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# FINANCIAL SERVICES POLICIES

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## SUPPLY CHAIN MANAGEMENT POLICY FOR BREDE VALLEY



**BREDE VALLEY**

MUNICIPALITY • MUNISIPALITEIT • UMASIPALA

**2021/2022-2022/2023 FINANCIAL YEAR**

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*A caring valley of excellence.*

**This Policy consists of three parts:**

**Part A** is the Supply Chain Management Policy (normal goods and services), adopted in terms of section 111 of the Local Government: Municipal Finance Management Act, No. 56 of 2003 and the Municipal Supply Chain Management Regulations, Notice 868 of 30 May 2005;

and

**Part B** is the Preferential Procurement Policy, adopted in terms of section 2 of the Preferential Procurement Policy Framework Act, No. 5 of 2000 and the Preferential Procurement Regulations, 2017; **Refer to annexure C (C1-C5), regarding legislative guidance provided by National Treasury for interim measures based on the outcome of the appeal to the high court. Breede Valley Municipality will keep the 2017 PPPFA Regulations as part of this policy, till further formal guidance has been provided by the legislator.**

And

**Part C** is the Contract Management framework, giving effect to section 116 of the Municipal Financial Management Act 56 of 2003 and is adopted in this policy

Commented [MP1]: Verified by NT and PT applicable from 1 July 2022, subject to amendments during comments phase – Review with Dir Esau comments

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**BREEDDE VALLEY**

MUNICIPALITY • MUNISIPALITEIT • UMASIPALA

## **MUNICIPAL SUPPLY CHAIN MANAGEMENT POLICY:**

### **PART A**

#### **NORMAL GOODS AND SERVICES:**

#### **SUPPLY CHAIN MANAGEMENT POLICY,**

**Adopted in terms of section 111 of the**

**LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, NO. 56 OF  
2003**

**and the**

**MUNICIPAL SUPPLY CHAIN MANAGEMENT REGULATIONS, NOTICE 868 OF 30  
MAY 2005**

#### **LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003**

The Council of the Breedede Valley Municipality resolved on 30 August 2005 in terms of Section 111 of the Local Government: Municipal Finance Management Act (no. 56 of 2003) to adopt the following as the Supply Chain Management Policy of the municipality.

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## 1, PRE-FACE, POLICY STATEMENT AND OBJECTIVES AND DEFINITIONS, ACRONYMS AND ABBREVIATIONS

### Preface:

The National Treasury in 2005 issued the Supply Chain Management Regulations, which gave rise to the supply chain management model policy for adoption by municipalities and municipal entities in terms of section 111 of the Municipal Finance Management Act, No 56 of 2003. The model policy prescribes the minimum requirements and principles, which municipalities and municipal entities must adhere to for their supply chain management systems. The policy was issued principally for the acquisition of goods and services and **consist out of four three parts**. Referred to as the Supply Chain Policy.

- 1) SCM policy for normal goods and services
- 2) In addition, the Preferential Procurement Policy Framework Act requires an Organ of State to determine its Preferential Procurement Policy and to implement it within the framework prescribed (refer to Part B of this policy)
- 3) In October 2015 via National Treasury circular 77, the National Treasury issued a Supply Chain Management Model Policy for Infrastructure Procurement and Delivery Management, in terms of Section 168 of the Municipal Finance Management Act of 2003 (Act 56 of 2003) in reference to SCM Regulation 3(2), this model policy prescribes the standards and gateways system requirements and principles which municipalities and municipal entities must adhere to when procuring infrastructure related services linking to CIDB and ISO standards and ethos, therefore the model policy for infrastructure Delivery and procurement serves as a conduit for the alignment between CIDB Act and supply chain management systems.
- 4) Giving effect to section 116 of the Municipal Financial Management Act 56 of 2003, a Contract Management framework have been adopted in this policy

### Policy statement and objectives:

The objectives of this Policy are:

- 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;
- 2) to comply with applicable provisions of the Municipal Finance Management Act including Municipal Supply Chain Management Regulations published under GN868 in Government Gazette 27636, 30 May 2005 and any National Treasury Guidelines issued in terms of the MFMA and regulations pertaining thereto; and
- 3) to acknowledge the provisions of:

**Commented [MP3]:** National Treasury did inform municipalities to implement 1 July 2021, however, due to threshold uncertainty and other un-uniform proposal effecting auditing, BVM has not adopted this approach. Confirmed with CFO to rather take out till new FIDM Policy is uniformly driven from PT.

- a) the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- b) The Competitions Act 1998 (Act No. 89 of 1998)
- c) the Construction Industry Development Board Act, 2000 (Act No.38 of 2000);
- d) the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);
- e) the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- f) the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000);
- g) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- h) the Prevention and Combating of Corrupt Activities Act, 2000 (Act No. 12 of 2004);
- i) the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)

#### **Definitions, acronyms and abbreviations**

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

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| <i>“Accounting Officer”</i>                 | means a person appointed by the Municipality in terms of Section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) and who is the head of administration and also the Municipal Manager for the Municipality.   |
| <i>“Act” or “MFMA”</i>                      | means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);   |
| <i>“B-BBEEA”</i>                            | means broad-based black economic empowerment as defined in section 1 of the Broad Based Black Economic Empowerment Act, 2003 (Act No 53 of 2003);  |
| <i>“B-BBEE status level of contributor”</i> | means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;  |
| <i>“Budget Holder”</i>                      | Means the person/s accountable for expenditure from, and income to, particular budget. Each budget holder is responsible for the control of his/her budget and for the general financial administration of his/her area of responsibility. The Budget Holder is responsible for to authorise expenditure from their budget, up to a total of their budget allocation |
| <i>“BVA”</i>                                | means the B-BBEE Verification Agency   |



