CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Supply Chain Management Policy

(Incorporating Preferential Procurement)

Supply Chain Management
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DEFINITIONS

1. In this Supply Chain Management Policy, unless the context indicates otherwise;

1.1 “Abuse” in terms of the City’s Supply Chain Management System means conduct by an official or person that is tantamount to:

1.1.1 fraud;

1.1.2 corruption;

1.1.3 favouritism;

1.1.4 unfair, irregular and unlawful practices;

1.1.5 misrepresentation on information submitted for the purposes of procuring a contract with the City, false declaration of interest, specific goals as referred to in the Preferential Procurement section of this policy, Construction Industry Development Board (CIDB) grading, expertise and capacity to perform in terms of a contract procured via the supply chain management system;

1.1.6 breach of a contract procured via the supply chain management system;

1.1.7 failure to comply with the supply chain management system; or

1.1.8 any other conduct referred to under the heading of” Combatting Abuse of the Supply Chain Management System”.

1.2 “Acceptable Bid” means any bid which, in all respects, complies with the specifications and bid conditions of tender as set out in the bid document. Also referred to as a “Responsive Bid”;

1.3 “Adjudication points” means the points for price and points for specific goals referred to in the Preferential Procurement Regulations, 2022 and the Preferential Procurement section of this policy, also referred to as “evaluation points”;

1.4 "Affected person" means a person whose rights may be materially or adversely, or both, affected if the City Manager takes any of the steps contemplated in this policy in order to combat abuse of the Supply Chain Management System;

1.5 “Alternative Bid” means a bid submitted in addition to the original bid submission submitted by a bidder which is submitted in accordance with

clauses 147 and 148 and which materially or substantially deviates from the specification or bid conditions, or both;

1.6 “Alternative Bidder” means a supplier or more than one supplier identified at the time of the award that will be considered for award should the appointed supplier (the winner) refuse the allocation of work offered in terms of the appointment;

1.7 “All applicable taxes” includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;

1.8 “Asset” means a tangible or intangible resource capable of ownership;

1.9 “Black People” has the meaning assigned to it in section 1 of the Broad-Based Black Economic Empowerment Act;

1.10 “Bid” means a written offer in a prescribed or stipulated form in response to an invitation by the City for the provision of goods, services or construction works through price quotations, advertised competitive bidding processes or proposals, or any other proposition for business with the City whether solicited or not;

1.11 “Bidder” means any person submitting a bid;

1.12 “Broad-Based Black Economic Empowerment Act” means the Broad-Based Black Economic Empowerment Act, 2003, (Act 53 of 2003);

1.13 “Capital Asset” means:

1.13.1 any immovable asset such as land, property or buildings; or

1.13.2 any movable asset that can be used continuously or repeatedly for more than one year in the production or supply of goods or services, for rental to others or for administrative purposes, and from which future economic benefit can be derived, such as plant, machinery and equipment;

1.14 “City” means the City of Cape Town, a municipality established by the City of Cape Town Establishment Notice No. 479 of 22 September 2000, issued in terms of the Local Government: Municipal Structures Act, 1998, (Act 117 of 1998) or any structure or employee of the City acting in terms of delegated authority;

1.15 “City Manager” means the Accounting Officer of the City as defined in the MFMA;

1.16 "City's Register of Tender and Contract Defaulters" means any list compiled by the City for purposes of the combating of Abuse of the Supply Chain Management System in terms of which the persons reflected on the list are prohibited from being awarded any contract by the City for the specified period reflected on the list;

1.17 “Closing Time” means the time and day specified in the bid documents for the receipt of bids;

1.18 “Collusive Bids” means where bidders collude in an arrangement between themselves to obtain the highest possible points in the evaluation or the award of a bid or collude in other ways in order to manipulate or influence the evaluation or award process and whereby a fair and competitive bidding process is eliminated;

1.19 “Competitions Act” means the Competitions Act, 1998, (Act 89 of 1998, and any regulations pertaining thereto;

1.20 “Competitive Bidding Process” means a competitive bidding process referred to in Regulation 12 (1) (d) of the Supply Chain Management Regulations;

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

1.22 “Community Based Supplier” means a supplier of goods, services or construction works who resides and operates in a specific area or community, who meets the criteria for Community Based Suppliers as determined by the Director: Supply Chain Management from time to time, and who is registered as such on the City’s Supplier Database and at its respective Sub-Council;

1.23 “Connected person” person’ bears the meaning of that term as defined in section 1(1) of the Income Tax Act 58 of 1962, read with the other relevant definitions in that sub-section;

1.24 “Consortium” means an association of two or more individuals, companies, or organisations with the objective of participating in a common activity, or pooling their resources to achieve a common goal;

1.25 “Construction Industry Development Board (CIDB) Act” means the Construction Industry Development Board Act, 2000, (Act 38 of 2000*)* and includes the regulations pertaining thereto;

1.26 “Construction Works” means any work in connection with:

the provision of a combination of goods and services arranged for the development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset including building and engineering infrastructure;

1.27 “Consultant” means a person or entity providing services requiring knowledge based expertise, and includes professional service providers (see also supplier);

1.28 “Contract” means the agreement which is concluded when the City accepts, in writing, a bid;

1.29 “Contractor” means any person or entity whose bid for goods, services or construction works contract(s) has been accepted and awarded by the City (see also supplier);

1.30 “Contract participation goal” is the value of the participation of specific targeted labour or enterprises that a supplier must achieve in the performance of a contract, expressed as a percentage of the bid sum less provisional sums, contingencies and VAT;

1.31 “Co-operative” means a co-operative registered in terms of section 7 of the Co-operatives Act, 2005 (Act no. 14 of 2005);

1.32 “Day(s)” means calendar days unless the context indicates otherwise;

1.33 “Delegated Authority” means any person or committee delegated with authority by the City in terms of the System of Delegations;

1.34 “Designated Group” means black designated groups, black people, women, people with disabilities or small enterprises as defined in section 1 of the National Small Enterprises Act, 1996 (act no. 102 of 1996);

1.35 “Director” in terms of this policy means a director of a company as defined in the Companies Act, 1973 and 2008 (Act No. 61 of 1973 and Act No. 71 of 2008); a member of a close corporation as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984); a trustee of a trust or a person holding an equivalent position in a firm;

1.36 “Employee”; is an official of the City whether employed permanently or on a contract, but excluding EPWP workers.

1.37 “e-Procurement”; is the electronic implementation of the procurement methodology;

1.38 “Evaluation Points” also referred to as “Adjudication Points” (see clause 1.3 above);

1.39 “Exempted Capital Asset” means a municipal capital asset which is exempted by section 14(6) or 90(6) of the MFMA from the other provisions of that section;

1.40 “Final Award” in relation to bids or quotations submitted for a contract, means the final decision on bid or quote accepted;

1.41 “Firm Price” means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the supplier and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;

1.42 “Formal Written Price Quotation” means a written or electronic offer to the City in response to an invitation to submit a quotation. “Formal Written Price Quotation”, “Quotation” or “Quote” shall have a similar meaning. Also referred to as “Bids”;

1.43 “Framework Agreement’ means a contract for construction works or goods or services, between the City and one or more suppliers, which are of an ad-hoc or repetitive nature on an “as instructed” or “as and when required” basis where the terms, conditions, specifications, rates, prices, and works order allocation processes are awarded for use over a predetermined period without guaranteeing any quantum of expenditure utilising the contract;

1.44 “Fronting Practice (Also referred to as Tokenism or Window dressing)” means a transaction, arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the objectives of the Preferential Procurement Policy Framework Act or the implementation of any of the provisions of the Preferential Procurement Policy Framework Act or the Preferential Procurement Regulations, including but not limited to practices in connection with obtaining points for specific goals:

1.44.1 in terms of which black persons who are appointed to an enterprise are discouraged or inhibited from substantially participating in the core activities of that enterprise;

1.44.2 in terms of which the economic benefits received as a result of earning points for specific goals of an enterprise do not flow to black people in the ratio specified in the relevant legal documentation;

1.44.3 involving the conclusion of a legal relationship with a black person for the purpose of that enterprise earning points for specific goals without granting that black person the economic benefits that would reasonably be expected to be associated with the status or position held by that black person; or

1.44.4 involving the conclusion of an agreement with another enterprise in order to earn specific goals in circumstances in which:

1.44.4.1 there are significant limitations, whether implicit or explicit, on the identity of suppliers, service providers, clients or customers;

1.44.4.2 the maintenance of business operations is reasonably considered to be improbable, having regard to the resources available; or

1.44.4.3 the terms and conditions were not negotiated at arm's length and on a fair and reasonable basis;

1.45 "Functionality" means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents. . "Functionality" is also referred to as "Quality";

1.46 "Granting of Rights" means the granting by the City of the right to use, control or manage capital assets in circumstances where sections 14 and 90 of the MFMA and Chapters 2 and 3 of the Municipal Asset Transfer Regulations do not apply. In other words, where the granting of such rights does not amount to "transfer" or "disposal" of the asset and which includes leasing, letting, hiring out, etc., of the capital asset;

1.47 "Green Procurement" is defined as taking into account environmental criteria for goods and services to be purchased in order to ensure that the related environmental impact is minimised. Green Procurement includes Energy Efficient Procurement;

1.48 "Influencing the Bid Process" means directly, indirectly or tacitly influencing or interfering with the work of relevant City Officials involved in the bid process in order to influence the process in order to inter alia:

1.48.1 influence the process or outcome of a bid, or both;

1.48.2 incite breach of confidentiality or the offering of bribes, or both;

1.48.3 cause over and under invoicing;

1.48.4 influence the choice of procurement method or technical standards; or

1.48.5 influence any City Official in any way which may secure an unfair advantage during or at any stage of the procurement process;

1.49 "In the service of the state" means:

1.49.1 a member of any municipal council, any provincial legislature or the National Assembly or the National Council of Provinces;

1.49.2 an official of any municipality or municipal entity;

1.49.3 an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act 1 of 1999);

1.49.4 a member of the board of directors of any municipal entity;

1.49.5 an executive member of the accounting authority of any national or provincial public entity; or

1.49.6 an employee of Parliament or a provincial legislature;

1.50 “Joint Venture” means a business enterprise where two or more participants come together to share their expertise;

1.51 “Local” – unless specifically stipulated otherwise, local shall not refer to a specific geographical location, other than being in the Republic of South Africa;

1.52 “Municipal Asset Transfer Regulations” means the Municipal Asset Transfer Regulations published in Government Gazette 31346 of 22 August 2008;

1.53 “Municipal Entity” means an entity as defined in the Municipal Systems Act;

1.54 “Municipal Finance Management Act” (MFMA): means the Local Government: Municipal Finance Management Act, 2003, (Act 56 of 2003);

1.55 “Municipal Structures Act” means Local Government Municipal Structures Act, 1998 (Act 117 of 1998);

1.56 “Municipal Systems Act” means Local Government Municipal Systems Act, 2000 (Act 32 of 2000);

1.57 “National Treasury” has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 18 of 1999;

1.58 “Non-exempted Capital Asset” means a municipal capital asset which is not exempted by section 14(6) or 90(6) of the MFMA, from the other provisions of that section;

1.59 “Non-firm Prices” means all prices other than “firm” prices;

1.60 “Panel Tender’’ means a contract, focused on construction works or goods or services, between the City and a list of suppliers who have achieved the minimum evaluation criteria for the provision of works and services, which are of an ad-hoc or repetitive nature on an “as instructed” or “as and when required” basis where the terms, conditions and works assignment allocation procedures which could include rotation or secondary competitive processes are awarded for use over a predetermined period of time without guaranteeing any quantum of expenditure utilising the contract. A panel refers to a number of supplier’s/ service providers/ contractors appointed to form part of the approved list to supply goods/ provide services /execute works projects, as and when the need arises;

1.61 “Person” includes a natural person, a juristic person, a partnership, an association (that is, any unincorporated body of persons, not being a partnership) and a firm (that is, a business, including a business carried on by a body corporate, carried on by the sole proprietor thereof under a name other than their own);

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

1.63 “Preferred Bidder” means a bidder with whom negotiations may be entered into to conclude the final terms of a contract;

1.64 “Preferential Procurement Policy Framework Act” (PPPFA) means the Preferential Procurement Policy Framework Act, 2000, (Act 5 of 2000);

1.65 “Preferential Procurement Regulations” means the 2022 regulations pertaining to the PPPFA;

1.66 “Price” includes all applicable taxes less unconditional discounts;

1.67 “Primary/Main supplier” shall have the same meaning as “Contractor”;

1.68 “Promotion of Access to Information Act (PAIA)” means Promotion of Access to Information Act, 2000 (Act 2 of 2000);

1.69 “Policy” means this Supply Chain Management Policy as amended from time to time;

1.70 “Promotion of Administrative Justice Act (PAJA)” means the Promotion of Administrative Justice Act, 2000, (Act 3 of 2000);

1.71 “Protection of Personal Information Act (POPIA)” means the Protection of Personal Information Act, 2013 (Act 4 of 2013);

1.72 “Quality” also referred to as “Functionality” (see clause 1.45 above);

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

1.74 "Representative" means any representative of a supplier in relation to the relevant tender, whether authorized or not, including but not limited to directors, members, employees and agents and includes Legal Representatives;

1.75 “Republic” means the Republic of South Africa;

1.76 “Responsible Person(s)” means an employee of the City who is responsible for the implementation of a project and or contract(s) emanating from the project or part thereof;

1.77 “Rural Area” means 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 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;

1.78 “SARS” means the South African Revenue Services;

1.79 “Standby Contractor/Supplier(s)” means a responsive bidder, at the time of awarding a bid, that will be considered for award should the contract be terminated for any reason whatsoever;

1.80 “Sub-contract” means the primary/main supplier’s assigning, leasing, making out work to, or employing, another person to support such primary/main supplier in the execution of part of a contract for Construction or Services;

1.81 “Sub-contractor” means any person that is assigned, leased, employed or contracted by the primary/main supplier to carry out work in support of the primary/main supplier in the execution of a contract for Construction or Services;

1.82 “Supplier/Vendor” are generic terms which may include suppliers of goods and services, and must be applied as the context requires;

1.83 “Supply Chain Management (SCM) Regulations” means the Municipal Supply Chain Management Regulations published, under Notice GN 868 of 30 May 2005 and as revised under (Government Notice 4198), Government Gazette no.49863 dated 14 December 2023, in terms of the Municipal Finance Management Act, 2003, (Act 56 of 2003);

1.84 “Targeted Labour” means those individuals employed by a supplier, or sub-contractor, in the performance of a contract, who are defined in the contract as the target group, and who permanently reside in the defined target area;

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

1.86 “Tender/Tenderer” means “bid/bidder”;

1.87 “Term tender” means a contract for goods, works and services for a longer term period which is rates based whereby a main supplier/contractor or alternative bidder/contractors, or both, are appointed;

1.88 “Transaction Value” means the actual contract value (the bid sum or price) in Rand, inclusive of all applicable taxes in respect of the goods, services or construction works that are contracted for;

1.89 “Treasury” has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 18 of 1999);

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

1.91 “Trust” means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person;

1.92 “Trustee” means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person; and

1.93 “Unsolicited Bid” means an offer submitted by any person at its own initiative without having been invited by the City to do so;

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

2. Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include females and words importing persons shall include companies, close corporations and firms, unless the context clearly indicates otherwise.

3. Unless otherwise indicated, all amounts/limits stated in this document shall be deemed to be inclusive of all applicable taxes.

POLICY STATEMENT

Introduction

4. Section 111 of the MFMA requires each municipality and municipal entity to adopt and implement a supply chain management policy, which gives effect to the requirements of the Act.

