

27. BID SPECIFICATION COMMITTEES

- 1) The appropriate bid specification committee must compile the specifications for each procurement transaction for goods or services by the Municipality, depending on the department involved.
- 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 Organization, 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 and / or 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 or functionality for which points may be awarded in terms of the points system set out in the Preferential Procurement Policy Framework Act, 2000, read with the Preferential Procurement Regulations 2017 as amended; and
 - g) must be approved by either the chief financial officer or relevant senior manager 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 senior manager and at least one professional with required technical expertise from the department responsible for the function involved (requiring the goods or services), and supply chain management practitioner from the supply chain management unit, and may, when appropriate, include local economic development officer and external specialist advisors
- 4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.

28. BID EVALUATION COMMITTEES

- 1) A bid evaluation committee must –
 - a) evaluate bids in accordance with –
 - i) the specifications for a specific procurement; and
 - ii) the points system set out in terms of paragraph 27(2)(f).

- iii) the general criteria to evaluate technical and financial ability as per **Annexure B**.
 - iv) the framework for the adjudication of bids as contained in Part B (Preferential Procurement Policy).
 - b) evaluate each bidder's ability to execute the contract;
 - c) evaluate the tenders to ensure value for money for the municipality;
 - d) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears for more than three months and;
 - e) consider only those bidders who has submitted and complied with the material terms and requirements of the bid documentation;
 - f) when calculating comparative prices, take into account any discounts which have been offered unconditionally, however, a discount which has been offered conditionally must, despite not being taken into account for evaluation purposes, be implemented when payment is effected;
 - g) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
 - h) submit to the adjudication committee a report and reasons in the event of a tender not being awarded.
- 2) A bid evaluation committee must as far as possible be composed of-
- a) Standing members
 - i) the relevant senior manager (or delegates);
 - ii) a delegated Manager: Treasury or senior supply chain management practitioner; and
 - iii) any other manager(s).
 - b) Other members:
 - i) At least one knowledgeable / professional official from the Directorate for whom the bid is called.
 - ii) Technical experts, consultants or advisors, provided that these experts may only actively contribute to discussions, but not vote on the items evaluated.
- 3) A manager: treasury or a supply chain practitioner nominated by the CFO will be the chairperson of the Bid Evaluation Committee.
- 4) The quorum for each meeting of the Bid Evaluation Committee is at least one senior supply chain management practitioner and a representative of the relevant directorate.

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.
- c) Consider the report and recommendations of the bid evaluation committee where it is recommended that the tender not be awarded; and either
 - i) Take a decision that the tender not be awarded for the reasons presented and that it be re-advertised or not be re-advertised; or
 - ii) take a decision that the tender be awarded and make a final award or a recommendation to the accounting officer to make the final award.
- 2) A bid adjudication committee shall be composed of the following: –
 - a) the chief financial officer or, if the chief financial officer is not available, a manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer; and
 - b) the Manager: Treasury or senior supply chain management practitioner; and
 - c) Directors of each directorate or in their absence, a duly delegated official.
 - d) if deemed necessary, a technical expert in the relevant field who is an official, if such an expert exists
- 3) The accounting officer may appoint the CFO as 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 and will be documented in the minutes.
- 4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.
- 5) The chairperson 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 or considered when determining a quorum.
- 6) A quorum is of 50 % plus 1, with the Chief Financial Officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer being, at all times one of the quorum-forming members.
- 7) If the bid adjudication committee decides NOT to award a bid, either in support of the recommendation by the bid evaluation committee or on their own decision, the bid adjudication committee may:-
 - a) refer the evaluation report back to the bid evaluation committee for review and/or reconsideration or clarification, or
 - b) refer the bid document to bid specification to revise and advertise; or
 - c) cancel the bidding process.

- 8) 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-
 - a) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;
 - b) notify the accounting officer.
- 9) The accounting officer may, in terms of a notice received as contemplated in paragraph 29.7—
 - a) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to; and
 - b) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- 10) 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.
- 11) The accounting officer must comply with section 114 of the Act within 10 working days.
- 12) If the Bid Adjudication Committee or other delegated official has resolved that a bid be accepted, the successful and unsuccessful bidders shall be notified in writing of this decision.
- 13) Every notification of decision shall be sent via registered mail and either faxed or sent via electronic mail to the address chosen by the bidder, with a copy of proof of transmission kept for record purposes, or shall be delivered by hand, in which case acknowledgement of receipt must be signed and dated on a copy of such notification and kept for record purposes.
- 14) Members of the bid specification committee, bid evaluation committee and technical advisors may attend the bid adjudication committee to provide clarity, but has no decision making rights pertaining to the award.
- 15) The accounting officer may sub-delegate its power in terms of this policy to the bid evaluation committee, the bid adjudication committee and the Accountant Supply Chain Management.
- 16) After approval of a bid, the accounting officer and the bidder must enter into a written agreement.
- 17) Original / legal copies of written contracts agreements must be kept in a secure place for reference purposes.
- 18) The accounting officer is empowered to condone non-compliance with peremptory requirements of bids in cases where the condonation is not incompatible with public interest and promote the values of fairness, competitiveness and cost-effectiveness which are listed in Section 217 of the Constitution.