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| <i>“business day”</i>                | means any day of the week except Saturday, Sunday and public holidays as determined in the Public Holidays Act, 1994 (Act No. 36 of 1994)   |
| <i>“CCA”</i>                         | means the Closed Corporations Act, 1984 (Act No 69 of 1984);  |
| <i>“CFO”</i>                         | means Chief Financial Officer of the Municipality or Director of Finance in this instance;  |
| <i>“CIDB”</i>                        | means Construction Industry Development Board   |
| <i>“CIDB regulations”</i>            | means any regulations issued in terms of the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000);  |
| <i>“close family member”</i>         | a person’s spouse, whether in a marriage or in a customary union according to indigenous law, domestic partner in a civil union, or child, parent, brother, sister, whether such a relationship results from birth, marriage or adoption  |
| <i>“closing date”</i>                | means the time and day specified in the bid documents and/or advertisement of the receipt of bids.  |
| <i>“competitive bidding process”</i> | means a competitive bidding process referred to in paragraph 12(1)(e) of this Policy;   |
| <i>“competitive bid”</i>             | means a bid in terms of a competitive bidding process;  |
| <i>“Construction Works”</i>          | means any work in connection with: <ul style="list-style-type: none"> <li>a) the erection, maintenance, alteration, renovation, repair, demolition or dismantling of or addition to a building or any similar structure;</li> <li>b) the installation, erection, dismantling or maintenance of a fixed plant;</li> <li>c) the construction, maintenance, demolition or dismantling of any bridge, dam, canal, road, railway, sewer or water reticulation system or any similar civil engineering structure; or</li> <li>d) the moving of earth, clearing of land, the making of an excavation, piling or any similar type of work.</li> </ul> |
| <i>“Consultant”</i>                  | means a person or entity providing services requiring knowledge based expertise   |
| <i>“contract”</i>                    | means the <b>Supply Chain</b> agreement that results from the acceptance of a bid <b>or quotations</b> by the Municipality <b>in writing</b> ;  |
| <i>“Contract Owner Manager”</i>      | means the deputy director, senior manager or manager, as the case may be, that is ultimately accountable for all activities during the life cycle of the contract. The Contract <b>Manager</b> <del>Owner</del> can also be seen as the Budget holder <u>involved in the</u>  |

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|                                | <u>planning and execution of a transaction/s involving the procurement of goods, services or works (Refer to the contract Management Framework of this policy).</u>  |
| “council”                      | means the council of the Breede Valley Municipality as contemplated in section 12 of the Local Government : Municipal Structures Act, 1997 (Act 117 of 1997) and includes any committee or employee of the council exercising powers or performing duties delegated to that committee or employee by the council.  |
| “CSD”                          | Central Suppliers Database (National Treasury)   |
| “day(s)”                       | Means calendar days unless the context indicates otherwise;  |
| “delegation”                   | in relation to a duty, includes an instruction a request to perform, or to assist in performing the duty.  |
| “director”                     | means a manager referred to in section 56 of the Municipal Systems Act.  |
| “disability”                   | means, in respect of a person, a permanent impairment of a physical, intellectual, or sensory function, which results in restricted, or lack of ability to perform an activity in the manner, or within the range, considered normal for a human being;  |
| “EME’s”                        | means the Exempted Micro Enterprises;  |
| “emergency”                    | an emergency is an unforeseeable and sudden event with harmful or potentially harmful consequences for the municipality which requires urgent action to address.   |
| “emerging enterprise”          | means an enterprise which is owned, managed and controlled by previously disadvantaged persons and which is overcoming business impediments arising from the legacy of apartheid.  |
| “enterprise”                   | Means a business, company, firm, (commercial) undertaking, venture, organization, operation, concern, industry, corporation, establishment, house, shop, office, bureau, agency, franchise, practice, partnership, consortium, cooperative, conglomerate, group etc. For the purpose of this policy, the term enterprise and consultant include, among others, consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, other multinational organizations, investment and merchant banks, universities, research agencies, government agencies, non-governmental organizations (NGOs) and individuals. |
| “essential community services” | means (in Local Government context) as published in Government Gazette numbers 18043 of 6 June 1997; Government Gazette number 18276 of 12 September 1997;   |

