation is changed to rectify an irregularity. Such person shall, within 10 working days, notify in writing the Auditor-General, the National Treasury and Provincial Treasury of the Western Cape, and, in the case of a municipal entity, also the parent municipality, of the reasons for deviating from such recommendation.

6.1.2.3 Issuing of an order

The authorised person shall, if the value of an order issued in terms of a framework contract, is within his or her delegation, consider the recommendation of the evaluation committee or the *[designated person]*, as relevant, and either:

- a) authorise the issuing of an order in accordance with the provisions of clause 4.25 of the standard; or
- b) decide not to proceed or to start afresh with the process.

6.1.3 Conduct of those engaged in infrastructure delivery¹²

6.1.3.1 General requirements

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

- a) behave equitably, honestly and transparently;
- b) discharge duties and obligations timeously and with integrity;
- c) comply with all applicable legislation and associated regulations;
- d) satisfy all relevant requirements established in procurement documents;
- e) avoid conflicts of interest; and
- f) not maliciously or recklessly injure or attempt to injure the reputation of another party.

6.1.3.1.2 All personnel and agents engaged in the municipality's infrastructure delivery management system shall: -

- a) 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;

¹² Sub clause 5.1 d) of the standard requires that the municipality's or municipal entity's policy establish ethical standards for those involved in the procurement and delivery of infrastructure. This clause is aligned with the provisions of SCM Regulation 46 (Ethical standards) issued in terms of the MFMA and National Treasury's Code of Conduct for Supply Chain Management Practitioners

- b) perform their duties efficiently, effectively and with integrity and may not use their position for private gain or to improperly benefit another person;
- c) strive to be familiar with and abide by all statutory and other instructions applicable to their duties;
- d) furnish information in the course of their duties that is complete, true and fair and not intended to mislead;
- e) ensure that resources are administered responsibly;
- f) be fair and impartial in the performance of their functions;
- g) at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual;
- h) not abuse the power vested in them;
- i) 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;
- j) assist the municipality in combating corruption and fraud within the infrastructure procurement and delivery management system;
- k) not disclose information obtained in connection with a project except when necessary to carry out assigned duties;
- l) not make false or misleading entries in reports or accounting systems; and
- m) keep matters of a confidential nature in their possession confidential unless legislation, the performance of duty or the provision of the law require otherwise.

6.1.3.1.2 An employee or agent may not amend or tamper with any submission, tender or contract in any manner whatsoever.

6.1.3.2 Conflicts of interest

6.1.3.2.1 The employees and agents of the municipality 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 municipality 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 the municipality's proprietary information.

6.1.3.2.2 The employees and agents of the municipality 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.

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

- a) the municipality 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.

6.1.3.3 Evaluation of submissions received from respondents and tenderers

6.1.3.3.1 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 the municipality.

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

6.1.3.3.3 The municipality's 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.

6.1.3.4 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 the municipality's confidential information and interests.

6.1.3.5 Gratifications, hospitality and gifts

6.1.3.5.1 The employees and agents of the municipality 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.

6.1.3.5.2 The employees and agents of the municipality 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.

6.1.3.5.3 The employees and agents of the municipality 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.

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

- a) meals and entertainment, but excluding the cost of transport and accommodation;
- b) promotional material of small intrinsic value such as pens, paper-knives, diaries, calendars, etc;
- c) incidental business hospitality such as business lunches or dinners, which the employee is prepared to reciprocate;
- d) complimentary tickets to sports meetings and other public events, but excluding the cost of transport and accommodation, provided that such tickets are not of a recurrent nature; and
- e) gifts in kind other than those listed in a) to d) which have an intrinsic value greater than R350 unless they have declared them to the Accounting Officer.

6.1.3.5.5 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.

6.1.3.5.6 Employees and agents of the municipality shall without delay report to the Accounting Officer 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.

6.1.3.6 Reporting of breaches

Employees and agents of the municipality shall promptly report to the Accounting Officer any alleged improper conduct which they may become aware of, including any alleged fraud or corruption.

6.1.4 Measures to prevent abuse of the infrastructure delivery system¹³

The Accounting Officer 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: -

- a) take steps against an employee or role player and inform the National Treasury and Provincial Treasury of the Western Cape of those steps;
- b) report to the South African Police Service any conduct that may constitute a criminal offence;
- c) 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;
- d) cancel a contract if: -
 - 1) 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
 - 2) an employee or other role player committed any corrupt or fraudulent act during the tender process or during the execution of that contract.

6.1.5 Awards to persons in the service of the state¹⁴

6.1.5.1 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: -

- a) a member of any municipal council, any provincial legislature, or 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

¹³ The requirement to prevent abuse of the supply chain management system is aligned with the provisions of SCM Regulation 38 issued in terms of the MFMA.