Successful bidder briefing

- 19) The notification to the successful bidder in terms of this Policy may require of the successful bidder to attend a compulsory briefing session with the municipality before commencement of the contract at no cost to the municipality.
- 20) The purpose of the briefing session is to:
- a) Introduce the municipal contract manager allocated to the specific contract in terms of this policy and to meet the successful bidders contract manager;
 - b) Examine and analyse the bid document and contractual conditions to ensure that specific expectations of the municipality and the obligations of the successful bidder are well understood;
 - c) Discuss the strengths and weaknesses of the bidder's submission in relation to the specific evaluation criteria and the bidders evaluated score.
 - d) Communicate and document the anticipated contract risks and challenges as perceived by both the municipality and the successful bidders;
 - e) To develop mitigating strategies to address and mitigate the contract risk and challenges; and
 - f) Communicate the contract administration process as stated in legislation and this policy.
 - g) Formally sign the bid contract.
- 21) At least the following persons must attend the briefing session:
- a) The municipal contract manager;
 - b) The authorised municipal supply chain official;
 - c) The successful bidders authorised contract signatory;
 - d) The successful bidders contract manager.
- 22) The notification to the successful bidder must state the date, time and place of the briefing session in writing:
- a) Proper minutes must be kept of each briefing session;
 - b) All correspondence and documentation in relation to the briefing session must be maintained as part of the procurement documentation.

Unsuccessful bidder debriefing

- 23) The unsuccessful bidder debriefing service is offered by the municipality to unsuccessful bidders upon request.
- 24) During the debriefing unsuccessful bidders can find out how their proposal scored against required criteria and obtain comments from the evaluation team on their bid.
- 25) The debriefing should be a positive and constructive experience that explains how bidders can improve future submissions.

- 26) The debriefing an opportunity for unsuccessful bidders to:
- a) Learn more about the procurement and evaluation process in an informal setting.
 - b) Find out how their proposal scored against the required criteria.
 - c) Hear the overall comments from the evaluation team on your bid.
 - d) Gather information on how future submissions may be improved.
- 27) The debriefing is not part of the Supply Chain complaint or appeal process in terms of this policy.
- 28) The debriefing is not legal proceeding and no legal representation is permitted at the debriefing.
- 29) At the debriefing session the unsuccessful bid is not compared to other bids, nor will information be provided to the unsuccessful bidder about other bids.
- 30) In scheduling bidders debriefings session upon the request of the unsuccessful bidder, the municipality must:
- a) Confirm the date and time of the debriefing session in writing;
 - b) Conduct separate debriefings with each vendor;
 - c) Ensure that proper minutes are kept of each debriefing session;
 - d) Retain all correspondence and documentation relevant to the debriefing session as part of the procurement documentation.
- 31) In conducting bidders debriefings, the municipality may:
- a) Provide a general overview of the evaluation process set out in the bid documents;
 - b) Discuss the strengths and weaknesses of the bidder's submission in relation to the specific evaluation criteria and the bidders evaluated score.
 - c) Provide suggestions on how the supplier may improve future submissions;
 - d) Address specific questions and issues raised by the supplier in relation to their submission.

Acceptance of offers

- 32) At the invitation of bids, or quotations:
- a) the municipality is not obliged to accept the lowest or any offer;
 - b) The municipality may, where an offer relates to more than one item, accept such offer in respect of or any specific item or items.
 - c) The municipality may accept any offer notwithstanding the fact that the offer does not comply with the bid invitation in respect of which the offer has been made subject to the conditions of this policy.

30. PROCUREMENT OF BANKING SERVICES

- 1) A contract for banking services –
 - a) must be procured through competitive bids;
 - b) must be consistent with section 7 or 85 of the Act; and
 - c) may not be for a period of more than five years at a time.
- 2) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.
- 3) The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of this policy. 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 Municipality disagree with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the relevant provincial treasury and the Auditor General.

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 gases 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

- 1) The Municipality supports the Proudly SA Campaign to the extent that, as far as possible, preference is given to procuring local goods and services.
- 2) Bids in respect of services, works or goods that have been designated for local production and content, must contain a specific bidding condition that only locally produced goods, services or works or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered.
The National Department of Trade and Industry is empowered to designate industry sectors, in line with national development and industrial policies for local production, where only locally produced goods, services or construction works, or locally manufactured goods that meet a stipulated minimum threshold for local production and content, may be used.
- 3) In the case of designated sectors, where in the award of bids, local production and content is of critical importance, such bids must be advertised with a specific condition of bidding, that only locally produced goods, services or construction works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- 4) Any instructions, circulars and guidelines issued by National Treasury in the above regard must be complied with.
- 5) Where there is no designated sector, bids may include, as a specific condition of bidding, that only locally produced goods, services or construction works, or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered, on condition that such prescript and threshold(s) are in accordance with the specific directives issued for this purpose by the National Treasury in consultation with the Department of Trade and Industry.
- 6) Every bid where local production and content are used, it must be measurable and audited.
- 7) Bids must be evaluated in terms of the evaluation criteria stipulated in the bid documents. The amendment of the stipulated minimum threshold for local production and content after the closure of bids is not allowed as this may jeopardise the fairness of the process.

35. APPOINTMENT OF CONSULTANTS

- 1) The accounting officer may procure consulting services provided that any Treasury guidelines and CIDB requirements in respect of consulting services are taken into account when such procurements are made.