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|                                  | <p>Government Gazette number 18439 of 21 November 1997;<br/> Government Gazette number 18761 of 27 March 1998;<br/> Government Gazette number 22670 of 21 September 2001;<br/> Government Gazette number 27104 of 24 December 2004;<br/> Government Gazette number 28076 of 28 July 2006;<br/> Government Gazette number 29987 of 22 June 2007;<br/> Government Gazette number 30805 of 29 February 2008:</p> <ol style="list-style-type: none"> <li>i. Municipal traffic services and policing.</li> <li>ii. Municipal health</li> <li>iii. Municipal security.</li> <li>iv. Supply and distribution of water.</li> <li>v. Generation, transmission and distribution of power.</li> <li>vi. Fire fighting.</li> <li>vii. The following parts of sanitation services: <ol style="list-style-type: none"> <li>a) Maintenance and operation of water borne sewerage systems, including pumping stations and the control of discharge of industrial effluent into the system;</li> <li>b) Maintenance and operation of sewerage purification works;</li> <li>c) Collection of refuse of an organic nature;</li> <li>d) Collection of infectious refuse from medical and veterinary hospitals or practices;</li> <li>e) Collection and disposal of refuse at a disposal site;</li> <li>f) Collection of refuse left uncollected for fourteen (14) days or longer, including domestic refuse and refuse on public roads and open spaces.</li> </ol> </li> </ol> |
| "end-user"                       | has the same meaning as user-departments;  |
| "final award"                    | in relation to bids or quotations submitted for a contract, means the final decision on which a bid or quote is accepted;  |
| "financial interest"             | means where a municipal staff member is a close family member of a person who is the owner, partner, principal shareholder or member, manager or who serves on the board of directors, etc of a tendering enterprise;  |
| "financial year"                 | means a twelve month period ending 30 June of every year.  |
| "formal written price quotation" | means quotations referred to in paragraph 12(1)(d) of this Policy;   |
| "Head: Supply Chain Management"  | Any post in the approved organisational structure to whom the entire SCM Unit reports to functionally  |

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| <i>"IDP"</i>                                      | means the Integrated Development Plan of Breede Valley Municipal Council;  |
| <i>"in the service of the state"</i>              | means to be –<br>a member of –<br>a) any municipal council;<br>b) any provincial legislature; or<br>c) the National Assembly or the National Council of Provinces;<br>d) a member of the board of directors of any municipal entity;<br>e) an executive member of the accounting authority of any national or provincial public entity; or<br>f) an official of any national or provincial department, national or provincial public entity or institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);<br>g) a member of the accounting authority of any national or provincial public entity; or<br>h) an employee of Parliament or a provincial legislature; |
| <i>"IRBA"</i>                                     | means the Independent Regulatory Board of Auditors;  |
| <i>"long term contract"</i>                       | <i>means a contract with a duration period exceeding one year and does not have the same meaning as contracts of a long term nature referred to in paragraph 22(1)(b)(i) of this policy</i>  |
| <i>"Long term nature contract"</i>                | <i>means a contract as defined by section 33(1) of the Municipal Finance Management Act imposing financial obligations on the Municipality beyond the first three years covered in the approved annual budget</i>  |
| <i>"list of accredited prospective providers"</i> | means the list of accredited prospective providers which the Breede Valley Municipality and the Central Suppliers Database keep in terms of paragraph 14 of this policy;   |
| <i>"MFMA"</i>                                     | means the Local Government : Municipal Finance Management Act, 2003 (Act No 56 of 2003);   |
| <i>"minor breach"</i>                             | Means a breach of the Supply Chain Management process that is technical in nature and is not affecting in any significant way on the essential fairness, equity, transparency, competitiveness or cost effectiveness of the procurement process and the circumstance surrounding the breach are the justifiable. Minor breaches only include breaches of the procurement processes in this Supply Chain Management Policy and not breaches of legislation or regulations.  |

**Commented [MP5]:** Making provision for audit purposes that proof of registration may come from both databases

**Commented [MP6R5]:** New approach-only CSD will be utilized

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| <i>“municipality”</i>                 | means the Breede Valley Municipality;  |
| <i>“municipal manager”</i>            | means a person appointed in terms of section 54A of the Local Government : Municipal Systems Act, 2000 (Act 32 of 2000);   |
| <i>“notice boards”</i>                | means the official notice boards at the municipal offices and libraries;   |
| <i>“ordinary meeting council”</i> of  | Means a council meeting scheduled for an open agenda and not limited the scope of agenda to a special meeting of council.  |
| <i>“other applicable legislation”</i> | means any other legislation applicable to municipal supply chain management, including –<br>a) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);<br>b) the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);<br>c) the Construction Industry Development Board Act, 2000 (Act No.38 of 2000);<br>d) the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);<br>e) the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000);<br>f) the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);<br>g) the Prevention and Combating of Corrupt Activities Act, 2000 (Act No. 12 of 2004);<br>h) Municipal Supply Chain Management Regulations, 2005;<br>i) the Preferential Procurement Regulations, 2017<br>j) The Competitions Act 1998 (Act No. 89 of 1998), |
| <i>“person”</i>                       | means a natural and/or juristic person;  |
| <i>“PFMA”</i>                         | means the Public Finance Management Act, (Act No. 1 of 1999) (as amended by Act 29 of 1999);   |
| <i>“PPPFA”</i>                        | means the Preferential Procurement Policy Framework Act, 2000 (no 5 of 2000);  |
| <i>“PPPFA Regulations”</i>            | means the Preferential Procurement Policy Framework Act Regulations as published in Government Notice 40553, dated 20 January 2017 10 March 2022 in terms of Section 5 of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000), and as amended from time to <del>time</del> ;   |
| <i>“Policy”</i>                       | means the Supply Chain Management Policy of the Breede Valley Municipality;  |
| <i>‘prohibited practice’</i>          | means a practice prohibited in terms of Chapter 2 of the Competition Act 1998, (Act 89 of 1998);   |