¹⁴ The clause aligns with SCM Regulation 44 issued in terms of the MFMA.

- f) an employee of Parliament or a provincial legislature.

6.1.5.2 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 6.1.5.1 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.

6.1.6 Collusive tendering ¹⁵

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

- a) is not associated, linked or involved with any other tendering entity submitting tender offers; or
- b) 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 (specification, timing, conditions of contract etc.) or intention to not win a tender shall be rejected.

6.1.7 Placing of contractors under restrictions ¹⁶

6.1.7.1 If any tenderer which has submitted a tender offer or a contractor which has concluded a contract has, as relevant: -

- a) withdrawn such tender or quotation after the advertised closing date and time for the receipt of submissions;
- b) after having been notified of the acceptance of his tender, failed or refused to commence the contract;
- c) had their contract terminated for reasons within their control without reasonable cause;
- d) offered, promised or given a bribe in relation to the obtaining or the execution of such contract;
- e) acted in a fraudulent, collusive or anti-competitive or improper manner or in bad faith towards municipality; or
- f) made any incorrect statement in any affidavit or declaration with regard to a preference claimed and is unable to prove to the satisfaction of the municipality that the statement was made in good faith or reasonable steps were taken to confirm the correctness of the statements,

¹⁵ The standard requires the inclusion of the Compulsory Declaration in all procurement documents. This sub-clause aligns with SCM Regulation 44 issued in terms of the MFMA and SANS 10845-3 which is incorporated by reference in the standard.

¹⁶ This sub-clause is aligned with the requirements of SCM Regulation 38 issued in terms of the MFMA.

a *[designated person]* shall prepare a report on the matter and make a recommendation to the Accounting Officer for placing the contractor or any of its principals under restrictions from doing business with the municipality.

6.1.7.2 The Accounting Officer may, as appropriate, upon the receipt of a recommendation made in terms of 6.1.7.1 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 *[name of municipality or municipal entity]* for a period of time.

6.1.7.3 The Head of Supply Chain Management shall:-

- a) record the names of those placed under restrictions in an internal register which shall be accessible to employees and agents the municipality who are engaged in procurement processes; and
- b) notify the National Treasury and Provincial Treasury of the Western Cape and, if relevant, the Construction Industry Development Board, of such decision and provide them with the details associated therewith.

6.1.8 Complaints

6.1.8.1 All complaints regarding the municipality's infrastructure delivery management system shall be addressed to the Head of Supply Chain Management. Such complaints shall be in writing.

6.1.8.2 The Head of Supply Chain Management shall investigate all complaints regarding the infrastructure procurement and delivery management system and report on actions taken to the Accounting Officer who will decide on what action to take.

6.2 Acquisition management

6.2.1 Unsolicited proposal ¹⁷

6.2.1.1 The municipality is not obliged to consider unsolicited offers received outside a normal procurement process but may consider such an offer only if:

- a) the goods, services or any combination thereof that is offered is a demonstrably or proven unique innovative concept;
- b) proof of ownership of design, manufacturing, intellectual property, copyright or any other proprietary right of ownership or entitlement is vested in the person who made the offer;
- c) the offer presents a value proposition which demonstrates a clear, measurable and foreseeable benefit for the municipality;
- d) the offer is in writing and clearly sets out the proposed cost;

¹⁷ The clause aligns with SCM Regulation 37 issued in terms of the MFMA.

- e) the person who made the offer is the sole provider of the goods or service; and
- f) the Accounting Officer finds the reasons for not going through a normal tender processes to be sound.

6.2.1.2 The Accounting officer may only accept an unsolicited offer and enter into a contract after considering the recommendations of the tender committee if:

- a) the intention to consider an unsolicited proposal has been made known in accordance with Section 21A of the Municipal Systems Act of 2000 together with the reasons why such a proposal should not be open to other competitors, an explanation of the potential benefits for the municipality and an invitation to the public or other potential suppliers and providers to submit their comments within 30 days after the notice;
- b) the municipality has obtained comments and recommendations on the offer from the National Treasury and Provincial Treasury of the Western Cape;
- c) the tender committee meeting which makes recommendations to accept an unsolicited proposal was open to the public and took into account any public comments that were received and any comments and recommendations received from the National Treasury and Provincial Treasury of the Western Cape; and
- d) the provisions of 6.2.1.3 are complied with.

6.2.1.3 The Accounting officer shall, within 7 working days after the decision to award the unsolicited offer is taken, submit the reasons for rejecting or not following the recommendations to the National Treasury, the Provincial Treasury of the Western Cape and Auditor General. A contract shall in such circumstances not be entered into or signed within 30 days of such submission.