- 2) Consultancy services must be procured through competitive bids if
 - a) the value of the contract exceeds R200 000 (VAT included); or
 - b) the duration period of the contract exceeds one year.
- 3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of –
 - a) all consultancy services provided to the municipality in the last five years; and
 - b) any similar consultancy services provided to the municipality in the last five years.
- 4) The accounting officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the Municipality.
- 5) The Accounting Officer shall as far as possible endeavour to realize the following cost containment measures when engaging with consultants:
 - (a) Accounting Officers shall only contract with consultants after a gap analysis report has confirmed that the municipality does not have the requisite skills or resources in its permanent employment to perform the services required.
 - (b) Evidence of acute planning of the project must be visible to all relevant persons including the administration and political oversight mechanisms in place at the municipality.
 - (c) Consultants, including construction and infrastructure related services, must only be remunerated at the rates equal to or below those:
 - o determined in the "Guidelines on fees for audits done on behalf of the Auditor-General South Africa", issued by the South African Institute of Chartered Accountants (SAICA);
 - o set out in the "Guide on Hourly Fee Rates for Consultants", by the Department of Public Service and Administration (DPSA); or
 - o Prescribed by the body regulating the profession of the consultant.
 - (d) Ensure an exacting "specification" of the work to be accomplished, accompanies the tender and is used as a monitoring tool and appropriately recorded and monitored.
 - (e) Ensure that contracts for consultants include retention and penalty clauses for poor performance and in this regard against the above specification, accounting officers must invoke such clauses, where deemed necessary.
 - (f) That contracts/services are concluded based on the best "value for money" principles, i.e. matching fees against quality and against benchmarked practices.
 - (g) The appointing of consultants on a time and cost basis with specific start and end dates.
 - (h) Travel and subsistence costs for the appointment of consultants must be in accordance with the travel policy of government and the contract price specifies all travel & subsistence costs.
 - (i) Endeavour to ensure that when travel and subsistence costs for appointed

consultants are exclusive of the contract, the costs must be in accordance with the following provisions:

- o Hotel accommodation may not exceed the amount determined by National Treasury;
- o Only economy class air tickets may be purchased for flights;
- o Only group B vehicles or lower may be hired for engagements, as determined by National Treasury;
- o Kilometres claimed for the use of private vehicles may not exceed the rates approved by the National Department of Transport, as updated from time to time.

(j) To develop consultancy reduction plans.

(k) Undertake all engagements of consultants in accordance with the SCM Regulations and the municipality's SCM policy.

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 procure any required goods or services through any convenient process, which may include direct negotiations and through the process set out in this paragraph provided that the municipality shall adhere to fair, equitable, transparent, competitive and cost-effective, procurements to the maximum extent practicable.
- b) Dispense with the official procurement processes established by this Policy only –
 - i) In an emergency;
 - ii) If such goods or services are produced or available from a single provider only;
 - iii) For the acquisition of special works of art or historical objects where specifications are difficult to compile;
 - 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
 - vii) ad-hoc repairs to plant and equipment where it is not possible to ascertain the nature or extent of the work required in order to call for bids; and
 - viii) workshop strip and quote
- c) 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.

4) All identified possible unauthorized, irregular and fruitless and wasteful expenditure must be

referred to the Municipal Public Accounts Committee (MPAC) investigation and the MPAC makes recommendations to Council with the exception of minor breaches ratified by the accounting officer.

- 5) The following will be deemed not to be deviations from SCM processes:
- (i) Advertisements that are placed in National Government and Provincial Government Gazettes.
 - (ii) The procurement of fuel from any recognised Fuel Company and their depots, except when fuel is procured for the Municipal Depot.
 - (iii) Vehicles serviced by the agent in terms of the warranty or service plan of the vehicle as well as any other repairs or maintenance that is identified when the vehicle is being serviced by an agent in terms of the warranty or service plan of the vehicle.
 - (iv) The acquisition of services of medical specialists as may be required from time to time and in terms of the Pension Funds Amendment Act, Act 65 of 2001 and related regulations and amendments.
 - (v) Any machinery or other equipment serviced by the agent in terms of the warranty or service plan of that machinery or equipment.
 - (vi) Training, courses, seminars and/or workshops advertised by a professional institution related to local government.
 - (vii) The use of restaurants for special functions where quotations cannot be obtained.
 - (viii) The procurement of newspapers for municipal libraries and other municipal offices.
 - (ix) The acquisition of driving license cards from the service provider officially appointed by the National Department of Transport to issue such cards.
 - (x) Pauper burials and cremations.
 - (xi) The acquisition of specialist services of attorneys, advocates and labour relations practitioners subject thereto that the acquisition of such services be dealt with in terms of the Municipality's Delegation of Powers and Duties as amended from time to time and any Bargaining Council Agreements on Disciplinary Procedures.

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 was to be 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 five business days after the decision on the award of the unsolicited bid is taken, but no contract committing the Municipality to the bid may be entered into or signed within 30 days of the submission.

38. COMABTING OF ABUSE OF SUPPLY CHAIN MANGEMENT SYSTEM

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

contract with the Municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;

- e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
 - f) cancel a contract awarded to a person if –
 - i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
 - ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
 - g) reject the bid of any bidder if that bidder or any of its directors –
 - i) has abused the supply chain management system of the Municipality or has committed any improper conduct in relation to such system;
 - ii) has been convicted for fraud or corruption during the past five years;
 - iii) has 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).
- 2) The accounting officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) of this policy.
- 3) Restrictive practices are prohibited
- a) In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder is or a contractor was involved in collusive bidding.
 - b) If a bidder or contractor, based on reasonable grounds or evidence obtained by the municipality, has engaged in the restrictive practice referred to above, the municipality may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No. 89 of 1998.
 - c) If a bidder or contractor has been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder or contractor from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder or contractor concerned.

Part 3: LOGISTICS, DISPOSAL, RISK AND PERFORMANCE MANAGEMENT

39. LOGISTICS MANGEMENT

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

- 1) 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;
- 2) the setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;
- 3) the placing of manual or electronic orders for all acquisitions other than those from petty cash;
- 4) 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;
- 5) 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;
- 6) regular checking to ensure that all assets are properly managed and maintained in terms of Council's Asset Management Policy; and
- 7) monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for particular goods or services.