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| <b>“QSE”</b>                                   | means Qualifying Small Enterprise;  |
| <b>“quotation”</b>                             | means a stated price that a supplier expects to receive for the provision of specified services, works or goods;  |
| <b>“Regulations”</b>                           | means the Local Government: Municipal Finance Management Act, 2003, Municipal Supply Chain Management Regulations published by Government Notice 868 of 30 May 2005;  |
| <b>“SANAS”</b>                                 | means the South African National Accreditation System;  |
| <b>“SARB”</b>                                  | means the South African Reserve Bank;   |
| <b>“SARS”</b>                                  | means the South African Revenue Services;   |
| <b>“SASAE”</b>                                 | refers to the South African Standard on Assurance Engagements;  |
| <b>“SCM”</b>                                   | means Supply Chain Management;  |
| <b>“SDBIP”</b>                                 | means Service Delivery and Budget Implementation Plan;  |
| <b>“senior manager”</b>                        | means a manager referred to in section 56 of the MSA;   |
| <b>“single provider”</b>                       | Sole supplier- One and Only (Alone of its kind) Supplier (Oxford Dictionary). If such goods or services are produced or available from a single provider only. There is no competition and only one provider exists in South Africa (for example, sole distribution rights);  |
| <b>“small business”</b>                        | means a separate and distinct business entity, including cooperative enterprises and non-governmental organisations, managed by one owner or more which, including its branches or subsidiaries, if any, is predominantly carried on in any sector or sub-sector of the economy mentioned in column 1 of the Small Business Classification Schedule, and which can be classified as a micro-, a very small, a small or a medium enterprise by satisfying the criteria mentioned in columns 3,4 and 5 of the Schedule opposite the smallest relevant size or class as mentioned in column 2 of the Schedule. |
| <b>“SMME’s”</b>                                | refers to Small Medium and Micro Enterprises;   |
| <b>“supply chain management practitioners”</b> | includes the Chief Financial Officer and the Head: Supply Chain Management and any other officials involved in the demand, acquisition, logistics and disposal processes and systems  |
| <b>“survivalist enterprise”</b>                | means a business set up by people unable to find a paid job or get into an economic sector of their choice. Income generated  |

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|  | from these activities usually falls far short of even a minimum income standard, with little capital invested, virtually no skills training in the particular field and only limited opportunities for growth into a viable business. This category is characterised by poverty and the attempt to survive. |
| <i>“tender”</i>  | means a ‘bid’ or a ‘quotation’ in relation to a request to quote or invitation to submit a bid;   |
| <i>“tender box”</i>  | means the specified tender box at the offices of Breede Valley Municipality at Stofberg Huis, 23 Baring Street, Worcester or as indicated in the tender documentation;  |
| <i>“the Regulations”</i>   | means the Local Government: Municipal Supply Chain Management Regulations as published in Government Notice 868 of 2005 in terms of section 111 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) and any amendments;  |
| <i>“Treasury guidelines”</i>   | means any guidelines on supply chain management issued by the Minister in terms of section 168 of the Act   |
| <i>“user-departments”</i>  | means all directorates, departments, sections, units and warehouse (stores) operating within the municipality requiring goods and/or services   |
| <i>“validity period”</i>   | means the period for which a bid is to remain valid and binding as stipulated in the relevant tender document.  |
| <i>“written or verbal quotations”</i>  | means quotations referred to in paragraph 12(1)(b) & (c) of this Policy.  |
| <i>Reckoning of number of days: When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively of every such Sunday and public holiday.</i> |   |
| <i>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, closed corporations and firms, unless the context clearly indicates otherwise.</i>   |   |
| <i>All amounts / limits stated in this document shall be deemed to be inclusive of Value Added Tax (VAT).</i>  |   |

## SECTION 1: IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

### 2. SUPPLY CHAIN MANAGEMENT POLICY

2.1. All officials and other role players in the Supply Chain Management system of the Municipality must implement this policy in a way that-

- (a) gives effect to-
  - (i) section 217 of the Constitution;
  - (ii) Part 1 of Chapter 11 and other applicable provisions of the Act;
  - (iii) Regulations pertaining to Supply Chain Management; and
  - (iv) Guidelines as issued by National Treasury, which affects this Policy.
- (b) is fair, equitable, transparent, competitive, cost effective and gives effect to the principles contained in this policy;
- (c) complies with-
  - (i) the Regulations;
  - (ii) PPPFA Regulations; and
  - (iii) is consistent with other applicable legislation;
- (d) does not undermine the objective for uniformity in Supply Chain Management systems between organs of state in all spheres;
- (e) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector;
- (f) applies the highest ethical standards, any minimum norms and standards that may be prescribed in terms of section 168 of the Act; and/or
- (g) promotes local economic development.

2.2. This Policy applies when the municipality-

- (a) procures goods or services;
- (b) disposes of goods no longer needed;

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- (c) selects contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; and/or
- (d) selects external mechanisms referred to in section 80 of the MSA for the provision of municipal services in circumstances contemplated in section 83 of that Act.

2.3. This Policy, except where provided otherwise, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, or the acquisition of services of attorneys and advocates. The latter procurement will be dealt with in terms of Legal Representatives Accreditation and Appointment Policy.

### **3. AMENDMENT OF THE SUPPLY CHAIN MANAGEMENT POLICY**

3.1. The Accounting Officer must –

- (a) at least annually review the implementation of this policy; and
- (b) when the Accounting Officer considers it necessary, submit proposals for the amendment of this policy to the Council.