6.2.2 Tax and rates compliance¹⁸

6.2.2.1 SARS tax clearance

6.2.2.1.1 No contract may be awarded or an order issued where the value of such transaction exceeds R 30 000, unless a tenderer or contractor is in possession of an original valid Tax Clearance Certificate issued by SARS or if not domiciled in the Republic of South Africa and the SARS has confirmed that such a tenderer is not required to prove their tax compliance status.

6.2.2.1.2 In the case of a partnership, each partner shall comply with the requirements of clause 6.

6.2.2.1.3 No payment shall be made to a contractor who does not satisfy the requirements of 6.2.2.1.2. An employee of the municipality shall upon detecting that a tenderer or contractor is not tax compliant, immediately notify such person of such status.

¹⁸ This sub-clause aligns with the provisions of SCM Regulation 43 issued in terms of the MFMA. .

6.2.2.1.4 Notwithstanding the requirements of 6.2.2.1 and 6.2.2.3 the following shall apply, unless a person who is not tax compliant indicates to *[designated person]* that it intends challenging its tax compliance status with SARS,

- a) 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;
- b) 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;
- c) 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;
- d) 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;
- e) 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.

6.2.2.1.5 The municipality 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 6.2.2.1.4e).

6.2.2.2 Municipal rates and taxes¹⁹

No contract may be awarded to a tenderer who, or 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.

6.2.3 Declarations of interest

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:

- a) are an employee of the municipality or in the employ of the state; or
- b) have a family member or a business relation with a person who is in the employ of the state.

6.2.4 Invitations to submit expressions of interest or tender offers

6.2.4.1 All invitations to submit tenders where the estimated value of the contract exceeds R200 000 including VAT, except where a confined tender process is followed, and

¹⁹ This subclause aligns with the provisions of SCM Regulation 38 issued in terms of the MFMA.

expressions of interest shall be advertised on the municipality's website and on the National Treasury eTender Publication Portal.²⁰ Advertisements shall be placed by the municipality's Supply Chain Management Unit.

6.2.4.2 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 6.2.4.1 be advertised on the CIDB website. Advertisements shall be placed by the municipality's Supply Chain Management Unit.

6.2.4.3 Where deemed appropriate 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 the municipality's Supply Chain Management Unit.

6.2.4.4 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 Accounting Officer.

6.2.4.5 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.

6.2.5 Publication of submissions received and the award of contracts²¹

6.2.5.1 The municipality shall publish within 10 working days of the closure of any advertised call for an expression of interest or an invitation to tender where the estimated value of the contract exceeds R200 000 including VAT on the municipality's website, the names of all tenderers that made submissions to that advertisement, and if practical or applicable, the total of the prices and the preferences claimed. Such information shall remain on the website for at least 30 days.

6.2.5.2 The municipality shall publish within 7 working days of the award of a contract the following on the municipality's website;

- a) the contract number;
- b) contract title;
- c) brief description of the goods, services or works;
- d) the total of the prices, if practical;
- e) the names of successful tenderers and their B-BBEE status level of contribution;
- f) duration of the contract; and

²⁰ This subclause aligns with National Treasury Instruction No 1 of 2015/2016 – Advertisement of bids and the publication of awards on the eTender Publication Portal.

²¹ This subclause aligns with National Treasury Instruction No 1 of 2015/2016 – Advertisement of bids and the publication of awards on the eTender Publication Portal.

g) brand names, if applicable.

6.2.5.3 The municipality shall submit within 7 working days of the award of a contract the information required by National Treasury on the National Treasury eTender Publication Portal regarding the successful and unsuccessful tenders.

6.2.5.4 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 6.2.5.3 be notified on the CIDB website. The notification shall be placed by the municipality's Supply Chain Management Unit.

6.2.6 Disposal committee

6.2.6.1 The Accounting Officer 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.

6.2.6.2 The disposal panel shall comprise not less than three people. The chairperson shall be an employee of municipality.

6.2.6.3 The disposal committee shall make recommendations to *[designed person]* 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.

6.3 Reporting of infrastructure delivery management information

[designated person] shall submit any reports required in terms of the standard to the National Treasury or Provincial Treasury of the Western Cape.

6.31 The implementer shall report to the relevant treasury within one month of the award of a contract or the issuing of an order, all engineering and construction, supply, service and professional service contracts that are awarded, or orders that are issued, should the total of prices including VAT exceed the following thresholds

Value of contract or order including VAT			
Services contract	Professional services	Supply	Engineering and construction works
R 25 million	R 25 million	R 50 million	R 50 million

7 Infrastructure procurement

7.1 Usage of procurement procedures ²²

²² Delete this clause if there are no restriction. Amend if there are specific circumstance under which a procurement procedure is to be used.

The municipality shall use all applicable Supply Chain Management / Procurement administrative and compliance procedures applicable to infrastructure procurement:

7.2 Procurement documents

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

Applicable contracts listed in Table 10 of the Standard for Infrastructure Procurement and Delivery Management (SIPDM) may be made use of.