40. DISPOSAL MANAGEMENT

DISPOSAL AND LETTING

40.1 Objective

The main objective of this Chapter is to provide a regulatory framework for the disposal and letting of immovable assets and to provide a framework when the Municipality enter into lease agreements.

40.2 Definitions

For the purposes of this Chapter, unless the context indicates to the contrary

40.2.1 "**Asset Transfer Regulations**" means the Municipal Asset Transfer Regulations promulgated in terms of the MFMA;

40.2.2 "**BEE Act**" means the Broad-Based Black Economic Empowerment Act 53 of 2003;

40.2.3 "**BEE**" means the economic empowerment envisaged by the BEE Act of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to-

- a) increasing the number of black people that manage, own and control enterprises and productive assets;
- b) facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;
- c) human resource and skills development;
- d) achieving equitable representation in all occupational categories and levels in the workforce;
- e) preferential procurement; and
- f) investment in enterprises that are owned or managed by black people;

40.2.4 "**black people**" means Africans, Coloureds and Indians;

40.2.5 "**local**" in respect of persons, means inhabitants of Cederberg Municipality and in respect of geographical area, means the jurisdictional area of Cederberg Municipality;

40.2.6 "**MFMA**" means the Local Government: Municipal Finance Management Act 56 of 2003;

40.2.7 "**The Systems Act**" means the Local Government: Municipal Systems Act 32 of 2000.

40.3 General principles

40.3.1 Immovable property may only be sold at market related prices and let at market related rates except when the public interest or plight of the poor demands otherwise. For purposes of this Chapter:

- "**public interest**" means disposal or letting to:-

- a) promote the achievement of equality by taking measures to protect or advance persons or categories of persons, disadvantaged by unfair discrimination;
- b) afford black people who are South African citizens a preference in respect of the disposal and letting of immovable property as envisaged in section 9(2) of the Constitution;
- c) promote BEE through disposal and letting;
- d) ensure and promote home ownership and enterprise development of black people including but not limited to ensuring that people that qualify in terms of the Municipality's GAP housing policy have access to adequate housing on a progressive basis;
- e) advance agricultural projects for land reform purposes,
- f) promote welfare and charitable purposes including non-profit rehabilitation facilities; shelters for the indigent and destitute; youth development and drug counseling;
- g) promote sports development facilities and for sports development purposes;
- h) foster equitable access to public amenities, social and/or sports clubs and similar organisations by providing discounted prices or rates in the event that the beneficiaries or the membership component of such institution or body consist of at least 50% black people and/or the membership or subscription fee of black people is less than 50% of the normal membership or subscription fee;
- i) facilitate and promote local economic development activities.
 - **"plight of the poor"** means the needs of the people that are vulnerable and unable to meet their socio-economic needs independently or to support themselves and their dependants and are in need of social assistance.

40.3.2 Black people who are South African citizens will be afforded a preference in respect of the disposal and letting of immovable assets as envisaged in section 9(2) of the Constitution regardless of whether it is sold or let at market related prices or rates or not.

40.3.3 In the case of the free disposal of computer equipment, the provincial department of education must first be approached to indicate within 30 days whether any of the local schools are interested in the equipment.

- 40.3.4 In the case of the disposal of firearms, the National Conventional Arms Control Committee must approve any sale or donation of firearms to any person or institution within or outside the Republic.
- 40.3.5 All fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property must be reviewed annually.
- 40.3.6 Where assets are traded in for other assets, the highest possible trade-in price must be negotiated.

40.4 Methods of disposal

- 40.4.1 Transferring assets to another organ of state in terms of a provision of the MFMA enabling the transfer of assets.
- 40.4.2 Transferring assets to another organ of state at market related value or free of charge when appropriate.
- 40.4.3 By destroying assets.
- 40.4.4 Assets may be disposed of by sale or other agreement after a process which is fair, equitable, transparent and competitive and which may include:
 - 40.4.4.1 a tender process which involves the call for purely financial offers for disposal or letting of immovable assets taking into account the general principles above; .
 - 40.4.4.2 a call for development proposals in order to fulfill the constitutional and legislative duties of the Municipality including but not limited to achieving the general principles and progressive realisation of the right to access to adequate housing and the fostering of conditions which enable citizens to gain access to land on an equitable basis such as the specific objective of addressing skewed land ownership or control patterns focusing on and incorporating ownership of or control by black people; and
 - 40.4.4.3 a two-stage bidding process for large complex projects; projects where it may be undesirable to prepare complete detailed technical specifications or long term projects with a duration period exceeding three years.

40.4.5 Granting of servitudes and similar rights which confers on the person to whom the right is granted the power to use, control or manage the immovable asset as if that person is the beneficial owner. These are subject to the process and requirements set for disposal of immovable assets contained in this Chapter including the general principles in 40.3 and which must be fair, equitable, transparent and competitive.

40.4.6 Movable assets may be sold by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous to the Municipality (applicable to movable assets).

40.5 Disposal of immovable assets

40.5.1 Process

40.5.1.1 An item consisting of the motivation for the disposal of immovable assets must be prepared by the Directorate: Corporate and Strategic Services enabling Mayco to make an informed decision in principle.

40.5.1.2 After a decision in principle is taken by Mayco, Supply Chain Management will embark on the applicable process after the Accounting Officer has determined the applicable scoring methodology and/or preference points and/or weights and/or specific goals.

40.5.1.3 After the competitive bidding process, the Supply Chain Management Unit will source the valuation of the asset concerned depicting its fair market value. Fair market value will be calculated as the average of the valuations sourced from two service providers for properties with a municipal valuation in excess of R1 million. In respect of properties with a municipal valuation below R 1 million the fair market value will be determined by the municipal valuator determining a current value for the said property and for purposes of this Chapter market related prices shall have the same meaning.