3.2 If the Accounting Officer submits proposed amendments to the Council that differs from the model policy issued by the National Treasury, the Accounting Officer must –

- (a) ensure that such proposed amendments comply with the Regulations; and
- (b) report any deviation from the model policy to the National Treasury and the relevant provincial treasury.

3.3 When amending this Supply Chain Management policy the need for uniformity in supply chain practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of Supply Chain Management systems for small businesses must be taken into account.

3.4 The Accounting Officer must in terms of section 62(1)(f)(iv) of the Act, take all reasonable steps to ensure that the municipality implements the Supply Chain Management policy.

### **4. DELEGATION OF SUPPLY CHAIN MANAGEMENT POWERS AND DUTIES**

- 4.1. The council hereby delegates all powers and duties to the Accounting Officer which are necessary to enable the Accounting Officer -
- (a) to discharge the Supply Chain Management responsibilities conferred on Accounting Officers in terms of:
    - (i) Chapter 8 or 10 of the Act; and
    - (ii) this Policy.
  - (b) to maximize administrative and operational efficiency in the implementation of this Policy;
  - (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this Policy; and
  - (d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- 4.2 Section 79 of the Act apply to the sub-delegation of powers and duties delegated to an Accounting Officer in terms of this policy.
- 4.3 The Accounting Officer may not sub-delegate any Supply Chain Management powers or duties to a person who is not an official of the municipality or to a committee, which is not exclusively composed of officials of the municipality.
- 4.4 This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this policy.

## **5. SUB-DELEGATIONS**

- 5.1. The Accounting Officer may in terms of section 79 of the Act sub-delegate any Supply Chain Management functions, powers and duties, including those delegated to the Accounting Officer in terms of this policy, but any such sub-delegation must be consistent with sub-paragraph (2) and paragraph 4 of this policy.
- 5.2. The Council specifically delegate the power to make a final award;
- a) above R10 million (VAT included) to the Accounting Officer only;
  - b) above R200 000.00 (VAT included), but not exceeding R10 million (VAT included), to a Bid Adjudication Committee consistent with paragraph 19, 26 and 29 or any other provision of this policy;

- c) Below R200 000 (VAT incl.) may be sub-delegated as per Council's delegations and or as attached as Annexure B referring to all expenditure related systems delegations, pertaining to the procurement of goods and services and construction works;
  - d) Not exceeding R200 000 (VAT incl.) AND not less than R30 000,01 (VAT incl.) may be sub-delegated, but only to the Manager/Head of Procurement;
  - e) Not exceeding R30 000 (VAT incl.) may be sub-delegated, but only to the Manager/Head of Procurement.
  - f) The abovementioned delegation will be signed off by the senior manager Supply Chain Management unit on a monthly basis in presenting these reports to the accounting officer, as prescribed in the SCM Regulation; 5(3) -report and the monthly management report to the CFO;
- 5.3. An official or Bid Adjudication Committee to which the power to make final awards has been sub-delegated in accordance with this policy, must within five days of the end of each month submit to the official referred to in this policy, a written report containing particulars of each final award made by such official or committee during that month, including –
  - (a) the amount of the award;
  - (b) the name of the person to whom the award was made; and
  - (c) the reason why the award was made to that person.
- 5.4. A written report referred to in this policy must be submitted –
  - (a) to the Accounting Officer, in the case of an award by—
    - (i) a Bid Adjudication Committee of which the Chief Financial Officer is a member; or
    - (ii) the Chief Financial Officer; or
  - (b) to the Chief Financial Officer, in the case of an award by an official or officials referred to in this Policy.
  - (c) The awards scheduled must be published on Council's website in terms of Section 75(g) of the Act).
- 5.5. Sub paragraphs 5.3 and 5.4 of this policy do not apply to procurements out of petty cash.
- 5.6. This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub-delegated, to make a final award in a competitive bidding process, otherwise than through the

committee system provided for in paragraph 26 of this Policy. Also, refer to paragraph 4.4 and 5.2(a) of this Policy.

- 5.7. No Supply Chain Management decision-making powers may be delegated to an advisor or consultant.

## **6. OVERSIGHT ROLE OF COUNCIL**

- 6.1. Council must maintain oversight over the implementation of this policy.
- 6.2. For the purposes of such oversight the Accounting Officer must-
- (a) within 30 days of the end of each financial year submit a report on the implementation of the Supply Chain Management policy to the council of the municipality; and
  - (b) whenever there are serious and material problems in the implementation of this policy, immediately submit a report to the council.
- 6.3. The Accounting Officer must, within 10 days of the end of each quarter, submit a report on the implementation of this policy to the Executive Mayor of the municipality.
- 6.4. The report referred to in paragraph 6.3 above shall also be tabled to council on a quarterly basis. The report may be included as part of any other report to serve before council.
- 6.5. The reports must be made public in accordance with section 21A of the MSA and placed on the municipal website.

## **7. SUPPLY CHAIN MANAGEMENT UNIT**

- 7.1. A Supply Chain Management unit is hereby established to implement this policy.
- 7.2. The Chief Financial Officer is administratively in charge of the supply chain management unit, which operates under the direct supervision of the Senior Supply Chain Manager, to whom this duty has been sub-delegated in terms of Section 82 of the Act.

## **8. TRAINING OF SUPPLY CHAIN MANAGEMENT OFFICIALS**

The training of officials involved in implementing this policy should be in accordance with relevant legislation, including any Treasury guidelines on Supply Chain Management training.