5. In addition, the PPPFA requires an Organ of State to determine its Preferential Procurement Policy and to implement it within the framework prescribed. This requirement is given effect to in the Preferential Procurement section of this Policy.

Desired Outcomes

6. The desired outcome of this Policy is to provide a mechanism to ensure sound, sustainable and accountable supply chain management within the City of Cape Town, whilst promoting black economic empowerment, which includes general principles for achieving the following socio-economic objectives:

   6.1 to stimulate and promote local economic development in a targeted and focused manner;

   6.2 to promote resource efficiency and reduce the negative environmental impact of daily operations of the City;

   6.3 to facilitate creation of employment and business opportunities for the people of Cape Town;

   6.4 to promote the competitiveness of local businesses;

   6.5 to increase the small business sector access, in general, to procurement business opportunities created by Council;

   6.6 to implement e-Procurement as an alternative to a manual process, to enhance efficiency and service delivery;

   6.7 to support green procurement initiatives as far as is reasonably possible.

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

Regulatory Context

8. The objectives of this Policy are:

8.1 to give effect to section 217 of the Constitution of the Republic of South Africa by implementing a system that is fair, equitable, transparent, competitive and cost effective;

8.2 to comply with all applicable provisions of the MFMA including the Municipal Supply Chain Management Regulations published under GN868 in Government Gazette 27636 30 May 2005, the amendments to regulations regarding Supply Chain Management Regulations published under GN4198 in Government Gazette 49863 14 December 2023 and to comply with any National Treasury Circulars/Guidelines specifically adopted by Council, in terms of the MFMA;

8.3 to ensure consistency with all other applicable legislation and any regulations pertaining thereto, including:

8.3.1 the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000);

8.3.2 the Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003);

8.3.3 the Construction Industry Development Board Act, 2000 (Act 38 of 2000);

8.3.4 the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

8.3.5 the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);

8.3.6 the Promotion of Access to Information Act, 2000 (Act 2 of 2000); and

8.3.7 Protection of Personal Information Act, 2013 (Act 4 of 2013).

Oversight

9. Section 117 of the MFMA prohibits a City Councillor from being a member of a bid committee or any other committee evaluating or approving quotations or bids nor may a City Councillor attend any such meeting as an observer.

10. Council, however, has an oversight role to ensure that the City Manager implements this Supply Chain Management Policy.

11. The Executive Mayor must provide general political guidance over the fiscal and financial affairs of the City and must monitor and oversee the exercise of responsibilities assigned to the City Manager and chief financial officer in terms of the MFMA.

12. For the purposes of such oversight, the City Manager shall, within 10 (ten) calendar days of the end of each quarter, submit a report on the implementation of this Policy to the Executive Mayor and, within 30 days of the end of each financial year, shall submit a similar such report to Council.

13. In addition, if any serious and material problems arise in relation to the implementation of this Policy, the City Manager shall immediately report to Council accordingly.

14. All such reports shall be made public in accordance with section 21A of the Municipal Systems Act.

Compliance with Ethical Standards

15. In order to create an environment where business can be conducted with integrity and in a fair and reasonable manner, this Policy will strive to ensure that the City Manager and all representatives of the City involved in supply chain management activities shall act with integrity and in accordance with the highest ethical standards.

16. All officials or role players involved in the implementation of the Supply Chain Management Policy shall adhere to the code of conduct of municipal staff contained in schedule(s) of the Municipal Systems Act, and this Policy's Code of Ethical Standards.

GENERAL PROVISIONS AND APPLICATION OF POLICY

Commencement and Review

17. This Policy is effective from the date on which it is adopted by Council. Should any Legislation be enacted or be amended that conflicts with any part of this Policy, such Legislation will take precedence and will be implemented by the City without amending this Policy. Such amendment of the Policy as may be required would be done as expeditiously as possible.

18. The City Manager must annually review the implementation of this Policy and if she/he considers it necessary, submit proposals for the amendment of the Policy to the Council for approval.

Application of Policy

19. This Policy applies to:

    19.1 the procuring of goods or services, including construction works and consultant services;

    19.2 the disposal by the City of goods no longer needed;

    19.3 the selection of suppliers to provide assistance in the provision of municipal services otherwise than in circumstances where chapter 8 of the Municipal Systems Act applies; or

    19.4 the selection of 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;

    19.5 the procurement of goods and services under a current contract secured by another organ of state, provided that the relevant supplier has agreed to such procurement.

20. Unless specifically stated otherwise, this Policy does not apply if the City contracts with another organ of state for:

    20.1 the provision of goods or services to the City;

    20.2 the provision of a municipal service, or assistance in the provision of a municipal service; or

    20.3 any other contractual agreements between organs of state for whatever reasons.

    A report shall be submitted to the appropriate delegated authority seeking authority to contract with another organ of state.

21. The Policy provides for the following supply chain management systems:

    21.1 demand management system;

    21.2 acquisition management system;

    21.3 logistics management system;

    21.4 disposal management system;

    21.5 risk management system;

    21.6 performance management system.

22. These systems must be adhered to in all supply chain management activities undertaken by the City.

Delegations

23. The City Manager has the statutory power to delegate or sub-delegate to a staff member any power conferred on the City Manager in terms of the MFMA and the Supply Chain Management Regulations relating to supply chain management.

24. No decision-making in terms of any supply chain management powers and duties may be delegated to an advisor or consultant who is not a City official.

Competency

25. The City Manager shall ensure that all persons involved in the implementation of this Policy meet the prescribed competency levels, and where necessary, shall provide relevant training.

26. The training of officials involved in implementing this Policy shall be in accordance with any National Treasury circulars / guidelines on supply chain management training and City SCM Procedures and Directives.

Supply Chain Management Department

27. The City has established a Supply Chain Management Department to assist the City Manager to implement this Policy.

Communication with the City

28. All correspondence with regard to this Policy shall be addressed to the Director: Supply Chain Management.

Availability of Supply Chain Management Policy

29. A copy of this Policy and other relevant documentation is available on the City's website.

e-Procurement

30. The implementation and use of an e-Procurement system is at the sole discretion of the Director: Supply Chain Management.

Payment Terms

Payment Terms for Goods and Services

31. Payment of invoices will be made within 30 days of receiving the relevant invoice or statement, unless otherwise prescribed for certain categories of expenditure or specific contractual requirements in accordance with any other applicable policies of the City.

32. More frequent payment to suppliers is not a right in terms of this policy. A supplier may submit a fully motivated application in this regard to the Director Expenditure or their delegated authority for consideration. Exempted Micro Enterprises, as defined in the Broad-Based Black Economic Empowerment Act, 2003, (Act 53 of 2003), may request for more frequent payments at the sole discretion of the Director Expenditure or their delegated authority.

33. Notwithstanding anything contained above, the City shall not be liable for payment of any invoice that pre-dates the date of delivery of any goods or services, or the date of certification for construction works.

DEMAND MANAGEMENT SYSTEM

Introduction

34. Demand management provides for an effective system to ensure that the resources required to support the strategic operational commitments of the City 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 City.

35. The City's Integrated Development Plan (IDP) is a comprehensive strategy document setting out how the City intends to tackle its development challenges in a financial year. It is on the basis of the IDP that the resources of the municipality will be allocated and on which the budget is based.

36. In order to achieve effective demand management, the Director: Supply Chain Management shall continuously ensure:

    36.1 That efficient and effective Supply Chain Management systems and practices are implemented to enable the City to deliver the required quantity and quality of services to the public;

    36.2 The establishment of uniformity in policies, procedures, documents and contract options and the implementation of sound systems of control and accountability;

    36.3 The development of a professional supply chain management system which results in continuing improvement in affordability and value for money, based on total cost of ownership and quality of procurement as competition amongst suppliers is enhanced;

    36.4 In dealing with suppliers and potential suppliers, the City shall respond promptly, courteously and efficiently to enquiries, suggestions and complaints.

Major Activities

37. Demand management is the beginning of the supply chain management process and the major activities associated with identifying demand are:

    37.1 establishing requirements;

    37.2 determining needs; and

    37.3 deciding on appropriate procurement strategies.

38. Demand management accordingly shall involve the following activities:

38.1 understanding the future needs;

38.2 identifying critical delivery dates;

38.3 identifying the frequency of the need;

38.4 linking the requirement to the budget;

38.5 conducting expenditure analyses based on past expenditure;

38.6 determining requirements (including the internal capacity to implement);

38.7 conducting commodity analyses in order to check for alternatives; and

38.8 conducting industry analyses.

ACQUISITION MANAGEMENT SYSTEM

Introduction

39. The objectives of this acquisition management system are to ensure:

39.1 that goods and services, including construction works and consultant services are procured by the City only in accordance with the authorised procedures incorporated herein;

39.2 that expenditure on goods and services, including construction works and consultant services is incurred in terms of an approved budget;

39.3 that the threshold values of the different procurement procedures are complied with;

39.4 that bid documentation, evaluation and adjudication criteria, and general conditions of contract are in accordance with the requirements of relevant legislation including, the PPPFA and its Regulations, and any conditions of the CIDB Act and its Regulations where applicable; and

39.5 that procurement circulars/guidelines issued by the National Treasury and specifically adopted by Council are taken into account.

General

Application

40. This acquisition management system contains the general conditions and procedures which are applicable, as amended from time to time, to all procurement, contracts, and orders for the City.

Compliance with Legislative Requirements

41. Compliance with all legislative requirements not related to the supply chain management system must be adhered to by the Line Department.

Compliance with Other Procedures

42. Compliance with other procedures not related to the supply chain management system such as project selection, feasibility, justification and approval processes, planning approvals and budget approvals must be adhered to by the Line Department.

The City's Supplier Database

43. The City's Supplier Database is the database which lists the details of all suppliers who have registered in order to do business with the City.

44. The City Manager shall ensure that the City's Supplier Database is updated at least quarterly and shall at least once per year, through newspapers commonly circulating locally, the website of the City, and any other appropriate ways, invite prospective suppliers of goods and services, construction works and consultant services to register on the City's Supplier Database.

45. Prospective suppliers shall however be allowed to submit applications for registration and amendments for listing on the City's Supplier Database at any time.

46. The listing criteria for suppliers are as indicated on the Supplier Registration Application and only those suppliers that have fully complied with these requirements will be registered.

47. The registration process for the submission of e-Procurement bids is a separate process administered through a web based portal in addition to registration on the City's Supplier Database.

48. The City Manager shall disallow the registration of any prospective supplier on the City's Supplier Database who does not comply with the requirements of the Supplier Registration Application.

49. The City Manager shall disallow the registration of any prospective supplier whose name appears on the National Treasury's Database of Restricted Suppliers or Register for Tender Defaulters and who is therefore prohibited from doing business with the public sector.

50. Bidders who are not registered on the City's Supplier Database are not precluded from submitting bids, but must however register when called upon to do so.

51. All persons forming part of a Joint Venture or Consortium must comply with the requirements of clause 50 above.

National Treasury's Web Based Central Supplier Database (CSD)

52. In addition to the requirements of the City's Supplier Database, it is a requirement for all Suppliers to be registered on the National Treasury Web Based Central Supplier Database (CSD) that can be accessed at https://secure.csd.gov.za.

53. The CSD is the national standardised and centralised electronic supplier database administered by the National Treasury which provides information to an organ of state.

54. Prospective suppliers shall be allowed to submit applications for registration and amendments for listing on the CSD at any time and agree to the terms and conditions of the CSD.

55. Bidders who are not registered on the CSD are not precluded from submitting bids, but must however register when called upon to do so.

56. Prospective suppliers must notify the City immediately upon receipt of their CSD Reference Number (MAAA….) for this to be captured onto the City Supplier Database.

Combating Abuse of the Supply Chain Management System

57. The City Manager provides measures for the combating of abuse of the supply chain management system and is able to:

57.1 take all reasonable steps to prevent such abuse;

57.2 investigate any allegations against an official, or other role player, of abuse and when justified, to:

57.2.1 take appropriate steps against such official or other role player, including the registering of the person on the City's Register of Tender and Contract Defaulters for a period not exceeding 10 (ten) years and carrying out the actions listed in Regulation 38(1)(d), (e), (f) and (g) of the Supply Chain Management Regulations; and

57.2.2 where necessary, report any alleged criminal conduct to the South African Police Service or any other recognised authority;

57.3 check the National's Treasury's Database of Restricted Suppliers and Register for Tender Defaulters 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.

58. The steps referred to in clause 57 above which the City Manager may take include:

58.1 reject any bid from a bidder:

58.1.1 if any municipal rates and taxes or municipal service charges owed by the bidder, or any of its directors, to the City or any of the City's municipal entities, or any other municipality or municipal entity, are in arrears for more than three months; or

58.1.2 who during the last five years has failed to perform satisfactorily on a previous contract with the City or its municipal entities or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;

58.2 reject a recommendation for the award of a contract if:

58.2.1 the recommended bidder, or any of its directors has committed any abuse of the supply chain management system in competing for the particular contract.

58.3 cancel a contract (and enforce all contractual remedies) awarded to a person if:

58.3.1 the person committed any abuse of the supply chain management system during the bidding process or the execution of the contract;

58.3.2 an official or other role player committed any corrupt or fraudulent act during the bidding or in the execution of the contract that benefited that person;

58.3.3 a material irregularity vitiates the procurement process leading to the conclusion of the contract, rendering the procurement process and the conclusion of the resulting contract unfair, inequitable, non-transparent, uncompetitive or not cost-effective, provided the City Manager —

58.3.3.1 affords the person fourteen (14) days to make representations on whether the contract should be cancelled; and

58.3.3.2 takes into account all relevant considerations in exercising his discretion whether to cancel the contract, including the following factors (none in itself necessarily determinative):

58.3.3.2.1 the commercial consequences of cancellation for the parties to the contract;

58.3.3.2.2 the extent of the parties' reliance on the lawfulness of the procurement process, the award of the tender, and the conclusion of the contract;

58.3.3.2.3 the degree to which the successful bidder is implicated in the irregularity invoked for cancelling the contract, or has been an innocent victim of irregularity attributable to public officials or third parties;

58.3.3.2.4 any adverse consequences for the general public or to the public interest consequent on the cancellation of the contract;

58.3.3.2.5 the extent and duration of the contract concerned;

58.3.3.2.6 whether the City is likely to conclude a similar agreement with another person within a specific time frame;

58.3.3.2.7 the extent to which the agreement has been executed;

58.3.3.2.8 the urgency of the services to be delivered or supplied in terms of the contract;

58.3.3.2.9 whether extreme costs will result from cancellation; and

58.3.3.2.10 any other factor which, in the opinion of the City Manager, is relevant to the cancellation of the contract.

58.4 automatically reject the bid of any bidder or any of its directors who:

58.4.1 abused the supply chain management system of the City or its municipal entities, or has committed any improper conduct in relation to this system;

58.4.2 has been convicted of fraud or corruption during the past five years;

58.4.3 wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years;

58.4.4 has been listed on the National Treasury's Register for Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act, 12 of 2004;

58.4.5 has been listed on the National Treasury's Database for Restricted Suppliers as a person prohibited from doing business with the public sector;

58.4.6 has been found guilty of contravening the Competition Act; or

58.4.7 any other basis listed in the Supply Chain Management Policy.