40.5.1.4 Depending on the fair market value as determined, either a request for authorisation of a public participation process will be submitted by the Accounting Officer to Council or a final submission prepared by Corporate Services in terms of Section 14 of the MFMA to Council must then follow.

40.6 Letting

The letting of assets must adhere to and achieve the general principles contained in 40.3.

40.6.1 Process

- 40.6.1.1 An item must be prepared by the Directorate: Corporate and Strategic Services to Mayco to obtain a decision in principle to let the immovable asset.
- 40.6.1.2 After a decision in principle is taken by Mayco, the Accounting Officer must determine the applicable scoring methodology and/or preference points and/or weights and/or specific goals.
- 40.6.1.2 The Supply Chain Management Unit must then embark on the applicable process within the framework of the general principles contained in 40.3 which process must be fair, equitable, transparent and competitive. The normal rental stock of the Municipality for housing purposes is expressly excluded from this provision but the general principles contained in 40.3 must still be complied with.
- 40.6.1.3 The necessary contractual requirements must be drafted and finalised by Corporate and Strategic Services.

40.7 General

- 40.7.1 All items or reports to Council in terms of this Chapter must contain all the applicable and prescribed provisions in terms of the Asset Transfer Regulations including but not limited to factors that Council must consider as well as those pertaining to conditions that may be imposed.
- 40.7.2 All agreements concluded pursuant to disposal or letting must contain the minimum requirements stipulated in the Asset Transfer Regulations that are applicable to agreements as well as in the MFMA.

40.8 Application

This Chapter must be applied to all assets owned by the Municipality and must be complied with in every instance where the disposal or letting of assets is dealt with.

41. RISK MANAGEMENT

- 1) The accounting officer has established and implemented an effective system of risk management for the identification, consideration and avoidance of potential risks in the supply chain management system.
- 2) Risk management include –
 - a) The early and systematic identification of risks on a case-by-case basis;

- b) The allocation and acceptance 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.
- 3) Due care must be taken in the bid administration and management process to minimise the risks of:
 - a) litigation by unsatisfied service providers;
 - b) misinterpretation of municipal needs;
 - c) overstatement or understatement of municipal needs;
 - d) selecting or delivery of inappropriate goods and services;
 - e) poor value for money;
 - f) appointing inappropriate suppliers;
 - g) unethical conduct of suppliers and other official involved in the supply chain management process;
 - h) uneconomical, uncompetitive and inequitable procurement.
- 4) To give effect to paragraph 3 above, the municipality will identify risk inherent to a particular bid-
 - a) Risks may be identified for all bids during the specification stage of the bid process.
 - b) Risks identified in (i) above may cover the entire life cycle of a contract from initiation to completion of the goods/services.
 - c) For contracts with a life cycle in excess of 3 months, the risks may be reviewed at least monthly by the contract manager as referred to in this policy.
 - d) The contract manager in conducting the review of the bid risks during the life cycle of the contract may add new or emerging risks when identified.
- 5) A risk table may be included at specification stage for each bid that may set out:
 - a) Risk description;
 - b) Background to the risk;
 - c) Impact;

- d) Likelihood;
 - e) Inherent risk;
 - f) Current controls;
 - g) Perceived control effectiveness;
 - h) Residual risk;
 - i) Risk owner;
 - j) Actions to improve management of the risk;
 - k) Time scale.
- 6) The risk rating methodology will be in accordance with the Cederberg Municipality's risk management policy.
 - 7) The Evaluation and Adjudication Committee may review risks of bids received against the predetermined risk as identified at the bid specification stage and may in conducting the review of the bid add new or emerging risks and mitigating strategies when identified.
 - 8) At the briefing session with the successful bidder in terms of this policy:
 - a) Risks identified during the Bid specification, Bid evaluation and Bid adjudication process that pertains to the contract for goods or services may be disclosed to the successful bidder to improve mitigating factors.
 - b) New and emerging risks identified may be added.
 - c) Risks identified by the successful bidder may be added to the contract risks if agreed to by the municipality.

42. PERFORMANCE MANAGEMENT

- 1) The accounting officer must establish and implement an internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes were followed and whether the objectives of this Policy were achieved.
- 2) The quarterly report and annual report on the implementation of this policy, the monitoring of the service delivery and budget implementation plan (SDBIP) and the Annual Report may be used as tools to perform a retrospective analysis of supply chain management processes.
- 3) Vendor performance-
 - a) Each project manager shall monitor the supplier's compliance and performance to the set of specifications.

- b) If the supplier fails to perform in accordance with the specification requirements, the project manager must report such failure to the supplier in writing immediately upon becoming aware of such non-compliance for them to correct the situation.
- c) The above information will be kept and made available for future evaluation purposes, contract negotiations and regular feedback to vendors.
- d) If vendors fail to deliver in terms of the General conditions of contract, the municipality reserves the right to make use of remedies at its disposal in terms of applicable law.