## **SECTION 2 : SUPPLY CHAIN MANAGEMENT SYSTEM**

### **9. FORMAT OF THE SUPPLY CHAIN MANAGEMENT SYSTEM**

This Policy provides systems for –

- (i) demand management;
- (ii) acquisition management;
- (iii) logistics management;
- (iv) disposal management;
- (v) risk management; and
- (vi) performance management.

## **PART 1: DEMAND MANAGEMENT**

### **10. SYSTEM OF DEMAND MANAGEMENT**

- 10.1. An effective system of demand management is established and must be implemented in order to ensure that—
- (a) the resources required by the municipality to support its operational commitments and its strategic goals as outlined in the Integrated Development Plan (IDP) are achieved; and
  - (b) the Performance Management System (PMS) must give the necessary support to ensure that the resources required, to support the strategic and operational commitments of the municipality, are delivered at the correct time, at the right price and at the right location, and that the quality and quantity satisfy the needs of the municipality.
- 10.2 This Policy provides for an effective demand management system to ensure that user-departments—

- a) include timely planning and management processes to ensure that all goods and services required by the municipality are quantified, budgeted for and timeously and effectively delivered at the right locations and at the critical delivery dates, and are of the appropriate quality and quantity at a fair cost;
- b) have sufficient resources required by the Municipality to support its operational commitments and its strategic goals outlined in the Integrated Development Plan, the Budget and the Service Delivery and Budget Implementation Plan.
- c) submit their proposed procurement plans to the Supply Chain Management unit during the IDP and draft budget processes.
- d) Develops the Demand Management Plan in conjunction with the IDP, Service Delivery and Budget Implementation Plan (SDBIP) and annual budget.
- e) Submit their Demand Management Plan and to be approved by the Accounting Officer or his or her delegate annually.
- f) Review their Demand Management Plan regularly and submit to the Accounting Officer or his delegates on a regular basis.
- g) Co-ordinate their Demand management plan in consultation with SCM officials of the Municipality during the draft budget phase.

The outcome of this activity should be a detailed planning document that outlines what goods, works or services should be procured, the manner in which they should be procured as well as the timelines to execute the procurement functions.

- 10.3 The Accounting Officer may in terms of section 79 of the Act sub-delegate any Supply Chain Management powers and duties, including those delegated to the Accounting Officer in terms of this Policy, but any such sub-delegation must be consistent with this Policy.

## PART 2: ACQUISITION MANAGEMENT

### 11. SYSTEM OF ACQUISITION MANAGEMENT

- 11.1 An effective system of acquisition management, as set out in this Part, is established and must be implemented in order to ensure that—
- (a) goods and services are procured by the municipality in accordance with **authorised processes only**;
  - (b) any expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;

- (c) the threshold values for the different procurement processes are complied with;
- (d) bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
- (e) any Treasury guidelines on acquisition management are properly taken into account.

11.2 All requests (requisitions) for the procurement of goods and services shall be directed and submitted to the offices of the Supply Chain Management unit in time for the unit to follow the procurement processes diligently and must be—

- (a) on the specific requisition system, duly authorised and clearly specifying—
  - (i) the nature of the goods or the services required in terms of this policy;
  - (ii) the specifications and quantity of the goods or duration of the services;
  - (iii) the correct vote (line item) number with sufficient funding to conclude the process;
  - (iv) the realistic estimated cost of the goods or services required;
  - (v) any requirement in terms of the CIDBA;
  - (vi) any requirement in terms of the PPPFA; and
  - (vii) any other requirement (legislative, site meeting, contact details, etcetera).
- (b) captured and authorised by a duly authorised official of the user-department, as delegated.

11.3. When procuring goods and / or services of a capital nature section 19 of the Act regarding budgeting and costing of capital projects must be complied with.

11.4. When procuring goods and / or services which will have future budgetary implications, section 33 of the Act regarding contracts must be complied with.

11.5 When procuring goods or services contemplated in section 110(2) of the Act, the Accounting Officer must make public the fact that such goods or services are procured otherwise than through the municipality's Supply Chain Management system, including –

- (a) the kind of goods or services; and
- (b) the name of the supplier

## 12. RANGE OF PROCUREMENT PROCESSES

12.1 Goods and services may only be procured by way of-

- (a) Petty cash purchases up to a transaction value of R 2 000.00 (VAT included) for items specified in the Petty Cash policy;
- (b) One written price quotation up to a transaction value of R 2 000.00 (VAT included) Verbally and confirmed in writing;
- (c) Three written price quotations for written and verbal procurements of a transaction value over R 2 000.00 up to R30 000.00 (VAT included);
- (d) Formal written price quotations for procurements of a transaction value over R 30 000.00 up to R200 000.00 (VAT included); and
- (e) A competitive bidding process for–
  - (i) Procurements above a transaction value of R200 000.00 (VAT included); and
  - (ii) The procurement of long-term contracts.

12.2. The Accounting Officer may, in writing lower, but not increase, the different threshold values specified in subparagraph 12(1); The Accounting Officer may, in writing -

- (a) lower, but not increase, the different threshold values specified in subparagraph (1); or
- (b) direct that –
  - (i) Petty cash purchases in terms of Council's Petty Cash Policy for procurement transactions with a value up to R2 000 (Incl. VAT);



- (ii) written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000 (Incl. VAT);
- (iii) formal written price quotations be obtained for any specific procurement of a transaction value lower than R30 000 (Incl. VAT); or
- (iv) A competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000 (Incl. VAT).