58.5 invalidate any recommendations or decisions that were unlawfully or improperly made, taken or influenced, including recommendations or decisions that were made or in any way influenced by:

58.5.1 Councillors in contravention of item 5, 6 or 9 of the Code of Conduct for Councillors set out in Schedule 7 of the Municipal Structures Act; or

58.5.2 Municipal officials in contravention of item 4, 5 or 8 of the Code of Conduct for Municipal Staff Members set out in Schedule 2 of the Municipal Systems Act;

58.6 list a person and any of their representatives (if applicable) on the City's Register of Tender and Contract Defaulters as being prohibited from bidding for or being awarded any contract by the City for a period not exceeding 10 (ten) years specified on the list, whereupon the prohibition shall extend to:

58.6.1 their bidding for any such contract through the medium of another person, whether through the incorporation or constitution of such other person or in any other way; and

58.6.2 a connected person or another person in the management or operations of which the listed person or a connected person is involved, bidding for or being awarded any such contract.

58.7 If it is suspected that the tenderer has submitted false information regarding a specific goal, the City Manager –

58.7.1 must notify the tenderer of the suspected false information, and afford them 14 days to submit representations regarding why they should not be disqualified from the tender, or if a contract has been concluded why the contract should not be cancelled in whole or in part;

58.7.2 may disqualify the tenderer or terminate the contract in whole or in part after considering the representations made by the tenderer;

58.7.3 if applicable, claim damages from the tenderer; and

58.7.4 may, under exceptional circumstances, consider not imposing a strict liability, but may rather consider an action which is rational and proportionate to the merits of the event.

59. To avoid the circumvention or evasion of the consequences of listing a person (herein referred to as 'the first-mentioned person') on the City's Register of Tender and Contract Defaulters in terms of clause 58.6 above, the City Manager may so list in terms of clause 58.6 above any person (herein referred to as 'the second-mentioned person') who or which he reasonably suspects:

59.1 exercised or could reasonably be expected to exercise relevant operational control over the first-mentioned person at the time of the events giving rise to the listing of the first-mentioned person in terms of clause 58.6 above; or

59.2 was involved in those events or knew of and refused or failed to prevent those events when they had a duty and the power to do so; or

59.3 may, during the period reflected on the City's Register of Tender and Contract Defaulters when the first-mentioned person is prohibited from being awarded any contract by the City, in order to circumvent or evade the consequences of the listing of the first-mentioned person, bid for such contracts through the medium of another person (herein referred to as 'the third-mentioned person'), whether through the incorporation or constitution of the third-mentioned person or in any other way.

60. The City must inform the National and Provincial Treasury of any actions taken in terms of clauses 57.2.2, 58.2, 58.3.1, 58.3.2, 58.4.1, 58.6, 58.7.2 or 59 above.

61. Any action against or listing of a person in terms of clause 60 shall, at the discretion of the City Manager, also be applicable to any other enterprise or any 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 actively associated.

62. The City Manager shall revoke access to the e-Procurement system in the event that the supplier is restricted in terms of the Supply Chain Management Policy.

63. Tenderers who submitted an offer or tenderers contracted with the City must provide all information requested by the City during any internal assessment or investigation process conducted by any of the City's assurance providers.

Appointment of Observer

64. Where appropriate, the City Manager may appoint a neutral or independent observer in order to ensure fairness and transparency in the application of this acquisition management system.

Contracts Having Budgetary Implications beyond Three Financial Years (Section 33 of MFMA)

65. The City may only enter into a contract that will impose financial obligations beyond the three years covered in the annual budget for that financial year if section 33 of the MFMA has been fully complied with.

66. The City may, for ad-hoc rates based term contracts, enter into contracts for a maximum period of 36 months, even if such period extends into a fourth financial year where —

    66.1 goods and services are procured on an as and when needed basis; and

    66.2 quantities are unknown at the time of awarding contracts and financial commitments are short term commitments per order.

Proudly South African Campaign

67. The City supports the Proudly South African Campaign where appropriate.

Specialised Forms of Procurement

Acquisition of Goods or Services from other Organs of State or Public Entities

68. In the case of goods or services procured from another organ of state or public entity (including the Department of Water Affairs, Eskom or any other such entities), such procurement shall be made public, giving details of the nature of the goods or services to be procured and the name/s of the supplier/s.

Acquisition of Goods and Services under Contracts secured by other Organs of State

69. The City Manager may procure goods or services under a contract secured by another organ of state, but only if:

    69.1 the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;

    69.2 the municipality or entity has no reason to believe that such contract was not validly procured;

    69.3 there are demonstrable discounts or benefits for the municipality or entity to do so; and

    69.4 that other organ of state and the provider have consented to such procurement in writing.

70. Sub clauses 3 and 4 do not apply if-

    70.1 a municipal entity procures goods or services through a contract secured by its parent municipality; or

    70.2 a municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.

Acquisition of Banking Services

71. Subject to section 33 of the MFMA, any contract for the provision of banking services:

    71.1 shall be procured through a competitive bidding process;

    71.2 shall be consistent with section 7 of the MFMA; and

    71.3 may not be for a period longer than five years.

72. The process for procuring a contract for banking services must commence well in advance in line with the City's demand planning guidelines and at least nine months before the end of an existing contract.

73. The closure date for the submission of bids for banking services may not be less than 60 days from the date on which the advertisement is placed in newspaper commonly circulating locally.

74. Bids shall be restricted to banks registered in terms of the Banks Act 1990, (Act 94 of 1990).

Acquisition of IT Related Goods or Services

75. The City Manager may request that the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process in which case the parties must enter into a written agreement to regulate the services provided by, and the payments to be made to, the SITA.

76. If the transaction value of IT related goods or services exceeds R50 million in any financial year, or if the transaction value of a single contract (whether for one or more years) exceeds R50 million, the City Manager must notify the SITA together with a motivation of the IT needs of the City.

77. If SITA comments on the submission and the City disagrees with such comment, the comments and the reasons for rejecting or not following such comments must be submitted to the Council, the Provincial and National Treasury, and the Auditor-General prior to awarding the bid.

Acquisition of Goods Necessitating Special Safety Arrangements

78. Goods, other than water, which necessitate special safety arrangements (for example, flammable products, poisons), may not be acquired in excess of immediate requirements unless there is sound financial or technical justification therefor.

79. Where the storage of goods, other than water in bulk is justified, the City Manager may authorise such storage and the decision must be based on sound reason including:

    79.1 total cost of ownership and cost;

    79.2 service delivery advantages; or

    79.3 obligations for the City.

Public-Private Partnerships

80. Part 2 of Chapter 11, section 120 of the MFMA applies to the procurement of public-private partnership agreements. Section 33 also applies if the agreement will have multi-year budgetary implications for the City within the meaning of that section.

External Mechanisms for Municipal Service Delivery

81. The principles contained, including the procurement mechanisms, in Sections 76 to 81 Of the Municipal Systems Act applies when the City elects to supply any municipal services through any external mechanisms. Section 33 of the MFMA also applies if the agreement will have multi-year budgetary implications for the City within the meaning of that section.

List of Accredited Prospective Suppliers

82. The City Manager shall ensure that a list of accredited prospective suppliers of goods and services is kept, for the procurement requirements of the City through any applicable bidding process.

83. The list of accredited prospective suppliers refers to suppliers who are accredited to do business with the City in respect of particular commodities, services or construction.

84. The Director: Supply Chain Management will determine the procedure for the procurement of goods and services through written and formal written price quotations (up to and including R750 000 (VAT Included) or the relevant amount approved by National Treasury) when using the List of Accredited Suppliers in order to promote ongoing competition amongst providers, including by inviting providers to submit quotations on a rotation basis. The Chief Financial Officer must on a monthly basis be notified in writing of all written price quotations and formal price quotations accepted by an official acting in terms of a sub delegation."

85. The list of accredited prospective suppliers must be compiled per commodity and per type of service. The listing criteria for accredited prospective suppliers are as set out in clause 46 above, along with any additional criteria the City may stipulate from time to time as it relates to the relevant commodity or type of service.

86. This list must be updated at least quarterly to include any additional prospective suppliers and any new commodities or types of service. Prospective suppliers shall, however, be allowed to submit applications for listing at any time.

87. The provisions of clauses 47 to 49 shall also apply to suppliers listed on the list of accredited prospective suppliers.

Advertisements, Notices and Communications to Local Community

88. When anything must be notified by Council through the media to the local community the procurement of such notices, advertisements or media campaigns must be done (where possible) in accordance with the applicable official procurement process. Where it is impractical or impossible to follow the official procurement process or where the services are available from a single provider only, then the deviation process as contained in clause 329 will be applicable.

Community Based Suppliers

89. The Director: Supply Chain Management may request quotations directly from Community Based Suppliers in a specific area or from a specific community for the procurement of goods and services for amounts less than R30 000 (including construction works) in accordance with procedures as determined by the Director: Supply Chain Management from time to time.

Range of Procurement Processes

90. Goods and services, including construction works and consultant services shall be procured through the range of procurement processes set out below.

Competitive Bids

91. Where the estimated transaction value exceeds the greater of R750 000 (VAT Included), or the relevant amount approved by National Treasury, or for any consulting contract exceeding one year in duration.

Framework Agreement Bids

92. In framework agreements the focus is on the procurement of construction works or goods or services and can include all:

    (i) construction works within the civil, mechanical, electrical engineering, and building industries as defined by the CIDB;

    (ii) professional services within the built environment;

    (iii) goods; or

    (iv) services.

93. Framework agreements allocate works orders based upon the rates and prices awarded by the relevant delegated authority (typically the Supply Chain Management Bid Adjudication Committee) at the outset of the contract. As works orders are created using rates and prices and cost price adjustments (CPA) provisions that have already been approved by an appropriate delegated authority, the approval of such works orders is a contract management function and is subject to appropriate controls and approvals established by line departments.

Panel Tender

94. In panel tenders the focus is on the procurement of construction works or goods and services whether professional engineering service or not.

95. Panel tenders select suppliers from a list of accredited suppliers to perform works assignments based on processes which could include rotation, and secondary competitive processes. Each works assignment would require approval by an appropriate delegated authority before the execution of such a works assignment can commence.

Formal Written Price Quotations

96. Formal written price quotations are required where the estimated transaction value exceeds R2 000 or the greater amount approved by National Treasury and is less than or equal to R750 000 (VAT Included), or the relevant amount approved by National Treasury.

Petty Cash Purchases

97. Petty cash purchases are required where the transaction value is less than or equal to R2 000[1] or the greater amount approved by National Treasury. *(One written price quotation is required for procurement values between the approved petty cash threshold as determined by the City Manager and R2 000)*

Procurement of Consulting Services

98. Where the estimated value of fees exceeds R750 000 (VAT Included), or the relevant amount approved by National Treasury, or where the duration of the appointment will exceed one year, a competitive bidding process shall apply.

99. Where the estimated value of fees is less than or equal to R750 000 (VAT Included), or the relevant amount approved by National Treasury, and the duration of the appointment will be more than one year, a competitive bidding process as described in this Policy, as amended from time to time, shall be applied.

100. Consulting services may also be procured as Framework Bids in accordance with the conditions set out in this Policy.

Reduction in Threshold Values

101. The City Manager may:

101.1 lower, but not increase, the different threshold values specified in the acquisition management system of this Policy; or

101.2 direct that:

101.2.1 formal written price quotations be obtained for any specific procurement of a transaction value less than R2 000 or the amount approved by National Treasury; or

101.2.2 a competitive bidding process be followed for any specific procurement of a transaction value lower than R750 000 (VAT included), or the relevant amount approved by National Treasury.

[1] Note that the City Manager has, in terms of this policy, reduced the threshold value for petty cash purchases to R250, 00.

Deliberate Splitting of Orders

102. The provision of goods, services or construction works may not deliberately be split into parts, or items of a lesser value, merely to avoid complying with the requirements of this policy. When determining transaction values, a requirement for goods and services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.

102.1 Where the City has followed a competitive bidding process and no suitable offers have been received, commencing on an RFQ process for those items to ensure continued service delivery is not considered to be deliberate splitting of orders.

General Conditions Applicable to Bids and Quotations

103. The City may not consider a bid or quote unless the bidder who submitted the bid or quote:

103.1 has furnished the City with that bidder's:

103.1.1 full name;

103.1.2 identification number or company or other registration number; and

103.1.3 tax reference number; and

103.1.4 VAT registration number, if any;

103.2 has attended a compulsory site inspection, where applicable;

103.3 a CSD tax compliance report certifying that the provider's tax matters are in order and in the event that the CSD database used by the City is offline, a SARS tax compliance PIN must be submitted, or if the supplier is a foreign vendor, a tax clearance certificate; and

103.4 has indicated whether:

103.4.1 the provider is in the service of the state, or has been in the service of the state in the previous twelve months;

103.4.2 if the provider is not a natural person, whether any of the directors, managers, principal shareholders or stakeholders is in the service of the state, or has been in the service of the state in the previous twelve months; or

103.4.3 whether a spouse, child or parent of the supplier or of a director, manager, shareholder or stakeholder referred to in sub-clause 103.4.2 is in the service of the state, or has been in the service of the state in the previous twelve months.

104. Irrespective of the procurement process, the City may not make any award above R15 000 or the greater amount approved by National Treasury, to a person whose tax matters have not been declared by the SARS to be in order.

105. Before making an award the City must verify the bidder's tax compliance status. Where the recommended bidder is not tax compliant, the bidder should be notified of the non-compliant status and be requested to submit to the City, within 7 working day, written proof from SARS that they have made arrangement to meet their outstanding tax obligations. The proof of tax compliance submitted by the bidder must be verified by the City via CSD or e-Filing. The City should reject a bid submitted by the bidder if such bidder fails to provide proof of tax compliance within the timeframe stated.

106. Irrespective of the procurement process followed:

106.1 the City is prohibited from making an award to a person —

106.1.1 who is in the service of the state;

106.1.2 if the person is not a natural person, of which any director, manager or principal shareholder or stakeholder is in the service of the state;

106.1.3 who has been in the service of the City during the previous 12 months;

106.1.4 if the person is not a natural person, of which any director, manager or principal shareholder or stakeholder has been in the service of the City during the previous 12 months;

106.1.5 or an entity who has employed a former City employee who was at a level of T14 or higher at the time of leaving the City's employment and involved in any of the City's bid committees for the bid submitted and employee left the City's employment voluntarily during the previous 12 months;

106.1.6 who was a City employee, or who employs a City employee –

a) who left the City's employment whilst under investigation for alleged misconduct, or

b) was facing disciplinary action or potential disciplinary action by the City, or

c) who was involved in a dispute against the City, during the previous 36 months, or any other period prescribed by applicable legislative provisions and found to be in contravention of the SCM system

106.1.7 who is an advisor or consultant contracted with the City whose prior or current obligations creates any conflict of interest or unfair advantage; and

106.2 the City reserves its rights not to register a Vendor or not to make a Final Award, revoke a Final Award already made or cancel a Contract where the implementation of the Contract may result in reputational risk or harm, to the City, which includes the Vendor's Sub-contractor(s), (which may be linked to the main tenderer and/or any of its' Sub-contractor(s)), as a result of (inter alia):

106.2.1 reports of poor governance or unethical behaviour, or both;

106.2.2 association with known notorious individuals and family of notorious individuals, including any individual that has been accused of criminal activity;

106.2.3 poor performance issues, known to the City;

106.2.4 negative media reports, including negative social media reports; and

106.2.5 adverse assurance (e.g. due diligence) report outcomes.

106.2.6 Circumstances where the relevant vendor has employed, or is directed by, anyone who was previously employed in the service of the state (as defined in clause 1.48), where the person is or was negatively implicated in any SCM irregularity.

106.3 The City reserves its rights not to register a Vendor or not to make a Final Award, revoke a Final Award already made or cancel a Contract where a tenderer who has participated in a procurement process, or anyone on the tenderer's behalf or instruction, has either threatened or physically harmed a City official or individuals under the vendor(s) control in any manner which may undermine or potentially undermine the integrity of that procurement process.