Part 4: OTHER MATTERS

43. PROHIBITION ON AWARDS TO PERSONS WHOSE TAX MATTERS ARE NOT IN ORDER

- 1) Bids in excess of R30 000 will only be evaluated if the municipality is in possession of a Master Registration Number or tax compliance status PIN of the bidder to enable the municipality to verify the bidder's tax compliance status
- 2) The designated official(s) should verify the bidder's tax compliance status prior to the finalisation of the award of the bid or price quotation.
- 3) Where the recommended bidder is not tax compliant, the bidder should be notified of their non-compliant status and the bidder must be requested to submit to the municipality or municipal entity, within 7 working days, written proof from SARS of their tax compliance status or proof from SARS that they have made an arrangement to meet their outstanding tax obligations. The proof of tax compliance status submitted by the bidder to the municipality or municipal entity must be verified via the CSD or e-Filing.
- 4) The accounting officer should reject a bid submitted by the bidder if such a bidder fails to provide proof of tax compliance status within the timeframe stated above.
- 5) Where goods or services have been delivered satisfactorily without any dispute, the accounting officer should not delay processing payment of invoices due to outstanding tax matters.

44. PROHIBITION ON AWARDS TO PERSONS IN THE SERVICE OF THE STATE

- 1) Irrespective of the procurement process followed, no award may be made to a person in terms of this Policy –
 - a) who is in the service of the state;
 - b) that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
 - c) a person who is an advisor or consultant contracted with the Municipality in respect of a contract that would cause a conflict of interest.
- 2) In the case of false declaration of interest the –

- (a) contract must be immediately suspended and payments made, recovered;
- (b) criminal charges must be laid with the South African Police Services for further investigation;
- (c) details to be reported to Council at its next meeting and information contained in the Annual Report of the municipality;

45. AWARDS TO CLOSE FAMILY MEMBERS OF PERSONS IN THE SERVICE OF THE STATE

- 1) The municipality does not encourage the awarding of contract by employees in decision-making positions to close family members or friends. To this extent the municipality requires all employees to make full disclosures of businesses owned by close family members and/ or friends and it is further expected that such individuals must not directly or indirectly be involved in the awarding of such business.
- 2) The accounting officer must ensure that the notes to the annual financial statements disclose particulars of any award of more than R2 000 (VAT included) to a close family member 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 for supply chain management practitioners and other role players involved in supply chain management is hereby established in accordance with sub-paragraph (2) in order to promote –
 - a) mutual trust and respect; and
 - b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
- 2) An official or other role player involved in the implementation of the supply chain management policy –
 - a) must treat all providers and potential providers equitably;
 - b) may not use his or her position for private gain or to improperly benefit another person;
 - c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
 - d) notwithstanding subparagraph (2)(c), must declare to the accounting

officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;

- e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the Municipality;
- f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
- g) must be scrupulous in his or her use of property belonging to the municipality;
- h) must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
- i) must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –
 - i) any alleged fraud, corruption, favouritism or unfair conduct;
 - ii) any alleged contravention of paragraph 47(1) of this policy; or
 - iii) any alleged breach of this code of ethical standards.

3) Declarations in terms of subparagraphs (2)(d) and (e) –

- a) must be recorded in a register which the accounting officer must keep for this purpose;
 - i) by the accounting officer must be made to the mayor of the municipality who must ensure that such declarations are recorded in the register.

4) A breach of the code of ethics must be dealt with as follows –

- a) in the case of an employee, in terms of the disciplinary procedures of the Municipality envisaged in section 67(1)(h) of the Municipal Systems Act;
- b) in the case a councillor, in terms of Schedule 1 of the Systems Act;
- c) in the case a role player who is not an employee, or a councillor through other appropriate means in recognition of the severity of the breach; and
- d) in all cases, financial misconduct must be dealt with in terms of Chapter 15 of the Act.
- e) in the case of SCM practitioners and the other role players involved in SCM, in terms of National Treasury's code of conduct

47. INDUCEMENTS, REWARDS, GIFTS AND FAVOURS

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

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 or persons, not directly involved in the supply chain management processes –
 - a) to assist in the resolution of disputes between the Municipality and other persons regarding –
 - i) any decisions or actions taken in the implementation of the supply chain management system; or
 - ii) any matter arising from a contract awarded in the course of the supply chain management system;
 - b) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.

- 2) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.
- 3) The person appointed must –
 - a) strive to resolve promptly all disputes, objections, complaints or queries received; and
 - b) submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.
- 4) A dispute, objection, complaint or query may be referred to the relevant provincial treasury if –
 - a) the dispute, objection, complaint or query is not resolved within 60 days; or
 - b) no response is forthcoming within 60 days.

- 5) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query will 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. RIGHT OF APPEAL

- 1) In terms of Section 62 of the Municipal Systems Act (Act 32 of 2000 as amended), a person whose rights are affected by a decision taken by the municipality, in terms of a delegated authority, in the implementation of its supply chain management system, may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of receipt of the notification of the decision.
- 2) Bid documents must state that any appeal in terms of this policy must be submitted to the Municipal Manager, and must contain the following:
 - a) reasons and/or grounds for the appeal;
 - b) the way in which the appellants rights have been affected; and
 - c) the remedy sought by the appellant.
- 3) The Municipal manager shall establish an appropriate appeal authority in terms of section 62 of the Systems Act, to consider appeals received in terms of paragraph 64(1) above.
- 4) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

52. CONTRACT MANAGEMENT

- 1) Contract administration includes all administrative duties associated with a contract that has arisen through the acquisition/procurement processes described in this policy.
- 2) All contracts must be administered by a contract manager, who will be an internal official assigned to ensure the effective administration of the contract.
- 3) The contract manager will typically be the internal project manager assigned to the project as a whole, but may also be a cost centre owner or other responsible official.
- 4) A contract manager must be assigned to each contract and, where possible, should be involved from the earliest stages of the acquisition process.
- 5) The contract manager's duties and powers shall be governed by the conditions of contract and the general law.
- 6) In administering a contract, the contract manager will be required to form opinions and make decisions which, while in the Cederberg Municipality's best interests, must be fair to all parties concerned.