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

12.4 Formal distinct municipal bidding documents, complying with National Treasury prescripts, must be utilised at all times.

### **13. GENERAL PRECONDITIONS FOR CONSIDERATION OF WRITTEN PRICE QUOTATIONS OR BIDS**

A written quotation or bid may not be considered, unless the provider who submitted the quotation or bid –

- (a) has furnished the Municipality with that provider's -
  - (i) full name or name of the enterprise, type of enterprise and/or relevant enterprise registration documentation;
  - (ii) identification number or company or other registration number; and
  - (iii) tax reference number and VAT registration number, if any;
- (b) has authorised the municipality to obtain a tax clearance, by supplying the municipality with the PIN code for the South African Revenue Services that the provider's tax matters are in order;
- (c) has indicated -
  - (i) whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
  - (ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholders are in the service of the state, or has been in the service of the state in the previous twelve months;
  - (iii) whether a close family member of the provider or a director, manager, shareholder or stakeholder referred to in subparagraph (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.

### **14. LISTS OF ACCREDITED PROSPECTIVE PROVIDERS**

14.1 The Accounting Officer must –

- (a) keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements through written and formal ~~(closed)~~ written price quotations;
- (b) at least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers; and
- (c) disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector (check before listing if prospective provider is not registered on the List of Restricted Suppliers (forward e-mail to restrictions@treasury.gov.za) and the Register for Tender Defaulters – National Treasury website [www.treasury.gov.za](http://www.treasury.gov.za)).

**Commented [MP12]:** Was not removed in previous review

- 14.2 The information required as part of the database listing criteria for accredited prospective providers may ~~must~~ include the following: ~~are as follows, but not limited to:~~

**Commented [MP13]:** ....may include, since criteria are changing throughout a fin year; i.e: PPPFA

- 1) Name of supplier / service provider;
- 2) Street address;
- 3) Postal address;
- 4) Contact person in Sales Department;
- 5) Sales Department's telephone number;
- 6) Sales Department's fax number;
- 7) Sales Department's cell number;
- 8) Sales Department's email address;
- 9) Contact person in Accounts Department;
- 10) Accounts Department's telephone number;
- 11) Accounts Department's fax number;
- 12) Accounts Department's email address;
- 13) VAT registration number;
- 14) Bank details;
- 15) Type of industry;
- 16) Valid certification for specialised services;
- ~~17) Valid tax clearance pin number;~~
- 18) Certified Copy of Certificate of Incorporation/Registration: Company, Closed Corporation or Trust (Obtainable from CIPC);
- 19) Certified copies of Identity Document(s) of Owner(s), Member(s), Trustees or Shareholder(s) (Original Certified Copy);

**Commented [MP14]:** Duplication of par 24 - remove

- 20) Certified copies of Identity Document(s) of Authorised Person/Signatory (Original Certified Copy);
- 21) Copy of Registration Documents of Construction Industry Development Board (Obtainable from CIDB) - applicable to construction industry only;
- 22) Organ of State: Resolution of the Board; Juristic person.
- 23) Copy of Joint Venture Agreement;
- 24) Valid Tax Clearance number and pin code (Obtainable from SARS) proof that tax matters are in order;
- 25) Copy of latest Municipal Account(s) or Affidavit confirming of residential address or renting of business premises;
- 26) Certified letter from banking institution, confirming banking details;
- 27) Health certificate (Catering Suppliers);
- 28) Copy of registration documentation if registered with Professional Board (e.g. engineering, accounting, law, architectural etc.);
- 29) Letter of good standing from the Office of the Compensation Commissioner;
- 30) Certified copy of original valid B-BBEE Rating certificate, EME letter Obtainable from a SANAS accredited verification agency or an affidavit.
- 31) Completion of all related Municipal Bidding Documents; and
- 32) Application to register as prospective provider must be duly completed on the Central Suppliers Database (CSD) and/or, signed and submitted to Breede Valley Municipal Database.
- 33) Or any other information relevant to a specific tender or changing legislation or regulations, as substantiated in the tender invitation to tender document.

- 14.3 The list must be compiled from the applicants who have applied in terms of paragraph 14.1 (b) and who meets the listing criteria as specified in paragraph 14.1 (c) and 14.2.
- 14.4 This registration list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services, if needed. Prospective providers must be allowed to submit applications for listing at any time. It will remain the obligation of the prospective providers to adequately inform the CSD of any changing information, which is accurate.
- 14.5 This list must be compiled per commodity and per type of service.

**Commented [MP15]:** With the phased approach of implementation of the new SCM system, it does not allow BVM any other option as to adopt 2 databases as interim measure for audit compliance

**Commented [MP16R15]:** Decision to primarily use CSD confirmed with CFO

**Commented [MP17]:** This will allow BVM to obtain any other information in a fast changing legislation arena AND protect BVM from Popi Act resistance for information by bidders

**Commented [MP18]:** More than one database reference

- 14.6 The accredited prospective suppliers must be reviewed and updated annually.
- 14.7 The list's may be used by the Department of Local Economic Development (LED) or other internal related departments to promote participation of Small, Medium and Micro Enterprises (SMME's), in order to increase local economic spending, ensuring a sustainable economic environment within BVM.