106.4 Where sub-contracting is applied, the service provider of the City is to honour invoices of the sub-contractor. The City applies a strict payment process and requires the same principles to be applied by its contractors to their sub-contractors. Where complaints are received by sub-contractors regarding adverse payment practices, the City may take action accordingly in accordance with clause 106.2, as the City's reputation may be at risk or harmed. This sub-clause does not place any obligation on the City to ensure that the contractor honours invoices of a sub-contractor.

107. The City Manager shall ensure that the notes to the annual financial statements of the City disclose particulars of any award above R2 000 to a

person who is a spouse, child or parent of a person in the service of the state, or who has been in the service of the state in the previous twelve months, including[2]:

107.1 the name of the person;

107.2 the capacity in which the person is in the service of the state; and

107.3 the amount of the award.

[2] Awards can be made to close family members in terms of SCM Regulation 45

Competitive Bids

General

108. Competitive bids must be called for –

108.1 any procurement of goods or services or construction works above a transaction value of R750 000 (VAT Included) or the relevant amount approved by National Treasury;

108.2 a consulting contract exceeding one year in duration.

109. When determining transaction values, a requirement for goods or services, construction works or consultant services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.

110. Within the context of preferential procurement, one of the strategies to encourage and assist entry into Local Government procurement by emerging businesses is to simplify and standardise bid/contract documentation wherever possible.

111. To this end, the City will prepare a suite of standard documentation and, where appropriate, simplified bid/contract documents for use in the City's procurement process as and where applicable.

112. Where standard bid/contract documentation is prescribed in terms of legislation (the CIDB Standard for Uniformity, for example) such standard documentation must be used for the procurement of goods, services or construction works, as applicable.

Bid Specifications

113. Bid specifications must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services.

114. Bid specifications must take account of any accepted standards such as those issued by South African National Standards, the International Standards Organisation, or any authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply.

115. Bid specifications shall, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design.

116. Bid specifications 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.

    116.1 Bid specifications may not make any 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 words “or equivalent”.

117. Bid specifications must be approved by the City Manager, their delegatee, or that person’s subdelegatee, where applicable, prior to publication of the invitation for bids, where applicable.

118. Where specifications are based on standard documents available to bidders, a reference to those documents, together with details of any specific technical parameters and ratings, is sufficient.

Bid Specification Committee

119. All bid specifications and bid documentation must be compiled by an ad-hoc bid specification committee constituted for each tender or procurement activity.

120. The Bid Specification Committee shall be comprised of at least two City officials as members, consisting of an appointed Chairperson and a responsible technical official. The Supply Chain Management Practitioner serves in an advisory capacity. No bid committee meeting shall proceed without an SCM practitioner. Disagreements on the advice provided by the Supply Chain Management Practitioner must be dealt with in terms of the Rule of Order for Bid Committees and be recorded accordingly.

121. Where appropriate a representative of Internal Audit and Legal Services and other specialist advisors (internal or external) may form part of this committee.

122. The City Manager, their delegatee, or that person’s subdelegatee, where applicable, shall, taking into account section 117 of the MFMA, appoint the members of the Bid Specification Committees.

123. No person, advisor or corporate entity involved with the bid specification committee, or director of such corporate entity, may bid for any resulting contracts.

124. Committee meetings must be conducted in accordance with the applicable Terms of Reference and Guide and Rules of Order for Members of the City of Cape Town's Bid Committees.

Compilation of Bid Documentation

125. If the bid relates to construction works as contemplated by the CIDB Act, then the requirements of that Act must be taken into account in the bid documentation together with any Circulars published by National Treasury and the Local Government Framework for Infrastructure Delivery and Procurement Management (LGFIDPM) to the extent adopted by Council.

126. General conditions of contract and supply chain management circulars / guidelines of the National Treasury in respect of goods and services must be taken into account when compiling bid documents.

127. Bid documentation must clearly indicate the terms and conditions of contract, specifications, criteria for evaluation and adjudication procedures to be followed where applicable, and include where site inspections are compulsory.

128. Appropriate penalties should be specified for failure to comply with specific terms and conditions of all contracts.

129. An appropriate contract and delivery period should be specified for all contracts.

130. The requirements of the preferential procurement section of this Policy must be clearly set out in the bid documentation.

131. The bid documentation and evaluation criteria shall not be aimed at hampering competition, but rather to ensure fair, equitable, transparent, competitive and cost effective bidding, as well as the protection or advancement of persons, or categories of persons, as embodied in the preferential procurement section of this Policy.

132. The bid documentation must require a bidder to furnish the following:

    132.1 the bidder's full name;

    132.2 the identification number or company or other registration number;

    132.3 the bidder's City Supplier Database Registration Number;

    132.4 the bidder's National Treasury Central Supplier Database Registration Number;

132.5 the bidder's tax reference number and VAT registration number, if any; and

132.6 a valid tax clearance from the South African Revenue Services stating that the bidder's tax matters are in order and the bidder's SARS Tax Compliance Status PIN.

133. Bid documentation must stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), adjudication or, as a final measure, in a court of South African law.

134. A provision for the termination/cancellation of the contract in the case of non- or under-performance must be included in the bid documentation.

135. Unless otherwise indicated in the bid documents, the City shall not be liable for any expenses incurred in the preparation or submission of a bid.

136. Bid documentation must state that the City shall not be obliged to accept the lowest bid, any alternative bid or any bid.

137. Unless the City Manager otherwise directs bids are invited in the Republic only.

138. Laws of the Republic shall govern contracts arising from the acceptance of bids.

139. Where the acquisition in question is likely to involve an imported component which will be subject to foreign exchange rate adjustments, the bid documentation must specify that the supplier take out a forward exchange contract in order to fix the Rand based price as soon as possible after the award in the case of lump sum contracts or as soon as possible after placement of each order requiring imported components or subassemblies in case of framework contracts.

140. Bid documentation must compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted.

141. The bid documentation must require bidders to disclose:

141.1 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;

141.2 if the bidder 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

141.3 whether a spouse, child or parent of the bidder or of a director, manager, shareholder or stakeholder referred to in sub-clause 141.2, is in the service of the state, or has been in the service of the state in the previous twelve months.

142. Bid documentation must:

142.1 require bidders to complete, sign and submit, together with their bid, a certificate of independent bid determination;

142.2 stipulate that if it is found that the certificate of independent bid determination is not true and complete in every respect, that the bid may be rejected/declared non-responsive.

143. Bid documentation for consultant services must require bidders to furnish the City with particulars of all consultancy services, and any similar services (to the services being bid for) provided to an organ of state in the last five years.

144. Bid documentation for consultant services must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, item, system or process designed or devised by a consultant in terms of an appointment by the City, shall vest in the City.

145. Bid documentation must state that the responsibility for registration and verification on the City's Supplier and National Treasury's Central Supplier Databases rests solely with the bidder.

Bids exceeding R10 million

146. If the estimated value of the transaction exceeds R10 million, the bid documentation must require the bidders to furnish:

146.1 if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements -

146.1.1 for the past three years, or;

146.1.2 since their establishment if established during the past three years;

146.2 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;

146.3 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, and

146.4 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 City is expected to be transferred out of the Republic.

Alternative Bids

147. Alternative bids can be submitted provided that an acceptable bid, which complies with the bid conditions and specifications and submitted strictly in accordance with the bid documents, is also submitted.

148. An alternative bid shall be submitted on a separate complete set of bid documents or in accordance with such conditions as may be set out in the bid document and shall be clearly marked “Alternative Bid” to distinguish it from the acceptable bid referred to above.

149. All acceptable bids (excluding alternative bids) shall first be evaluated in accordance with the bid conditions and ranked in terms of the preference point system described in the Preferential Procurement section of this policy. Only the alternative of the highest ranked acceptable bid (that is, submitted by the same bidder) may be considered, and if appropriate, recommended for award.

150. Alternative bids of any but the highest ranked acceptable bid, shall not be considered.

151. If the alternative bid of the highest ranked acceptable bid is considered to have merit, then the alternative bid shall be ranked along with all of the acceptable bids received.

152. An alternative of the highest ranked acceptable bid that is priced higher than the first ranked bid may be recommended for award, provided that the ranking of the alternative bid is higher than the ranking of the next ranked acceptable bid.

153. The City will not be bound to consider alternative bids.

Public Invitation for Competitive Bids

154. On completion of the bid specification process the City shall publicly invite bids.

155. Bid invitation shall be by notice published in the media and any electronic platform (such as CIDB website, City Website, and National Treasury e-Tender Portal) that may be applicable or suitable.

156. Tenderers must ensure that they submit their most recent email address to the City at the time of collecting or retrieving the bid documentation and that the email address remains the tenderer's official email address during the course of the tender advertisement period. This is necessary to enable the City to issue notices to that tenderer during the tender advertisement period.

157. The City does not take responsibility for bid documents not retrieved through the official platforms prescribed in clause 155.

158. The notice shall, as soon as possible after the publication contemplated above, be posted on official notice boards designated by the City Manager.

159. The notice may require payment of a non-refundable bid fee by bidders wanting to collect bid documents. This bid fee shall be determined by the Director: Supply Chain Management from time to time.

160. The notice contemplated by clause 155 above shall specify:

160.1 the title of the proposed contract and the bid or contract reference number;

160.2 such particulars of the contract as the City deems fit;

160.3 the date, time and location of any site inspection, if applicable;

160.4 the place where the bid documentation is available for collection and the times between which bid documentation may be collected;

160.5 that bids may only be submitted on the bid documentation provided by the City[3];

160.6 the non-refundable bid fee payable, if any;

[3] Where activity schedules or bills of quantities are to be submitted as part of the bid documentation, printed schedules, in the same format as those issued, will be accepted.

160.7 the place where bids must be submitted;

160.8 the closing date and time for submission of bids; and

160.9 the appropriate CIDB contractor grading for construction work.

161. The notice shall further state that all bids for the contract must be submitted in a sealed envelope on which it is clearly stated that such envelope contains a bid and the contract title and contract or bid reference number for which the bid is being submitted.

162. Bid documentation shall be available for collection until the closing date of bids.

Issuing of Bid Documents

163. Bid documents and any subsequent notices may only be issued by officials designated by the Director: Supply Chain Management from time to time.

Site Inspections/Bid Clarification Meetings

164. Site inspections and/or clarification meetings in respect of bids exceeding R750 000 (VAT Included), or the relevant amount approved by National Treasury, will in general, not be compulsory. A site inspection/clarification meeting may be made compulsory with the approval of the Director: Supply Chain Management. If required, the minimum bid period can be extended by at least 7 (seven) days with the approval of the Director: Supply Chain Management (refer to clauses 193 to 195 in this regard).

165. If site inspections and /or clarification meetings are to be held, full details must be included in the bid notice, including whether or not the site inspection/ clarification meeting is compulsory.

166. Where site inspections and /or clarification meetings are made compulsory, the date for the site inspection/clarification meeting shall be at least 14 (fourteen) days after the bid has been advertised. The City may choose to conduct a compulsory briefing meeting at a City facility first, followed by a physical site inspection.

167. If at a site meeting and /or clarification meeting, any additional information is provided or clarification of vague points is given, such additional information or clarification must be conveyed to all bidders in accordance with clauses 200 to 202 of this Policy.

Two-stage Bidding Process

168. This process may be applied to bids for large complex projects, where it may be undesirable to prepare complete detailed technical specifications or long term contracts with a duration exceeding three years, or where there are legislative, design, technological or safety reasons to restrict bidding to firms who have proven their capability and qualification to meet the specific requirements of the bid.

169. In the first stage, bidders are invited to submit technical proposals, conceptual designs, performance specifications, or functional criteria.

170. In the second stage, all bidders that meets the stage 1 criteria, will be invited to submit final technical proposals and a financial offer.

171. The bidders who meets the stage 1 criteria shall be given a minimum of 7 (seven) days to submit a final technical proposal and financial offer.

172. A two stage process must comply with the provisions for competitive bids (clauses 108 to 288 refer).

Two Envelope System

173. A two envelope system differs from a two-stage bidding process in that a technical proposal and the financial offer are submitted in separate envelopes at the same place and time. The financial offers will only be opened once the technical proposals have been evaluated (clauses 225 to 232 refer).

Validity Periods

174. The period for which bids are to remain valid, irrevocable and open for acceptance must be indicated in the bid documents.

175. Bids shall remain valid for acceptance for a period of twelve (12) months after the expiry of the original validity period, unless the City is notified in writing of anything to the contrary by the bidder.

176. The validity of bids may be further extended by a period of not more than six months, subject to administrative processes and upon approval by the City Manager, their delegatee, or that person's subdelegatee, where applicable, unless the required extension is as a result of an appeal process or court ruling. In this regard:

    176.1 The City must write to the bidders whose bids are responsive, to request their consent to extend the validity period for their bid. The City is not obliged to write to bidders whose bids are not responsive to request their consent.

    176.2 Bidders whose bids are responsive may either accept or reject the extended validity period. Those who do not agree to extend the validity period, or fail to do so by the date stipulated in the City's

correspondence, will be regarded as non-responsive, and their bids will be excluded from further assessment and evaluation. The procurement process will then continue only with those bidders whose bids are responsive.

177. In circumstances where the validity period of a tender has expired, and the tender has not been awarded, the tender process is considered “completed”, despite there being no decision (award or cancellation) made. This anomaly does not fall under any of the listed grounds of cancellation and should be treated as a "non-award". A “non-award” is supported as a recommendation to the BAC for noting.

Contract Price Adjustment

178. In general, if contract periods do not exceed twelve (12) months, the bid shall be a fixed price bid and not subject to contract price adjustment. A Bid Specification Committee may however request approval from Director: Supply Chain Management to allow contract price adjustment for contract periods less than twelve (12) months. In such instances an appropriate contract price adjustment formula must be specified in the bid documents.

179. For all contract periods exceeding twelve (12) months in duration, contract price adjustment will be applicable. An appropriate contract price adjustment formula must be specified in the bid documents. The City Manager, their delegatee, or that person’s subdelegate, where applicable, may consider a contract price adjustment formula in instances within the first twelve (12) months of the contract period, under exceptional and motivated circumstances.

180. If as a result of an award of a contract beyond the original tender validity period, the contract execution will be completed beyond a period of twelve (12) months from the expiry of the original tender validity period, then the contract may be subject to contract price adjustment for that period beyond such twelve (12) months. An appropriate contract price adjustment formula will be determined by the City Manager, their delegatee, or that person’s subdelegatee, where applicable, if such was not included in the bid documents. This provision would also be applicable upon any such contract extension of framework agreement tenders and would encompass the full period of the contract extension beyond the original contract period.

181. If as a result of any extension of time granted the contract execution will be completed beyond a period of twelve (12) months from the expiry of the original tender validity period, then contract price adjustment may apply to that period beyond such twelve (12) months. An appropriate contract price adjustment formula will be determined by the City Manager, their delegatee, or that person’s subdelegatee, where applicable if such was not included in the bid documents. This provision would also be applicable upon any such contract extension of framework agreement tenders and would encompass the full period of the contract extension beyond the original contract period.

182. If the award of a contract is delayed beyond the original tender validity period any additional conditions proposed by any bidder may be considered provided it is reasonable and does not prejudice any other bidder.

Contracts providing for Compensation Based on Turnover

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

183.1 a cap on the compensation payable to the supplier; and

183.2 that such compensation must be performance based.

Provisional Sums and Prime Cost or Sub-Contract Allowances

184. Provision for monetary allowances shall as far as possible be avoided. Where these are unavoidable, the total value of such allowances shall not exceed 20% of the total estimated value of the tender unless otherwise approved by the Director: Supply Chain Management.