- 7) Directors shall be responsible for ensuring that contract managers are:
 - a) assigned to all contracts within the Director's area of responsibility; and
 - b) adequately trained so that they can exercise the necessary level of responsibility in the performance of their duties.
- 8) The contract manager must-
 - a) ensure that all the necessary formalities in signing up the contract and/or issuing the purchase order(s) are adhered to;
 - b) ensure that purchase order are captured on the municipality's financial system in the form in accordance with the pricing schedule;
 - c) ensure that all original contract documentation is lodged with Archives for record purposes;
 - d) monitor on a monthly basis the performance of the service provider order to ensure that all of the terms and conditions of the contract are met;
 - e) regularly report to the accounting officer on the management of the contract and the performance of the service provider;
 - f) conduct contract risk assessments for contracts longer than 3 months as stated in this Policy;
 - g) where necessary, take appropriate action where a service provider is underperforming or is in default or breach of the contract and to report such failures promptly to the accounting officer;
 - h) where appropriate, authorise payments due in terms of the contract by processing payment certificates (if applicable), and ensuring that the necessary Service Entry Sheets or Goods Received Notes are lodged with the Finance Department for capturing on the municipality's financial system;
 - i) contract variation or change procedures are approved by the accounting officer in writing which must be in line with the applicable general conditions of contract and this policy;
 - j) administer disputes, in consultation with the Supply Chain Management Unit, in terms of this policy and the applicable conditions of contract;
 - k) conduct, as appropriate, post contract reviews;
 - l) maintain adequate records (paper and/or electronic) in sufficient detail on an appropriate contract file to provide an audit trail;
 - m) act with care and diligence and observe all accounting and legal requirements;
 - n) inform the Asset Management section of the location of newly procured assets for asset register and insurance purposes; and

- o) provide contract information to the Supply Chain Management Unit, as determined by the unit, after a contract has ended.
- 9) The contract manager must-

53. EXPANSION OR VARIATION OF ORDERS AGAINST ORIGINAL CONTRACT VALUES

- 1) Contracts may be expanded or varied by not more than 20 % for construction related goods, services and / or infrastructure projects and 15 % for all other goods and / or services of the original value of the contract;
- 2) Anything beyond the abovementioned thresholds must be reported to Council and dealt with in terms of the provisions of section 116(3) of the MFMA which will be regarded as an amendment to the contract.

54. CONTRACTS PROVIDING FOR COMPENSATION BASED ON TURNOVER

If a service provider acts on behalf of a Municipality to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for the service or the amount collected, the contract between the service provider and the Municipality must stipulate-

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

55. UNSATISFACTORY PERFORMANCE

- 1) When an order is placed according to a contract, the following information should be attached to the order forms to assist the transit personnel with enquiries to contractors:
 - i) Postal address;
 - ii) Telephone /Facsimile number;
 - iii) Contact person (person who will handle the order on behalf of the contractor)

2) Unsatisfactory performance of contractor-

- 1) Unsatisfactory performance occurs when performance is not in accordance with the contract conditions, e.g.:
 - i) If the contractor fails to deliver any or all the goods, works or services within the period(s) specified in the contract, or within extension thereof granted by the SCMU pursuant to GCC;
 - ii) If the contractor fails to perform any other obligation(s) under the contract, e.g.:

If, during the guarantee period, a supplier does not comply with the requirements because of faulty material used during manufacture, or faulty finishing, or any deficiency, latent or otherwise, the contractor must be requested without delay, by registered mail, to replace or repair the supply depending on the circumstances. Supplies thus replaced or repaired or services thus rendered must be guaranteed for the same period as the original supplies or services.

- iii) If the contractor, in the judgement of the SCMU, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

3) Procedure applicable to non-performance

- 1) Should the contractor not adhere to the contract conditions (non-delivery, delivery of an inferior product, etc.), the following procedure should be followed:
 - (i) A registered letter must be sent to the supplier to inform him/her that he/she did not honour the contract conditions. The waybill number of the letter must be quoted on the relevant SCMUs copy.
 - (ii) The letter must be typed and concept letters should not be used. Each case should be handled individually.
 - (iii) The intention must be clearly stated in the letter (e.g. reprimand him on his delivery; etc.).
 - (iv) The contents of GCC paragraph 21 must be quoted for the contractor's convenience.
 - (v) The bid/contract number, order-number, description of the item(s), quantities and value of contract must be clearly indicated in the letter.
 - (vi) The contractor must be afforded an opportunity of at least fourteen (14) but not less than seven (7) days to comment.
 - (vii) If the supplier fails to deliver any or all of the goods or to perform the service within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delayed until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC clause 23.
- 2) Whilst the above-mentioned procedure is in process and there is a need for the item/service, the minimum quantity must be purchased in accordance with delegated powers and properly recorded to be able to recover any adverse cost from the contractor.

4) Procedure applicable to Buy-out transactions

- 1) When the time provided for the contractor to respond to the claim of non-performance has lapsed, the SCMU can proceed with the buy-out transaction. Another registered letter must be issued to the contractor, informing him/her that a buy-out transaction is now being initiated against him/her and that no further deliveries will be accepted as from date of the relevant letter in rectification of the breach of contract.
 - 1.1) When the Municipality has to buy out at the contractor's expense, the loss to the Municipality must always be restricted to the minimum since it is difficult to justify the recovery of unreasonable additional costs from the contractor.
 - 1.2) Only goods, works and services of the same quality can be obtained within delegated powers.