7.2.2 The municipality'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 the Accounting Officer prior to being issued for tender purposes.

7.2.3 Disputes arising from the performance of a contract shall be finally settled in a South African court of law. ²³

7.2.4 Additional requirements not stated or included in the standard templates, if any, must be added; e.g. use of standard access specifications, health and safety specifications, etc.

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

- a) consultancy services; ²⁴ and
- b) goods and services or any combination thereof where the total of the prices is expected to exceed R10 m including VAT. ²⁵

7.3 Developmental procurement policy

If the specific contract qualifies for any goals that has been set in Council's approved IDP, it must be stated upfront in the specifications, for that contract.

7.4 Payment of contractors ²⁶

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

7.5 Approval to utilise specific procurement procedures ²⁷

7.5.1 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:

²³ This sub-clause aligns with SCM Regulation 21 issued in terms of the PFMA.

²⁴ The clause aligns with SCM Regulation 35(3) issued in terms of the MFMA.

²⁵ The clause aligns with SCM Regulation 35(3) issued in terms of the MFMA.

²⁶ The Section 65 of the MFMA requires municipal manager or chief executives to settle all contractual obligations and pay all money owing within 30 days of receiving the relevant statement or invoice.

²⁷ This clause is necessary to enable the standard to be implemented.

- a) the Adjudication committee shall authorise the use of the negotiated procedure above the thresholds provided in the standard.
- b) the Adjudication committee 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
- c) procedure for the proposal may utilise the two-envelope system or the competitive negotiations procedure.

7.5.2 The Accounting Officer must nominate and authorise a person to pursue a negotiated procedure in case of an emergency.

7.6 Receipt and safeguarding of submissions

Where not clearly stipulated in current standing operating procedures of the municipality, the following steps must be taken;

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

7.6.2 The tender box shall remain locked at all times and the keys shall be under the control of the Supply Chain Management Unit. Such personnel shall be present when the box is opened on the stipulated closing date for submissions.

7.7 Opening of submissions

7.7.1 Submissions shall be opened by an opening panel comprising of two people from the Supply Chain Management Unit who have declared their interest or confirmed that they have no interest in the submissions that are to be opened.

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

- a) 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;
- b) return submissions unopened and suitably annotated where:
 - 1) submissions are received late, unless otherwise permitted in terms of the submission data;
 - 2) submissions were submitted by a method other than the stated method,
 - 3) submissions were withdrawn in accordance with the procedures contained in SANS 10845-3; and.
 - 4) only one tender submission is received and it is decided not to open it and to call for fresh tender submissions;

- c) record in the register submissions that were returned unopened;
- d) 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;
- e) record in the register the name of any submissions that is returned with the reasons for doing so;
- f) record the names of the tenderer's representatives that attend the public opening;
- g) sign the entries into the register; and
- h) stamp each returnable document in each tender submission.

7.7.3 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 7.7.3 h).

7.7.4 Respondents and tenderers whose submissions are to be returned shall be afforded the opportunity to collect their submissions.

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

7.8 Use of another organ of state's framework agreement ²⁸

The municipality 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 Accounting Officer shall make the necessary application to that organ of state to do so.

7.9 Insurances ²⁹

7.9.1 Contractors shall be required to take out all insurances required in terms of the specific contract.

7.9.2 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 below, unless otherwise directed by the Accounting Officer.

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

Table 4: Minimum insurance cover

²⁸ This clause aligns with SCM Regulation 32 issued in terms of the MFMA and clause 7.3 of the Standard.

²⁹ Cover may differ from contract to contract but must be in line with the manner in which the municipality wishes to manage its risk.

Type of insurance	Value
Engineering and construction contracts - 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.	Not less than R20 million
Professional services and service 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: R 5,0 million electrical, mechanical and engineering: R 3,0 million architectural: R 5,0 million other: R 3,0 million

7.9.4 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 the Accounting Officer.

7.9.5 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.

7.9.5 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 Accounting Officer in relation to the nature of the service that they provide.

7.9.6 The municipality 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.

7.9.7 Where payment is to be made in multiple currencies, the contractor is 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.

7.10 Written reasons for actions taken

7.10.1 Written reasons for actions taken shall be provided by a *[designated person]*.

7.10.2 The written reasons for actions taken shall be as brief as possible and shall as fair as is possible, and where relevant, be framed around the clauses in the:

- a) 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
- b) SANS 10845-4, *Construction procurement - Part 4: Standard conditions for the calling for expressions of interest*;

as to why a tenderer was not considered for the award of a contract or not awarded a contract.

7.10.3 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.

7.11 Request for access to information

7.11.1 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 municipality'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 the municipality.

7.11.2 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.

8 Commencement

This Policy takes effect on 1st July 2017.