185. Where monetary allowances in excess of R300 000 in respect of provisional sums or prime cost items have been included in the bid documents, and where the work or items to which the sums relate are to be executed/supplied by sub-contractors/suppliers, then one of the following processes, as determined by the Bid Specification Committee, shall be followed in respect of these allowances:

185.1 An **open competitive bidding process** in which bid documents are prepared by a consultant or a City employee in collaboration with the Responsible Person(s) in consultation with and to the approval of the supplier, invitations to bid are advertised in the media by the consultant or City employee or responsible person(s) on behalf of the supplier, and whereby the **selected sub-contractor/supplier** is chosen in consultation between the consultant, City employee or Responsible Person(s), together with the supplier from the responses received. The supplier must satisfy him/herself that the selected sub-contractor/supplier can meet the requirements of the sub-contract/supply agreement, and assumes the risk for the performance of the sub-contractor/supplier. The supplier may, on reasonable grounds, elect not to employ a particular sub-contractor/supplier.

185.2 A **two-stage selection process**, whereby the consultant or a City employee or Responsible Person(s) will advertise (in the media) for expressions of interest from suitably qualified sub-contractors/suppliers. From the responses received, the consultant or City employee, Responsible Person(s) and the supplier, in conjunction, shall compile a list of at least three (unless less than three responses were received)

suitable sub-contractors/suppliers who will then be asked to submit prices for the works/items required. The supplier will assume the risk for the performance of the **selected sub-contractor/supplier** identified through this process. The supplier may, on reasonable grounds, elect not to employ a particular sub-contractor/supplier.

185.3 A **nominated process**, whereby the City instructs the supplier to appoint a particular (typically specialist) sub-contractor/supplier. In this process the sub-contractor/supplier is a **nominated sub-contractor/supplier**, and the risk is transferred from the supplier to the City. The use of this process must therefore be motivated to, and approved by, the Director: Supply Chain Management prior to its implementation.

185.4 A preference point system (as described later in this policy) must be applied in respect of the processes described in clauses 185.1 to 185.3 above.

186. When monetary allowances of less than R300 000 have been included in the bid documents, and where the work or items to which the sums relate are to be executed/supplied by sub-contractors/suppliers, the supplier must be required to request a minimum of three written quotations from suppliers selected in consultation with the consultant and a City employee for approval by the Responsible Person(s).

Samples

187. Where samples are called for in the bid documents, samples (marked with the bid and item number as well as the bidder's name and address) shall be delivered separately (to the bid) to the addressee mentioned in the bid documents.

188. Bids may not be included in parcels containing samples.

189. If samples are not submitted as required in the bid documents or within any further time stipulated by the City in writing, then the bid concerned may be declared non-responsive.

190. Samples shall be supplied by a bidder at his/her own expense and risk. The City shall not be obliged to pay for such samples or compensate for the loss thereof, unless otherwise specified in the bid documents. The City reserves the right to keep samples supplied by the appointed bidder. Unsuccessful bidders can collect their samples within 90 days after the final notification of award has been send to suppliers, after which the City has the right not to return such samples and to dispose of them at its own discretion.

191. If a bid is accepted for the supply of goods according to a sample submitted by the bidder, that sample will become the contract sample. All goods/materials supplied shall comply in all respects to that contract sample.

Closing of Bids

192. Bids shall close on the date and at the time stipulated in the notice.

193. For bids for goods and services the bid closing date must be at least 14 (fourteen) days after publication of the notice.

194. For bids for construction works the bid closing date must be at least 21 (twenty-one) days after publication of the notice.

195. Notwithstanding the above, if the estimated contract value exceeds R10 million, or if the contract is of a long term nature with a duration period exceeding one year, then the bid closing date must be at least 30 (thirty) days after publication of the notice.

196. For banking services, the bid closing date must be at least 60 (sixty) days after publication of the notice.

197. For proposal calls using a two envelope system, the bid closing date must be at least 30 (thirty) days after publication of the notice.

198. The bid closing date may be extended by the Director: Supply Chain Management if circumstances justify this action, provided that all bidders that have drawn bid documents are notified of this decision in accordance with clauses 200 to 202 below, and that the notice to this effect is attached to all bid documents subsequently issued. Any amendment to the bid closing date shall also be published on the City's official website.

199. The City Manager may determine a closing date for the submission of bids which is less than any of the periods specified in clauses 192 to 197 above, 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.

Communication with bidders before bid closing

200. The Bid Specification Committee may, if necessary, authorise communication with bidders prior to bids closing.

201. Any communication authorised by the Bid Specification Committee, which has implications of consequence for all tenderers, shall be in the form of a written notice issued to all bidders by the Director: Supply Chain Management, or his nominated SCM representative on the Bid Specification Committee. In this regard:

    201.1 The communication will be sent by e-mail. A copy of the notice together with a transmission verification report/proof of posting must be kept for record purposes.

    201.2 the City need only distribute notices during the advertising period to tenderers who have obtained the bid documentation from official

electronic platforms prescribed in clause 155, the City's Tender Office, the City's official tender portal or who attended a briefing session, if any, regarding that procurement process. The tenderer must also have provided their current e-mail address via at least one of these platforms or at the briefing session. A tenderer is not entitled to receive any such notices where it fails to comply with this subclause, and the City owes no duty in that regard to the tenderer.

201.3 Notices should be issued at least one week prior to the bid closing date, where possible.

202. Notwithstanding a request for acknowledgement of receipt of any notice issued, the bidder will be deemed to have received such notice if the procedures in clause 201 have been complied with.

Submission of Bids

203. Bids must be submitted before the closing time, at the address and in accordance with the directives in the bid documents.

204. Each bid must be in writing using non-erasable ink and must be submitted on the official Form of Bid/Offer issued with the bid documents.

205. The bid must be submitted in a separate sealed envelope with the name and address of the bidder, the bid number and title, the bid box number (where applicable), and the closing date indicated on the envelope. The envelope may not contain documents relating to any bid other than that shown on the envelope. Only sealed bids will be accepted.

206. The onus shall be on the bidder to place the sealed envelope in the official, marked and locked bid box provided for this purpose, at the designated venue, not later than the closing date and time specified in the bid notice.

207. No bids forwarded by email or similar apparatus shall be considered unless:

207.1 the bid documentation specifically provides for this method of submission;

207.2 in the event of photostat copies of bids which are submitted in the prescribed manner, such bids will be considered, provided the original Forms of Bid/Offer can be shown to have been posted or couriered prior to the close of bids.

208. Electronic bids will not be accepted, unless the bid documentation specifically provides for this method of submission, either for the entire bid or any portion thereof.

209. Where bids are submitted in electronic format, such bids must be supplemented by sealed hard copies.

210. Clauses 204 to 206 above shall not apply to bids submitted through the e-procurement system.

211. The bidder shall choose a *domicilium citandi et executandi* in the Republic and unless notice of the change thereof has duly been given in writing, it shall be the address stated in the bid.

212. No person may amend or tamper with any bids or quotations after their submission. Where an e-Procurement system is used, the system must ensure that bids cannot be altered or tampered with after submission by the bidder.

Late Bids

213. A bid is late if it is not placed in the relevant bid box by the closing time for such bid.

214. A late bid shall not be admitted for consideration and shall be returned to the bidder upon request.

Opening of Bids

215. At the specified closing time on the closing date the applicable bid box shall be closed.

216. The bid box shall be opened in public as soon as practical after the closing time.

217. Immediately after the opening of the bid box, all bids shall be opened in public.

218. The official opening the bids shall read out, where possible, the name of the bidder, the amount of the bid and the preference indicated.

219. Where an e-Procurement system is used, the bid information described in clause 218 above shall be published on the City's official website as soon as practical after the closing time.

220. All rates, with the exception of rates only bids, and proprietary information are confidential and shall not be disclosed.

221. As soon as a bid or technical proposal has been opened:

221.1 the bid/proposal shall be stamped with the official stamps, and endorsed with the opening official's signature;

221.2 the name of the bidder and the bid sum shall, where possible, be recorded in a bid opening record kept for that purpose;

221.3 the responsible official who opened the bid shall forthwith place his/her signature on the bid opening record;

221.4 The responsible official will make the register available for public inspection; and

221.5 The responsible official will publish the entries in the register and the bid results on the website of the Municipality as soon as practical thereafter.

222. Bids found to be inadvertently placed in the incorrect bid box will be redirected provided that the applicable bids either closed on the same day at the same time, or are still open.

223. Bids received in sealed envelopes in the bid box without a bid number or title on the envelope will be opened at the bid opening and the bid number and title ascertained. If the bid was in the correct bid box it will be read out. If the bid is found to be in the incorrect bid box, it will be redirected provided that the applicable bids either closed on the same day at the same time, or are still open. If the bid closes at a later date, the bid will be placed in a sealed envelope with the bid number and title endorsed on the outside, prior to being lodged in the applicable box. The City however disclaims any responsibility for seeing that the bid is in fact lodged in the correct box.

224. The official opening the bids shall record, in the bid opening record:

224.1 any action taken in terms of clauses 222 and 223 above;

224.2 any unsealed bids received.

Opening of Bids where a Two Envelope System (consisting of a technical proposal and a financial proposal) is followed

225. If a two envelope system is followed, only the technical proposal will be opened at the bid opening.

226. The unopened envelope containing the financial proposal shall be stamped and endorsed with the opening official's signature, and be retained by him/her for safekeeping.

227. When required the financial offers/bids corresponding to responsive technical proposals, shall be opened by the opening official in accordance with clauses 218 and 221.

228. All bidders who submitted responsive technical proposals must be invited to attend the opening of the financial offers/bids.

229. Envelopes containing financial offers/bids corresponding to non-responsive technical proposals shall be returned unopened along with the notification of the decision of the Bid Adjudication Committee in this regard (clause 274 refers).

230. After being recorded in the bid opening record, the bids/technical proposals shall be handed over to the official responsible for the supervision of the processing thereof and that official shall acknowledge receipt thereof by signing the bid opening record.

231. Where an e-Procurement system is used, the names of the bidders that have submitted proposals shall be published on the City's official website as soon as practical after the closing time.

232. When the financial offers/bids are opened they shall be published on the City's official website as soon as practical thereafter, and all bidders shall be notified accordingly.

Bid Evaluation

Bid Evaluation Committee

233. An ad-hoc Bid Evaluation Committee shall be constituted for each tender or procurement activity to evaluate bids received.

234. The City Manager, their delegatee, or that person's subdelegatee, where applicable, shall, taking into account section 117 of the MFMA, appoint the members of the Bid Evaluation Committees.

235. The Bid Evaluation Committee shall be comprised of at least two City officials as members, consisting of an appointed Chairperson (who may be the same person as the Chairperson of the Bid Specification Committee) and a responsible technical official. The Supply Chain Management Practitioner serves in an advisory capacity. No bid committee meeting shall proceed without an SCM practitioner. Disagreements on the advice provided by the Supply Chain Management Practitioner must be dealt with in terms of the Rule of Order for Bid Committees and be recorded accordingly.

236. A representative of Internal Audit and Legal Services may form part of this committee where necessary as well as other internal/external experts/specialists. As relevant to the content of the tender, relevant internal/external specialists must be included in an advisory capacity to the Bid Evaluation Committee.

237. Where the scoring of functionality forms part of a bid process, the Bid Evaluation Committee, as appointed, must score functionality, except the SCM Practitioner.

238. Committee meetings must be conducted in accordance with the applicable Terms of Reference and Guide and Rules of Order for Members of the City of Cape Town's Bid Committees.

Bid Evaluation

239. The Bid Evaluation Committee may, if necessary, authorise communication with bidders prior to the award of the tender.

    239.1 Any communication authorised by the Bid Evaluation Committee shall be in the form of a written request for clarification, on any matter affecting the evaluation of the bid offer or that could give rise to ambiguity in the subsequent contract that does not change or affect their competitive position or the substance of their offer, issued in writing to the applicable bidders by the Director: Supply Chain Management or his nominated SCM representative, using any means as appropriate.

    239.2 A copy of the notice together with a transmission verification report/proof of posting shall be kept for record purposes.

240. The Bid Evaluation Committee shall consider the bids received and shall note for inclusion in the evaluation report, a bidder:

240.1 who is barred or prohibited from participating in a bid process in terms of abuse of this Policy;

240.2 who has failed to submit a Certificate of Independent Bid determination, either with the bid, or within such time for submission stated in the City's written request to do so;

240.3 whose bid does not comply with the general conditions applicable to bids and quotations of this Policy;

240.4 whose bid is not in compliance with the specification;

240.5 whose bid does meet the minimum score for functionality, if applicable;

240.6 whose bid is not in compliance with the terms and conditions of the bid documentation;

240.7 who is not registered and verified on the City's Supplier and National Treasury's Central Supplier Databases;

240.8 who, in the case of construction works acquisitions, does not comply with the requirements of the CIBD Act regarding registration of contractors;

240.9 whose tax matters are not in order, and

240.10 who, or any of its directors, has any undisputed municipal rates, taxes or municipal service charges in arrears for more than three months.

241. Bids shall be evaluated according to the following as applicable:

241.1 bid price, including VAT (corrected if applicable and considering all unconditional discounts where applicable);

241.2 the unit rates and prices;

241.3 the bidder's ability to execute the contract;

241.4 any qualifications to the bid;

241.5 the bid ranking as determined by the adjudication points allocated to the bid in accordance with the formulas as set out in the Preferential Procurement Section of this Policy.

The evaluation of the bid price may be based on:

241.5.1 Total contract value;

241.5.2 Line item level;

241.5.3 Weighted average method;

241.5.4 Pricing per category, or

241.5.5 Alternative methods agreed to with the SCM Department.

241.6 the financial standing of the bidder;

241.7 any other criteria specified in the bid documents.

242. Where a two-stage bidding process has been followed, the requirements for advancing to the second stage, as well as the bidders' compliance or scoring in respect thereof, must be included in the report to the Bid Adjudication Committee making a recommendation for award (one report to the Bid Adjudication Committee is required, only once the second stage evaluation has been completed).

243. The Bid Evaluation Committee shall check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears.

244. An alternative bid may be considered subject to clauses 147 to 153 of this policy.

245. If a bidder submits a fully motivated request in writing, after the closing of bids, that his/her bid be withdrawn, then such a request may be considered and reported in the bid evaluation report for decision by the Bid Adjudication Committee.

246. Adjudication points calculated in terms of the preference point system described in this policy must be rounded off to the nearest two decimal places.

247. The responsive bid that scores the highest number of adjudication points must be recommended for acceptance unless objective criteria, in addition to those specific goals contemplated in section 2 of the PPPFA, justify the acceptance of another bid. Such objective criteria include whether the recommended bidder:

247.1 has not demonstrated that it has the necessary resources and skills required to fulfil its obligations in terms of the bid document;

247.2 poses any material risk to the City;

247.3 is a supplier to whom notice has been served regarding abuse of the supply chain management system.

248. If two or more bidders score an equal number of adjudication points, the recommended bidder shall be the one scoring the highest points for specific goals.

249. When functionality is part of the evaluation process and two or more bids have scored equal points, including equal points for specific goals, the recommended bidder shall be the one scoring the highest score for functionality.

250. If two or more bids are equal in all respects, the Bid Evaluation Committee shall draw lots to decide on the recommendation for award.

251. All disclosures of a conflict of interest in respect of the recommended bidder shall be considered by the Bid Evaluation Committee and shall be reported to the Bid Adjudication Committee.