- 1.3) The difference in cost must be determined and any adverse costs must be recovered from the contractor.
- 1.4) The Senior Manager: Legal Services must therefore be furnished with all relevant information/documentation in order to act on behalf of the Municipality.
- 1.5) It is therefore important to keep proper record of all buy-out transactions.
- 2) To ensure uniformity, a register should be kept in which all buy-out/unsatisfactory performance transactions must be registered under the following headings:
 - i) Order Number;
 - ii) Date of Order;
 - iii) Name and address of contractor;
 - iv) Description of item(s) (as it appears on contract/order);
 - v) Value of order;
 - vi) Contractual delivery date;
 - vii) Date of letter addressed to contractor;
 - viii) Due date of response from contractor;
 - ix) Date of buy-out transaction;
 - x) Price quotations/Bids obtained;
 - xi) Difference in cost (Latest price paid versa contract price);
 - xii) Invoice number issued to contractor – adverse cost incurred due to buy-out transaction.
- 3) A file should be opened for each and every case and copies of all relevant documents and correspondence (copy of the order, letters addressed to the supplier, price quotations/bids invited in order to obtain the product, claim against the contractor, etc.)
- 4) Cases, which can be dealt with satisfactorily by the SCMU need not be referred to the Senior Manager: Legal Services for action. However, if a contractor repeatedly gives trouble and his/her actions cause the Municipality serious inconvenience, loss or embarrassment, the matter must be reported to the Senior Manager: Legal Services and a recommendation made regarding corrective steps which should be taken.

5) Cancellation of contracts

- 1) If acceptable reasons exist, in the event the amount exceeds R200 000.00 (inclusive of VAT), the Bid Adjudication Committee has the power to resile ("daaruit terugtree") from an agreement without detracting from any of the Municipality's rights and in appropriate cases, to claim compensation.

- 2) Cancellation of a contract may be considered for a variety of reasons, such as wrong preferences claimed, non-compliance with contract conditions, delayed deliveries, bribery, death or sequestration/liquidation of the contractor, etc.
- 3) Cancellation of a contract is usually prejudicial to the Municipality. Therefore serious thought must be given to the grounds for considering cancellation. Clarity must be reached beforehand on the question of whether the contractor will have a claim against the Municipality or not, and if so, whether cancellation can be justified. If cancellation is decided upon, the matter must be explained fully in a memorandum to the CFO and, in the event the amount exceeds R200 000.00 (inclusive of VAT), the Bid Adjudication Committee and the following must be addressed:
 - i) The particular contract condition or section of the Act empowering the action;
 - ii) what further arrangements will be made for completing the contract; and
 - iii) whether additional costs will be recovered from the contractor.
- 4) If the additional costs cannot be determined precisely, a careful estimate must be made and mentioned in the submission to the relevant Bid Adjudication Committee.
- 5) Any claim for the recovery of additional costs must be limited to the minimum actual amounts. Therefore, in such cases, purchasing organisations cannot summarily authorise purchasing to the best advantage of the Municipality, since this might prejudice the recovery of the additional costs from the original contractor. There may be other avenues of action, which might result in lower additional costs. Consequently, thought must also be given to the possibility of considering the next lowest acceptable bid received in response to the particular bid invitation, for acceptance. As an alternative, a fresh contract may be concluded through the normal bid procedures. In this process, account must be taken of the time elapsed between the closing of bids and the cancellation of the contract and the effect of the cancellation on the Municipality's schedules.

6) Restrictions

- 1) Circumstances may exist, when it might be an option to restrict a person/contractor or organisation from obtaining business from the public sector.
- 2) Should the Municipality opt to restrict the contractor and/or any other person(s) from obtaining business from the public sector, the Municipality must:
 - a) inform the contractor or person(s) by registered mail or by delivery of the notice by hand of the intention to impose the restriction, provide the reasons for such decision and the envisaged period of restriction;
 - b) allow the contractor and/or person(s) fourteen (14) days to provide reasons why the envisaged restriction should not be imposed;
 - c) consider any reasons, submitted by the contractor and/or person(s) in terms of paragraph (b) above;
 - d) impose the restriction or amended restriction; and

- e) inform the National Treasury within five (5) working days of such imposition of the name of the restricted person(s); the reason for restriction; the period of restriction and the date of commencement of the restriction.
- 3) Any restriction imposed on any person by the Municipality will, at the discretion of the Municipality also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Municipality actively associated.
- 4) However, when considering the restriction of a contractor/person, care must be taken that the prescribed procedures have been strictly adhered to since the court may find that an administrative action, such as the imposition of a restriction, is not valid in cases where the person or organisation, for example, has not been given a reasonable time to put the other side of the case, or has not been fully informed of the results of his failure to react. It is also possible that, where contradictions or ambiguities exist, the court will give the benefit of doubt to the persons or organisations against whom a restriction has been imposed and may pass judgment in their favour.

7) Amendment/ upliftment of restrictions

- 1) Based on sound reasons, the Municipality is empowered to amend/ uplift any restriction imposed and must then inform the National Treasury accordingly.
- 2) A contractor or any other person restricted by the Municipality has a right to contest the restriction in a Court of Law, and the Municipality who imposed the relevant restriction will be responsible and accountable for the Court proceedings.

56. HANDLING OF PROPRIETARY INFORMATION

- 1) All information designed and prepared for the municipality is deemed as proprietary. No such information may be distributed, modified or customised for third parties without the written permission of the accounting officer.
- 2) All supplier information shall be treated as confidential.
- 3) In appropriate instances, the municipality may require security clearance and confidentiality agreements to be entered into with suppliers.

57. SHORT TITLE AND COMMENCEMENT

This part of the policy is called the Cederberg Municipality **Supply Chain Management Policy**.

The first policy was adopted 10 July 2007 and takes effect 11 July 2007.