Recommendation to Bid Adjudication Committee

252. The Bid Evaluation Committee shall submit a report, including recommendations regarding the award of the bid, the nomination of one or more responsive standby supplier(s), or any other related matter, to the Bid Adjudication Committee for award.

253. In the event that a contract is not concluded after an award has been made by the Bid Adjudication Committee, the Bid Evaluation Committee may reconsider all remaining bids received and may submit further reports to the Bid Adjudication Committee for consideration.

254. In the event that a contract is terminated during the execution thereof, the Bid Evaluation Committee may submit a report to the Bid Adjudication Committee recommending the award, or non-award, of the contract to the standby supplier or any of the remaining responsive bidder(s). Should any revised terms, rates or conditions be negotiated, a report detailing these must be submitted to the Bid Adjudication Committee.

Bid Adjudication

General

255. The City shall not be obliged to accept any bid and accordingly reserves the right to not make any final award or, when a standby supplier has been nominated, not to make an award to such a bidder.

256. For goods and services bids, the City shall have the right to accept the whole bid or part of a bid or any item or part of an item or accept more than one bid.

257. The Bid Adjudication Committee may accept non-compliance with mandatory procedures or conditions, but only if such non-compliance is not material.

258. The City may opt to appoint more than one supplier, the highest ranked tenderer (the winner) and in addition, one or more alternative bidders for the allocation of work, whereby the order will always be offered and if accepted allocated to the highest ranked tenderer and only if the supplier refuses will the work be offered to the next highest ranked tenderer from the alternative bidders.

Bid Adjudication Committee

259. The Bid Adjudication Committee shall comprise at least four senior managers, and shall include:

259.1 the Chief Financial Officer or a Manager designated by the Chief Financial Officer;

259.2 at least one senior supply chain management practitioner of the City;

259.3 a technical expert in the relevant field who is an official of the City, if the City has such an expert; and

259.4 Senior Managers who are members of the bid adjudication committee will be allowed to sub-delegate, in writing, their responsibilities to competent staff members in cases where they cannot attend specific sittings of the committee.

260. The City Manager shall appoint the members and chairperson of the Bid Adjudication Committee. If the chairperson is absent from a meeting, the members of the committee who are present shall elect one of the committee members to preside at the meeting.

261. Neither a member of a Bid Evaluation Committee, nor an advisor or person assisting such committees, may be a member of a Bid Adjudication Committee.

Adjudication and Award

262. The Bid Adjudication Committee shall consider the report and recommendations of the Bid Evaluation Committee and make a final award or make another recommendation to the City Manager on how to proceed with the relevant procurement including not making an award.

263. The Bid Adjudication Committee may make an award to a preferred bidder(s), pursuant to the City Manager, their delegatee, or that person's subdelegatee, where applicable, successfully negotiating with the preferred bidder(s) in terms of clause 279 of this Policy.

264. In the event that a contract is not concluded after an award has been made by the Bid Adjudication Committee, the Bid Adjudication Committee may consider any further recommendations made by the Bid Evaluation Committee in a subsequent report.

265. In the event that a contract is terminated during the execution thereof, the Bid Adjudication Committee may consider any recommendations made by the Bid Evaluation Committee in a subsequent report for the award of the contract, provided that the bid is still valid and its validity period has not expired, or non-award, to another responsive supplier(s).

266. The City Manager may, at any stage of the bidding process, refer any recommendation made by the Bid Evaluation or Bid Adjudication Committee back to that committee for reconsideration of the recommendation.

Approval of Bid not recommended

267. If a 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:

    267.1 check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears;

    267.2 check in respect of the preferred bidder that it has the necessary resources and skills required to fulfil its obligations in terms of the bid document; and

    267.3 notify the City Manager.

268. The City Manager may:

    268.1 after due consideration of the reasons for the deviation or variation, ratify or reject the decision of the Bid Adjudication Committee referred to in clause 267 above;

    268.2 If the decision of the Bid Adjudication Committee is rejected, refer the decision of the adjudication committee back to that committee for consideration.

269. If a bid other than the one recommended in the normal course of implementing this Policy is approved, then the City Manager must, in writing and within ten working days, notify the Auditor-General, the Provincial Treasury and the National Treasury of the reasons for deviating from such recommendation.

270. The requirement of clause 269 does not apply if a different bid was approved in order to rectify an irregularity.

Right of Appeal

271. In terms of Section 62 of the Municipal Systems Act, a person whose rights are affected by a decision taken by the City may appeal against that decision by giving written notice of the appeal and reasons to the City Manager within 21 days of the date of receipt of the notification of the decision.

272. Bid documents must state that any appeal in terms of clause 271 must be submitted to the City Manager at the address stated, and must contain the following:

272.1 must be in writing;

272.2 reasons for the appeal;

272.3 the way in which the appellant's rights have been affected;

272.4 the remedy sought by the appellant; and

272.5 a copy of the notification advising the person of the decision.

273. Refer to the City's Appeals Policy for more detailed information on the above requirements.

Notification of Decision

274. The successful and unsuccessful bidders shall be notified in writing once a Final Award has been made.

275. The successful bidder shall, in addition, be advised of the 21-day appeal period, and be notified that no rights accrue to him/her until the bid is formally accepted in writing.

276. Where a preferred bidder has been identified and is referred to the City Manager by the Bid Adjudication Committee in order to authorize the negotiation of the final terms of a contract in terms of clause 279 below, the preferred bidder shall be notified of its preferred bidder status.

277. Every notification of decision shall be 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.

Negotiations with Preferred Bidders

278. A report, setting out the preferred bidder(s) identified through a competitive bidding process, shall be submitted by the Bid Evaluation Committee to the Bid Adjudication Committee for approval.

279. The City Manager may authorise the negotiation of the final terms of a contract, including the authority to terminate such negotiations, with bidders identified through a competitive bidding process as preferred bidders provided that such negotiation:

279.1 does not allow any preferred bidder a second or unfair opportunity;

279.2 is not to the detriment of any other bidder; and

279.3 does not lead to a higher price than the bid as submitted.

280. Minutes of such negotiations must be kept for record purposes.

281. If negotiations fail to result in acceptable contract terms, the City Manager, or the person authorised in terms of clause 279, may terminate the negotiations and invite the next ranked bidder(s) for negotiations. The original preferred bidder(s) should be informed of the reasons for termination of the negotiations. Once negotiations have been terminated they may not be re-opened. If negotiations eventually fail with the tenderer scoring the third highest points, the tender must be cancelled.

Cancellation and re-invitation of Bids

282. A bid may be cancelled, prior to the award of the contract, if:

282.1 due to changed circumstances, there is no longer a need for the goods, services or construction works requested;

282.2 funds are no longer available to cover the total envisaged expenditure;

282.3 no acceptable bids are received;

282.4 there is a material irregularity in the tender process; or

282.5 if negotiations have failed with the tenderers up to and including the tenderer scoring the third highest points where the prices offered is not market related.

283. If it becomes necessary to cancel or re-advertise formal bids, then a report to this effect shall be submitted to the Bid Adjudication Committee for decision.

284. If a bid has been cancelled, then all bidders must be notified in writing.

285. A decision to cancel a bid in terms of clause 282 above must be published in the media in which the original bid invitation was advertised.

286. It is not necessary to notify original bidders when calling for new bids, which will be advertised in accordance with clause 155.

287. No bid may be re-advertised before the Bid Adjudication Committee has resolved to cancel the original bid, and all bidders have been notified accordingly, unless no bids were received

Expansion or variation in Contract Period or Contract Sum (Increase in Contract Sum or Period)

288. Any expansion or variation of the contract, contract period or contract value must be submitted to and approved by the delegated authority in compliance with the latest directive in this regard as issued by the City Manager.

Framework Agreement Bid

General

289. It is permissible to invite bids for the supply of goods and services or construction works that is of an ad-hoc or repetitive nature, for a predetermined period of time (commonly referred to as a framework agreement bid).

290. The period of a framework agreement that is of repetitive nature for services that the City has an obligation to provide on an ongoing basis for the duration of the resulting contract(s), cannot extend beyond the three years covered in the annual budget for the financial year in which the contract is entered into, unless all related legislative and procedural processes are complied with. The period of a framework agreement that is of an ad hoc nature cannot exceed a period of 36 months from the commencement of the contract unless all related legislative and procedural processes are complied with.

291. The general acquisition procedure for framework agreement bids shall comply with procedures contained in the acquisition management system of this Policy.

292. The method by which the price will be determined must be stated in the bid documentation. The detailed formulation of the calculations that will determine the financial offer must be agreed to by the Bid Specification Committee prior to the advertisement of the bid.

293. Bid documentation shall state that the acceptance of framework agreement bids will not impose any obligation on the City to avail itself of the goods and services or construction works offered by the bidders.

294. Bid documentation shall state the processes by which allocations will be made arising from any resulting contract.

295. Material for repairs and maintenance can be purchased on a framework agreement bid where circumstances warrant it.

296. Additional items included in a framework agreement bid by any bidder which are clearly not an alternative to any of the items specified shall not be considered.

297. Orders[4] for goods may be raised up until the expiry of the framework agreement bid, provided that the goods can be delivered within 30 days of expiry of the framework agreement. The Director: Supply Chain Management may, based on motivated circumstances, approve the delivery of goods beyond 30 days from the expiry of the framework agreement.

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[4] The orders referred to are the purchase orders created on the City's SAP System. Responsible Person(s) should therefore not commence with any process in respect of a term bid if it is not going to be possible to raise a SAP purchase order before the term bid expires.

298. All orders, other than for goods in terms of clause 297 and the procurement of legal services, must be completed prior to the expiry of the framework agreement period, unless approval was obtained from the Director: Supply Chain Management, based on motivated circumstances.

Use of Transversal Contracts

299. Upon request, the City Manager, or their delegated authority, may approve the use of existing transversal contracts/ framework agreements by other City departments in accordance with the City's procedures, provided that the approval is not required where the transversal contract/framework agreement specifically states that it is for transversal use, in which case the contract owner/manager approves transversal use subject to any directive issued by the City Manager.

Evaluation and Adjudication of Framework Agreement Bids

300. The process for considering framework agreement bids shall be in terms of the evaluation and adjudication procedures as described in the bid documents and in accordance with the principles contained in this Policy.

301. Subsequent to award, where different selections of items are required in terms of the same framework agreement bid and it is not possible or practical to separate orders for different items from different suppliers then a selection process will have to be carried out in respect of each application by the Responsible Person. Individual orders will then be placed (or contracts awarded) on the basis of the highest total adjudication points received, per application.

302. If the selected supplier, in terms of the selection process specified in the framework agreement bid documentation, is unable to provide the required goods, services or construction works at the required time and confirms as such in writing then the bidder with the next highest adjudication points shall be selected. If after a contract is awarded, or an order is placed in terms of a framework agreement bid, the supplier fails to supply the goods or service required, then the remedies in terms of the contract shall apply.

Formal Written Price Quotations

General

303. Where the City intends to enter into any contract which is for the supply of any goods or services, or the execution of any construction work which involves or is likely to involve a transaction value over R2 000 and up to R750 000 (VAT Included), or the relevant amount approved by National Treasury, then a minimum of three formal written quotes shall be obtained from providers who are suitably qualified and experienced, having the necessary resources, and who are registered on the City's Supplier Database, and if applicable, are listed on the List of Accredited Prospective Suppliers in accordance with clauses 82 to 87. Quotations may be obtained from providers who are not listed on the City's Supplier Database, provided that such providers must meet the listing criteria referred to in this Policy.

304. The City may request and accept formal written price quotations in electronic format.

305. A preference point system, as described in the preferential procurement section of this Policy, must be applied to all such quotations in excess of R2 000 or the relevant applicable threshold as prescribed by National Treasury.

306. Any request for a formal written quotation which is likely to be in excess of R30 000 or the greater amount approved by National Treasury, must be advertised for at least 7 (seven) days on the City's official website and an official notice board as applicable.

307. Notwithstanding clause 303, if quotations have been invited on the City's official website, no additional quotes need to be obtained should the number of responses be less than three.

308. If it is not possible to obtain at least three written quotations, the reasons must be recorded and approved by the City Manager, their delegatee, or that person's subdelegatee, where applicable, who must, within three days of the end of the month, report to the Chief Financial Officer on any approvals given during that month in this regard.

309. The names of the potential providers and their written quotations must be recorded.

Quotation Documentation

310. All quotation documentation, where practicable, shall comply with the requirements of bid documentation contained in the acquisition management system for competitive bids.

Validity Periods

311. The provisions of clauses 174 to 177 of this Policy shall apply *mutatis mutandis* with regard to quotations.

Quotation Prices

312. In general, all quotations should be submitted on a fixed price basis (not subject to contract price adjustment). Only in exceptional circumstances may contract price adjustment be applied.

Submission of Quotations

313. Quotation documents issued by the City shall clearly state the place where such documents must be submitted and the date and time by when they must be submitted.

Closing of Quotations

314. Quotations shall close on the date and at the time stipulated on the request for quotations.

315. The closing date for quotations less than or equal to R30 000 in value must be at least 2 (two) days after publication of the request for quotations. This period may be shortened upon approval by the Director: SCM.

316. The closing date for quotations greater than R30 000 in value must be at least 7 (seven) days after publication of the request for quotations.

317. No quotations submitted after any stipulated closing date and time shall be considered.

Opening of Quotations (where lodged in a quotation box)

318. The provisions of clauses 215 to 224 of this Policy shall apply with regard to quotations that are required to be lodged in a quotation box.

Consideration and Acceptance of Quotations

319. All orders in respect of formal written price quotations shall be approved and released by the City Manager, their delegatee, or that person’s subdelegatee, where applicable.

Petty Cash Purchases

General

320. Where there is a need to purchase any goods or services using a petty cash system, which involves a transaction value up to R2 000[5] or the greater amount approved by National Treasury, the City's Procedures and Guidelines for Petty Cash Purchases shall be adhered to.

321. The delegated departmental official responsible for petty cash must compile monthly reconciliation report for the Chief Financial Officer, which must include the total amount of petty cash purchases for that month and receipts and appropriate documents for each purchase.

Appointment of Consultants

General

322. In the procurement of consulting services cognisance should be taken of any circulars / guidelines that have been adopted by Council and the requirements of all statutory bodies and councils relevant to such services.

Procurement Process (over R750 000 (VAT Included), or the relevant amount approved by National Treasury)

323. Where the estimated value of the fees exceeds R750 000 (VAT Included), or the relevant amount approved by National Treasury, or where the duration of the appointment will exceed one year, consulting services shall be procured through a competitive bidding process.

Procurement Process (up to R750 000 (VAT Included), or the relevant amount approved by National Treasury)

324. Where the estimated value of the fees is less than or equal to R750 000 (VAT Included), or the relevant amount approved by National Treasury, and the duration of the appointment is less than one year, the selection of a consultant to provide the required service shall follow a written price quotation or a formal written price quotation procedure as described in this Policy.

325. A preference point system, as described in the preferential procurement section of this Policy, must be applied to such quotations.

[5] Note that the City Manager has, in terms of clause 99 of this policy, reduced the threshold value for petty cash purchases to R250.

Deviation from the Procurement Processes

General

326. The City Manager may 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 negotiation, but only in respect of:

326.1 any contract relating to an emergency (as described in clauses 335 to 337 below) where it would not be in the interests of the City to invite bids;

326.2 any goods or services which are available from a single provider only;

326.3 the acquisition of animals for zoos;

326.4 the acquisition of special works of art or historical objects where specifications are difficult to compile; or

326.5 any other exceptional circumstances where it is impractical or impossible to follow the official procurement process, including, but not limited to:

326.5.1 any purchase on behalf of the City at a public auction sale;

326.5.2 any contract in respect of which compliance therewith would not be in the public interest;

326.5.3 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;

326.5.4 in the event of a major system failure;

326.5.5 in the event where the delivery of a municipal service would be significantly restricted; or

326.5.6 where it is impossible to follow the official procurement processes; including situations where it is not possible to ascertain the nature or extent of the work required in order to call for bids.

327. The City Manager may 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 or legislative nature.

328. The City Manager may condone a deviation from the procurement process, provided that such deviation is limited to the circumstances referred to in clause 326.

329. The reasons for all deviations shall be recorded and reported by the City Manager to Council at the next Council meeting, and shall be included as a note to the annual financial statements.

330. Any procurement activity approved in terms of a deviation process must be formalised in a written contract which describes the terms and conditions of contract as well as the scope of work or services, or the specification, as applicable.

Single-source Selection

331. National Treasury Guidelines provide for single-source selection in exceptional cases for consulting services. The justification for single-source selection must be examined in the context of the overall interests of the City and the project.

332. Single-source selection may be appropriate only if it presents a clear advantage over competition:

332.1 for services that represent a natural continuation of previous work carried out by the consultant, and continuity of downstream work is considered essential;

332.2 where rapid selection is essential;

332.3 for very small appointments;

332.4 when only one consultant is qualified, or has experience of exceptional worth for the project.

333. The reasons for single-source selection must be fully motivated in a report and approved by the Bid Adjudication Committee prior to conclusion of a contract, provided that if the award is for an amount of R750 000 (VAT included), or the relevant amount approved by National Treasury, or less, such award shall be approved by the Director: Supply Chain Management.

334. Consultant appointments approved in terms of a single-source selection process must be formalised in a written contract which describes the terms and conditions of contract, as well as the scope of services required.

Emergency Dispensation

335. The conditions warranting Emergency dispensation should include the existence of one or more of the following:

335.1 the possibility of human injury or death;

335.2 the prevalence of human suffering or deprivation of rights;

335.3 the possibility of damage to property, or suffering and death of livestock and animals;

335.4 the interruption of essential services, including transportation and communication facilities or support services critical to the effective functioning of the City as a whole;

335.5 the possibility of serious damage occurring to the natural environment;

335.6 the possibility that failure to take necessary action may result in the City not being able to render an essential community service;

335.7 the possibility that the security of the state could be compromised; and

335.8 where immediate action is necessary in order to avoid –

335.8.1 a hazardous or risky situation;

335.8.2 misery; or

335.8.3 a situation that may cause the City's operations to be severely disrupted; and early delivery is of critical importance.

336. The prevailing situation, or imminent danger, should be of such a scale and nature that it could not readily be alleviated by interim measures, in order to allow time for the formal procurement process. Emergency dispensation shall not be granted in respect of circumstances other than those contemplated in clause 335.

337. The procurement procedure to be followed in an emergency situation shall be determined by the City Manager.

Unsolicited Bids

338. The City is not obliged to consider any unsolicited bids received outside of the normal bidding process.

339. The City may only consider an unsolicited bid if the following have been complied with:

339.1 the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;

339.2 the product or service offered will be exceptionally beneficial to, or have exceptional cost advantages for, the City;

339.3 the person or entity that made the bid is the sole provider of the product or service; and

339.4 the reasons for not going through the normal bidding processes are found to be sound by the City Manager. In this regard a report must be submitted to the City Manager seeking approval to take the unsolicited bid process further.

340. If the City Manager considers the unsolicited bid worthy of pursuing, the decision to consider such bid shall be made public in accordance with section 21A of the Municipal Systems Act together with:

340.1 reasons as to why the bid should not be open to other competitors;

340.2 an explanation of the potential benefits for the City were it to accept the unsolicited bid; and

340.3 an invitation to the public and other potential suppliers to submit their written comments within 30 (thirty) days of the notice being published.

341. Details of the unsolicited bid, together with any written comments received pursuant to clause 340.3 as well as any responses from the bidder, shall be submitted to the Provincial and National Treasury for comment.

342. The unsolicited bid shall then be submitted to the Bid Adjudication Committee, together with any written comments submitted by the public and any written comments or recommendations of the Provincial or National Treasury, for consideration.

343. The Bid Adjudication Committee may award the bid in respect of any amount.

344. Any meeting of the Bid Adjudication Committee to consider an unsolicited bid shall be open to the public.

345. If any recommendations of the Provincial or National Treasury are rejected or not followed, the City Manager shall submit to the Auditor-General, the Provincial Treasury and the National Treasury the reasons for rejecting or not following those recommendations. Such submission shall be made within 7

(seven) days of the decision to award the unsolicited bid. No contract committing the City to the bid may be entered into or signed within 30 (thirty) days of the submission.

LOGISTICS MANAGEMENT SYSTEM

Introduction

346. Logistics management must provide for an effective system in order to provide for the setting of inventory levels, placing of orders, receiving and distribution of goods, stores and warehouse management, expediting orders, transport management, supplier performance, maintenance and contract management and administration.

General Logistics

Placing of Orders

347. Purchase orders will be created with reference to requisitions where the supply source is either bids or quotations.

348. All purchase orders will be captured on the City's SAP system exclusive of VAT.

349. Standing orders may be used in cases where longer term arrangements, necessitating interim payments, are required.

350. Purchase order approvals will be systems based and shall be authorized by the Procurement Section only. Purchase Orders will be issued in terms of the relevant procurement and tender procedures.

351. The City shall not be liable for payment for any goods delivered or services rendered without an official order.

Receiving of Goods

352. Goods received will be captured on the City's SAP system via a Goods Received Note with reference to the relevant purchase order. Where applicable, the Treasury Department's Assets Section (for asset creation) and Insurance Section (for claims) will be informed of the purchase via the City's SAP system, at the end of the procurement process, in terms of other applicable policies.

353. Deliveries of goods may not exceed the order quantity. Short deliveries will keep the purchase order open until the balance of the order is received or cancelled.

Expediting Orders

354. The purchasing expeditor will be required to monitor and expedite outstanding purchase orders.

355. Reminder letters can be communicated automatically to suppliers based on the reminder levels (days before delivery due date) that are set in the purchase order.

Transport Management

356. The City's fleet management policy must be adhered to at all times.

Supplier Performance

357. The SAP system will enable system-based evaluation, based on the suppliers' performance with regard to certain pre-determined criteria.

358. This information will be available for future evaluation purposes, contract negotiations and regular feedback to the suppliers.

Stock Logistics

Valuation of Stock

359. Stock is valued on the weighted average costing method per plant and is VAT exclusive. Stock is valued in terms of the generally recognized accounting procedures as adopted by the City.

Setting of Inventory Levels

360. Stock items shall be systematically replenished using the re-order point planning strategy.

361. Open reservations shall be taken into account during the replenishment run.

Issuing of Stock

362. Goods will be issued from stock with reference to reservations. Goods can be issued for consumption against internal orders, cost centres, projects and assets under construction.

Stock Replenishment

363. Purchase orders will be created, where applicable, with reference to replenishment requisitions in respect of term supply contracts for goods.

364. Replenishment requisition approvals will be systems based.

365. All replenishment will be effected via the Acquisition Management System.

Stores Management

366. The stores function shall be decentralised in different districts and will operate under the jurisdiction of the Supply Chain Management Department.

367. The Supply Chain Management Department must ensure proper financial and budgetary control; uphold the principle of effective administration, proper stock holding and control, product standardisation, quality of products and a high standard of service levels.

368. The Director: Supply Chain Management will develop and implement appropriate stock management procedures.

369. The Chief Financial Officer is the only delegated authority to write off stock.

DISPOSAL MANAGEMENT SYSTEM

Goal

370. To give effect to:

370.1 Regulation 40 of the Supply Chain Management Regulations which requires an effective system for the disposal or letting of assets including unserviceable, redundant or obsolete assets, and

370.2 the Municipal Asset Transfer Regulations, subject to sections 14 and 90 of the MFMA and any other applicable legislation.

371. As far as possible, assets to be disposed of must be made available to recycling. Disposal to landfill is not allowed unless no recycling options are available.

Disposal Management System

372. Subject to the provisions of the Municipal Asset Transfer Regulations:

372.1 moveable assets may be sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous to the City;

372.2 immovable property may:

372.2.1 be sold only at market related prices except when the public interest or the plight of the poor demands otherwise;

372.2.2 let only at market related rates except when the public interest or the plight of the poor demands otherwise and provided that all charges, rates, tariffs, scales of fees or other charges relating to the letting of immoveable property are annually reviewed;

372.3 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 schools are interested in the equipment;

372.4 in the case of fire arms, the National Conventional Arms Control Committee must approve any sale or donation of firearms to any person within or outside the Republic.

Transfer or Permanent Disposal of Assets and the Granting of Rights

373. Non-exempted capital assets shall be transferred or permanently disposed of strictly in accordance with Chapter 2 of the Municipal Asset Transfer Regulations and all other relevant City Policies.

374. Exempted capital assets shall be transferred strictly in accordance with Chapter 3 of the Municipal Asset Transfer Regulations and all other relevant City Policies.

375. The granting of rights (where sections 14 and 90 of the MFMA do not apply) by the City, shall be executed strictly in accordance with Chapter 4 of the Municipal Asset Transfer Regulations and all other relevant City Policies.

RISK MANAGEMENT SYSTEM

376. The risks pertaining to Supply Chain Management should at all times comply with the criteria laid down in the risk management policies of the City.

General

377. Risk Management shall provide for an effective system for the identification, consideration and avoidance of potential risks in the City's supply chain management system.

378. Managing risk must be part of the City's philosophy, practices and business plans and should not be viewed or practiced as a separate activity in isolation from line managers.

379. Risk Management shall be an integral part of effective management practice.

The Risk Management Process

380. The risk management process shall be applied to all stages of supply chain management, be it the conceptual stage, project scope definition, specification preparation, acquisition approval or implementation to completion.

381. Risk management is an integral part of good management of acquisition activities and cannot be effectively performed in isolation from other aspects of acquisition management.

382. Appropriate risk management conditions should therefore be incorporated in contracts

Key Principles

383. The key principles on managing risk in supply chain management include:

383.1 early and systematic identification of risk on a case-by-case basis, analysis and assessment of risks, including conflicts of interest and the development of plans for handling them;

383.2 allocation and acceptance of responsibility to the party best placed to manage risk;

383.3 management of risks in a pro-active manner and the provision of adequate cover for residual risks;

383.4 assignment of relative risks to the contracting parties through clear and unambiguous contract documentation;

383.5 acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it; and

383.6 ensuring that the costs incurred in managing risks are commensurate with the importance of the purchase and the risks to the City's operations.

Guarantees for Due Performance

384. Performance guarantees for the procurement of goods and services (including consultant services) will not generally be required, but in exceptional circumstances, can be called for. Where required, the value of such guarantee shall be determined in consultation with the City Manager, their delegatee, or that person's subdelegatee, where applicable.

385. The performance guarantees that may be required are as follows:

385.1 In respect of a Rand value less than or equal to R1 000 000: **waived** (that is, no performance guarantee is required);

385.2 In respect of a Rand value exceeding R1 000 000, but less than or equal to R10 000 000: **5%** of the bid sum;

385.3 In respect of a Rand value exceeding R10 000 000: **7%** of the bid sum;

385.4 for Framework Agreement Tenders the Bid Specification Committee must assess the City's anticipated risk exposure at any given time during the contract execution and then, based on the clauses above, determine and specify the monetary value of the required performance guarantee;

385.5 unless otherwise provided for in the conditions of contract prescribed

386. The value of a performance guarantee required may be varied with approval of the City Manager, their delegatee, or that person's subdelegatee, where applicable.

387. An amount, equal to the value of the required performance guarantee, may be provided in cash (interest free) in accordance with the processes as prescribed by the City Manager, their delegatee, or that person's subdelegate, where applicable, from time to time.

Advance Payment Guarantees

388. Advance payments in respect of specific materials or services may, where justified in accordance with rules determined by the City Manager, their delegatee, or that person's subdelegatee, where applicable, from time to time, be made to a supplier only upon submission by the supplier of an acceptable advance payment guarantee to the City. No such advance payment guarantee may be accepted unless the authenticity thereof has been verified by the City's Treasury Department.

389. Advance payments may not be used as a mechanism for providing a supplier with an interest free loan for working capital.

Retention

390. Retention in respect of the procurement of goods and services (including consultant services) will not generally be applied, but where required, can be called for. Where required, the value of retention to be deducted shall be determined in consultation with the City Manager, their delegatee, or that person's subdelegatee, where applicable.

391. The value of retention to be deducted in respect of construction works contracts shall be as follows:

391.1 In respect of a Rand value less than or equal to R200 000 : No retention is called for;

391.2 In respect of a Rand value exceeding R200 000, but less than or equal to R1 000 000: 10% of the value of work carried out with no limit, reducing by half for the duration of the defects liability period;

391.3 In respect of a Rand value exceeding R1 000 000: 5% of the value of work carried out with no limit, reducing by half for the duration of the defects liability period;

391.4 unless otherwise provided for in the conditions of contract prescribed.

392. The value of retention to be deducted in respect of construction works may be varied with the approval of the City Manager, their delegatee, or that person's subdelegatee, where applicable.

393. Where consultant services are to be completed at the end of the defects liability period in respect of a construction contract, the value of this work (typically 5%) may be invoiced at the end of the construction period, but shall be held as retention until the completion of the service (typically, an end of defects liability period inspection and the preparation of the final account). Alternatively, the value of this work must be budgeted for in the following financial year.

394. Financial guarantees in lieu of retention are, in general, not acceptable. Any motivation for the acceptance of a retention guarantee must be approved by the City Manager, their delegatee, or that person's subdelegatee, where applicable.

PERFORMANCE MANAGEMENT SYSTEM

395. The City Manager must establish and implement an internal monitoring system in order to determine the basis of a retrospective analysis whether the authorised Supply Chain Management processes were followed and whether the objectives of this Policy were achieved.

396. Performance management shall accordingly be characterised by a monitoring process and retrospective analysis to determine whether:

396.1 value for money has been attained;

396.2 proper processes have been followed;

396.3 desired objectives have been achieved;

396.4 there is an opportunity to improve the process;

396.5 suppliers have been assessed and what that assessment is; and

396.6 there has been deviation from procedures and, if so, what the reasons for that deviation are.

397. The performance management system shall accordingly focus on, amongst others:

397.1 achievement of goals;

397.2 compliance to norms and standards;

397.3 savings generated;

397.4 cost variances per item;

397.5 non-compliance with contractual conditions and requirements; and

397.6 the cost efficiency of the procurement process itself.

Contract Management

398. Contract management includes all activities and administrative duties associated with a contract that has arisen through one of the acquisition/procurement processes described in this policy.

399. Line departments are fully responsible for contract management and administration. Departmental Heads (Directors) shall be responsible to ensure that a contract manager who will be an internal official and is assigned to ensure the effective management of the contract. The contract manager will typically be the internal project manager assigned to the contract as a whole, but may also be a cost centre owner or other responsible official.

400. The contract manager's duties and powers shall be governed by the applicable conditions of contract, this Supply Chain Management Policy, any Policies, Frameworks and Procedures relating to contract management adopted by the City and the general law.

401. Departmental Heads (Directors) shall ensure that contract managers are assigned to each contract within the Department Head's area of responsibility and, where possible, should ensure that such contract manager be involved from the earliest stages of the acquisition process.

402. Departmental Heads (Directors) shall further be responsible for ensuring that contract managers:

402.1 take all reasonable steps to ensure that a contract procured through the provisions of this policy is properly enforced;

402.2 are adequately trained so that they can exercise the necessary level of responsibility in the performance of their duties;

402.3 in administering a contract, adhere to applicable legislation and legal precedent, regulations, policy and formalised guidelines.

403. In discharging his duties, the contract manager shall:

403.1 ensure that all the necessary formalities in signing up the contract and issuing the purchase order(s) are adhered to;

403.2 ensure that contracts related to the procurement of goods and services are captured on the City's SAP system in the form of a price schedule when appropriate;

403.3 ensure that all original contract documentation is lodged with the Supply Chain Management Department for record purposes;

403.4 monitor, update and report, on a monthly basis, except where no performance monitoring is required in a particular month, the cost status and delivery forecast of the contract and the performance of the supplier in order to ensure that all of the terms and conditions of the

contract are met, including the supplier's obligations as regards preferential procurement, targeted labour and resources, as applicable;

403.5 where necessary, take appropriate action where a supplier is underperforming or is in default or breach of the contract;

403.6 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 captured on the City's SAP system;

403.7 manage contract variation or amendment procedures in compliance with the latest directive in this regard as issued by the City Manager and approved by the applicable City delegatee, or that person's subdelegatee, where applicable;

403.8 administer disputes where necessary, in terms of this policy and the applicable Conditions of Contract;

403.9 maintain adequate records in sufficient detail on an appropriate contract file to provide an audit trail;

403.10 ensure that contractual actions relating to supplier liquidation proceedings are correctly and timeously taken to ensure the City's rights are protected and any negative impact on service delivery is mitigated, such options should include inter alia:

403.10.1 supplier proposal (via the liquidator) is deemed acceptable, by the relevant Executive Director, to the City utilising the appropriate contractual mechanisms; or

403.10.2 cancelling the contract, as the liquidator proposed supplier is deemed unacceptable to the City, and the City appointing an alternate supplier (via appropriate procurement mechanisms);

403.11 act with care and diligence and observe all accounting and legal requirements; and

403.12 for construction contracts, ensure that all contract administrative requirements of the CIDB is complied with.

CODE OF ETHICAL STANDARDS

General

404. In addition to this Code of Ethical Standards, the Codes of Conduct for Councillors, as set out in Schedule 7 of the Municipal Structures Act, and Municipal Staff Members, as set out in Schedule 2 of the Municipal Systems Act shall apply in the application of this Supply Chain Management Policy.

405. A code of ethical standards is hereby established for officials and all role players in the supply chain management system in order to promote:

405.1 mutual trust and respect; and

405.2 an environment where business can be conducted with integrity and in a fair and reasonable manner.

406. An official or other role player involved in the implementation of the supply chain management policy:

406.1 must treat all providers and potential providers equitably;

406.2 may not use his or her position for private gain or to improperly benefit another person;

406.3 may not accept any reward, gift, favour, hospitality or other benefit to a value of more than R350 directly or indirectly from any provider or potential provider including any close family member, partner or associate of that person;

406.4 notwithstanding clause 406.3, must declare to the City Manager 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;

406.5 must declare to the City Manager 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 City;

406.6 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;

406.7 must be scrupulous in his or her use of property belonging to the City;

406.8 must assist the City Manager in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system;

406.9 may not render any services in any capacity representing a supplier on any contracts the supplier may have with the City for a period of 12 months after having left the employment of the City upon a decision in this regard by the delegated authority; and

406.10 must report to the City Manager any alleged irregular conduct in the supply chain management system which that person may become aware of, including;

406.10.1 any alleged fraud, corruption, favouritism or unfair conduct;

406.10.2 any alleged contravention of this policy; or

406.10.3 any alleged breach of this code of ethical standards;

406.10.4 any breach of the codes of conduct for municipal staff and for councillors.

407. Declarations in terms of clause 406.5 must be recorded in a register which the City Manager must keep for this purpose.

408. The City has adopted the National Treasury's code of conduct for supply chain management practitioners and other role players involved in supply chain management. This code of conduct is binding on all officials and other role players involved in the implementation of the supply chain management policy.

409. A copy of the National Treasury code of conduct is available on the website **www.treasury.gov.za/mfma** located under "legislation".

410. A breach of the code of conduct adopted will be dealt with in accordance with schedule 2 of the Municipal Systems Act.

Inducements, Rewards, Gifts and Favours

411. 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:

    411.1 any inducement or reward to the City for or in connection with the award of a contract; or

    411.2 any reward, gift, favour or hospitality to any official or any other role player involved in the implementation of the supply chain management policy.

412. The City Manager must promptly report any alleged contravention of clause 411 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.

413. Clause 411 does not apply to gifts less than R350 in value or gifts from a single source in any calendar year that does not exceed R350 in value.

Sponsorships, Donations and Grants

414. The City may not give or receive any sponsorship, donation or grant which is not in terms of any Council Policy or System of Delegations.

415. The delegated authority must comply with all reporting requirements contained in these Policies and any other Regulations.

Objections and Complaints

416. 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.

Resolution of Disputes, Objections, Complaints and Queries

417. The City Manager shall appoint an independent and impartial person not directly involved in the supply chain to assist in the resolution of disputes between the City and other persons regarding:

417.1 any decisions or actions taken in the implementation of the supply chain management system; or

417.2 any matter arising from a contract awarded in the course of the supply chain management system; or

417.3 to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.

418. The City Manager, or another official designated by the City Manager, is responsible for assisting the appointed person to perform his or her functions effectively.

419. The person appointed must;

419.1 strive to resolve promptly all disputes, objections, complaints; or queries received; and

419.2 submit monthly reports to the City Manager on all disputes, objections, complaints or queries received, attended to or resolved.

420. A dispute, objection, complaint or query may be referred to the relevant provincial treasury if;

420.1 the dispute, objection, complaint or query is not resolved within 60 days; or

420.2 no response is forthcoming within 60 days.

421. 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.

422. The provisions above must not be read as affecting a person's rights to approach a court at any time.

Lifestyle audits

423. The City Manager reserves the right to request lifestyle audits on all personnel involved in the SCM system, as and when required.

OTHER EVALUATION AND ADJUDICATION CONSIDERATIONS

General

424. that bids may be declared non-responsive if:

424.1.1 they fail to meet objective criteria if stipulated in the bid documents;

424.1.2 they fail to achieve a minimum qualifying score for functionality (quality) if indicated in the bid documents.

425. The preference point system shall be used in the evaluation of responsive bids for the purposes of determining preferred/recommended bidders, and for the adjudication thereof.

426. The preference point system is not applicable to petty cash purchases.

427. Irrespective of the preference point system used, the following will be applicable:

427.1 If the price offered by a tenderer scoring the highest points is not market related, the city may not award the contract to that tenderer. The City may however:

427.1.1 negotiate a market related price with the tenderer scoring the highest points in accordance with clauses 278 to 281 of this Policy, or cancel the tender;

427.1.2 if the tenderer does not agree to a market related price, negotiate a market related price with the tenderer scoring the second highest points in accordance with clauses 278 to 281 of this Policy, or cancel the tender;

427.1.3 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 in accordance with clauses 281 of this Policy, or cancel the tender;

427.1.4 apply the foregoing principles to all written and formal written price quotations but upon the approval of Director: Supply Chain Management or his delegated official

427.2 If a market related price is not agreed as envisaged in clause 427.1 of this Policy, the City must cancel the tender.

427.3 The remedies for any breach detected for the submission of any false information by a bidder are contained in clause 58 of this Policy.

Evaluation of Bids on Functionality (Quality)

428. Functionality (otherwise known as quality) may be included in the bid evaluation process as a qualifying (eligibility) criterion.

429. If a bid is to be evaluated on functionality, this must be clearly stated in the invitation to submit a bid, and in the bid documentation.

430. The evaluation criteria for measuring functionality must be objective.

431. When evaluating bids on functionality the:

431.1 evaluation criteria for measuring functionality;

431.2 the points for each criteria and, if any, each sub-criterion;

431.3 the minimum qualifying score for functionality rounded off to the nearest two decimal places (if applicable),

must be clearly stipulated in the bid document.

432. The minimum qualifying score for functionality for a tender to be responsive must be determined separately for each tender. The minimum qualifying score for functionality must at least be 60% of the total possible score. For more specialised or complex tenders the minimum score may, at the discretion of the Bid Specification Committee, be increased to up to 70% of the total possible score. The setting of a minimum score any higher than 70% of the total possible score must be motivated to, and approved by, the Director: Supply Chain Management prior to use and must not be unreasonably restrictive.

433. If a bid fails to achieve the minimum qualifying score for functionality as indicated in the bid document, it must be regarded as non-responsive, and be rejected (not considered any further in the evaluation process).

434. Bids that have achieved the minimum score for functionality, and passed any other responsiveness tests, must be evaluated further in terms of the preference point system prescribed below.

Other Specific Goals

Unbundling Strategies

435. In order to encourage increased participation and the sustainable growth of the small business sector, the unbundling of larger projects into smaller, more manageable, contracts is encouraged.

436. Unbundling must however be considered in the context of:

436.1 economies of scale being lost;

436.2 abortive work becoming necessary;

436.3 additional demands (not only financial) being placed on the City's resources; and

436.4 the risk of later phases not being completed as a result of budget cuts becoming necessary in the future.

437. Unbundling, and all of its associated implications, must therefore be carefully considered at the planning stage of any project and the budgets for, and design thereof, should be structured accordingly.

438. It is important to note that while it is the City's policy to procure goods, services or construction works in the smallest practicable quantities, the practice of parcelling such procurement in order to avoid complying with the requirements of the different range of procurement processes described in this policy is not permitted.

Increasing Employment Opportunities

439. One of the City's key socio-economic objectives is to facilitate the creation of employment for the people of Cape Town.

440. Increasing employment opportunities through procurement may be achieved by specifying labour intensive technologies or methods of construction in the bid documents.

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

442. All labour earning less than a threshold wage, determined in accordance with National Guidelines, that is employed for the provision of services or construction works for the City, shall be reported in the prescribed format, on a monthly basis, to the Corporate EPWP[6] Unit.

Targeted Labour and/or Targeted Enterprises

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

444. Specified contract participation goals must be measurable and achievable, and the performance in respect of which must be monitored by the Responsible Person(s) during the execution of the contract.

445. Where a minimum contract participation goal has been specified in respect of targeted labour or enterprises, the supplier is obliged to meet that goal, and must be penalised if he or she does not.

446. Contract participation goals in respect of targeted labour or enterprises may not be introduced into the preference point system used for the evaluation of bids.

Actions in Regard of Non-performance

447. The specific penalties referred to in this section of the SCM Policy will be applicable to breaches of the contractual conditions relating to preferential procurement that were found to be non-fraudulently committed. If any of these breaches are found to be fraudulently committed, the conditions relating to the Abuse of the Supply Chain Management System will be applicable.

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[6] Expanded Public Works Programme: A national programme that aims to draw significant numbers of the unemployed into productive work.

448. In respect of tenders advertised on or after the effective date of the Preferential Procurement Regulations, 2022, for specific goals as determined in clause 452 the relevant percentage (%) or penalty amount will be determined within the tender contract or tender specifications.

449. The penalty to be applied for non-compliance with a specified contract participation goal, is as follows:

$$\text{Penalty} = (CPG^{s} - CPG^{a}) \times P^{*}$$

Where: **CPG^{S}** = The minimum Contract Participation Goal specified (expressed as a percentage).

CPG^{a} = The Contract Participation Goal achieved (expressed as a percentage).

P* = Accepted bid sum less provisional sums, contingencies and VAT.

PREFERENTIAL PROCUREMENT POLICY

Introduction

450. Where this Policy does not provide for a matter regulated by the Preferential Procurement Regulations, 2022 the provisions of the regulations will prevail in respect of a “tender” as defined in the regulations.

Definitions

451. In these Regulations, 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—

451.1 **"highest acceptable tender"** means a tender that complies with all specifications and conditions of tender and that has the highest price compared to other tenders;

451.2 **"lowest acceptable tender"** means a tender that complies with all specifications and conditions of tender and that has lowest price compared to other tenders;

451.3 **"price"** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;

451.4 **"Rand value"** means the total estimated value of a contract in Rand, calculated at the time of the tender invitation;

451.5 **"specific goals"** means specific goals as contemplated in section 2(1)(d) of the Act which may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender and disability including the implementation of programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994;

451.6 **"tender"** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;

451.7 **"tender for income-generating contracts"** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales, income from earned from tariffs and disposal of assets through public auctions; and

451.8 **"the Act"** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

Identification of preference point system

452. The tender document must stipulate —

452.1 the applicable preference point system as envisaged in Preferential Procurement Regulations 4, 5, 6 or 7; and

452.2 the specific goal in the invitation to submit the tender for which a point may be awarded, and the number of points that will be awarded to each goal, and proof of the claim for such goal.

452.3 the specific goals referenced in clause 452.2, are contained in the Preferential Procurement Guideline, as updated and approved by the City Manager.

453. If it is unclear whether the 80/20 or 90/10 preference point system applies, the tender documents must stipulate in the case of—

453.1 an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or

453.2 any other invitation for tender, 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.

80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million (Preferential Procurement Regulations 4)

454. The following formula must be used to calculate the points out of 80 for price in respect of an invitation for a tender with a Rand value equal to or below R50 million, inclusive of all applicable taxes:

$$Ps = 80\left[1 - \frac{(Pt - Pmin)}{Pmin}\right]$$

Where :

Ps = Points scored for price of the tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of lowest acceptable tender.

454.1 A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.

454.2 The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

454.3 Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

90/10 preference point system for acquisition of goods or services with Rand value above R50 million (Preferential Procurement Regulations 5)

455. The following formula must be used to calculate the points out 90 for price in respect of an invitation for tender with a Rand value above R50 million, inclusive of all applicable taxes:

$$Ps = 90 \left[1 - \frac{(Pt - Pmin)}{Pmin}\right]$$

Where :

Ps = Points scored for price of the tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of lowest acceptable tender.

455.1 A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.

455.2 The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

455.3 Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

80/20 preference points system for tenders for income-generating contracts with Rand value equal to or below R50 million (Preferential Procurement Regulations 6)

456. The following formula must be used to calculate the points for price in respect of an invitation for tender for income-generating contracts, with a Rand value equal to or below R50 million, inclusive of all applicable taxes:

$$Ps = 80 \left[1 + \frac{(Pt - Pmax)}{Pmax}\right]$$

Where :

Ps = Points scored for price of the tender under consideration;

Pt = Price of tender under consideration; and

Pmax = Price of highest acceptable tender.

456.1 A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.

456.2 The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

456.3 Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

90/10 preference point system for tenders for income-generating contracts with Rand value above R50 million (Preferential Procurement Regulations 7)

457. The following formula must be used to calculate the points for price in respect of a tender for income-generating contracts, with a Rand value above R50 million, inclusive of all applicable taxes:

$$Ps = 90 \left[1 + \frac{(Pt - Pmax)}{Pmax}\right]$$

Where :

Ps = Points scored for price of the tender under consideration;

Pt = Price of tender under consideration; and

Pmax = Price of highest acceptable tender.

457.1 A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.

457.2 The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

457.3 Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

Criteria for breaking deadlock in scoring

458. 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 specific goals.

459. If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

Remedies

460. If the City is of the view that a tenderer submitted false information regarding a specific goal, it must—

460.1 inform the tenderer accordingly; and

460.2 give the tenderer an opportunity to make representations within 14 days as to why the tender may 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.

461. After considering the representations referred to above, the City may, if it concludes that such information is false—

461.1 disqualify the tenderer or terminate the contract in whole or in part; and

461.2 if applicable, claim damages from the tenderer.