## 15. PETTY CASH PURCHASES

- 15.1 The general guideline and conditions are that petty cash purchases referred to in paragraph 12(1) (a) of this Policy are for minor items that are purchased for up to R2000.00 (VAT included) (Refer to Petty Cash Policy), which must include conditions;
  - a) Determining the terms on which a manager may delegate responsibility for petty cash to an official reporting to the manager
  - b) Limiting the number of petty cash purchases or the maximum amounts per month for each manager
  - c) Excluding any types of expenditure from petty cash purchases, where this considered necessary; and
  - d) Requiring monthly reconciliation reports from each manager to the Chief Financial Officer, including;
    - i. Total petty cash purchases for the month
    - ii. Receipts and appropriate documents  
(Refer to the Petty Cash Policy)
- 15.2 The Chief Financial Officer must keep the petty cash and apply the conditions as set out in the petty cash policy for the procurement of goods by means of petty cash purchases.
- 15.3 The Chief Financial Officer is authorised to increase the petty cash float as stipulated in the petty cash policy for a specific period and when justified.
- 15.4. The following process is not part of petty cash purchases, however needs consideration by user departments as preferred SCM process, above petty cash procedures:
 

The conditions for the procurement of goods by means of written quotations referred to in paragraph 12(1)(b) of this Policy for **minor items** that are purchased for up to R2,000 (Incl. VAT), are as follows: -

  - 15.4.1 written quotations for transactions must be obtained from at least one prospective supplier or service provider preferably from, but

not limited to, suppliers or service providers whose names appear on the list of accredited prospective providers of the Municipality provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria set out in paragraph 14(1)(b), (c) and (d) of this Policy;

15.4.2 if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.

## 16. WRITTEN PRICE QUOTATIONS

16.1 The conditions for the procurement of goods or services through written price quotations are as follows -

- (a) a quotation must be obtained from at least one provider, as set out in paragraph 12.1 (b) of this Policy, preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the municipality, provided that if quotations are obtained from a provider who are not listed, such provider must meet the listing criteria set out in paragraph 14.1 (c) and 14.2 of this Policy;
- (b) quotations must be obtained from at least three different providers, as set out in paragraph 12.1 (c) of this Policy, preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the municipality, provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria set out in paragraph 14.2 of this Policy;
- (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the Accounting Officer or another official designated by the Accounting Officer; and
- (e) the names of the responsive potential providers requested to provide such quotations, with their quoted prices, must be recorded.
- (f) providers must submit such quotations in writing not later than the date and time indicated on the request to quote form. Such quotation must be duly signed and dated and may be submitted per facsimile, e-mail or otherwise;

16.2 No orders may be placed based on verbal price quotations, except if written confirmation is obtained.

16.3 No information contained in a quotation, written or verbal, may be made available by an official to another prospective bidder.

## **17. FORMAL WRITTEN PRICE QUOTATIONS**

17.1 The conditions for the procurement of goods or services through formal written price quotations are as follows –

- (a) quotations must be obtained in writing from at least three different providers, as set out in paragraph 12.1 (d) of this Policy, whose names appear on the list of accredited prospective providers of the municipality;
- (b) quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria set out in paragraph 14.1(c) and 4.2 of this Policy;
- (c) if it is not possible to obtain at least three quotations, the reasons must be recorded by the supply chain practitioner and approved by the Chief Financial Officer or an official designated by the Chief Financial Officer, in terms of delegations.
- (d) providers must submit quotations by hand, per facsimile, email or registered post, in writing, duly signed and dated, in sealed envelopes, the quotation reference number clearly indicated on the outside, and must be placed in the tender box or posted to reach the municipality strictly not later than the closing date and time as indicated in the request/invitation to quote. Faxed, e-mailed or any quote received after the closing date and time will not be considered. Quotes received, including those received through email or facsimile, will be opened strictly at the closing time indicated and recorded in the formal written quotation register.

17.2 A designated official referred to in paragraph 17.1 (d) must three (3) working days of the end of each month report to the Chief Financial Officer on any approvals given during that month by that official in terms of that paragraph.

17.3 As each quote is opened the name of the bidder and only the amount (total) quoted shall be read out. An employee shall date-stamp the quotation and all enclosures related to prices, delivery periods and

special conditions. Bids and quotations shall be numbered in the sequence in which they are opened and the words “and last” shall be endorsed on the last quotation. In instances where only one quotation has been received the words “one and only” shall be endorsed on such quote.

## **18. PROCEDURES FOR PROCURING GOODS OR SERVICES THROUGH WRITTEN PRICE QUOTATIONS AND FORMAL WRITTEN PRICE QUOTATIONS**

18.1. The procedure for the procurement of goods or services through written price quotations or formal written price quotations, is as follows –

- (a) all requirements in excess of R30 000.00 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, be advertised for at least seven (7) days on the website and an official notice board of the municipality;
- (b) when using the list of accredited prospective providers on going competition amongst providers must be promoted by inviting providers to submit quotations on a rotation basis;
- (c) the Accounting Officer must take all reasonable steps to ensure that the procurement of goods and services through written or verbal quotations or formal written price quotations is not abused;
- (d) the accounting officer or CFO must on a monthly basis be notified in writing of all written or verbal quotations and formal written price quotations accepted by an official acting in terms of a sub-delegation
- (e) The Supply Chain Management unit must comply with all requirements for proper record keeping.
- (f) quotes received must be evaluated on a comparative basis taking into account unconditional discounts;
- (g) responsive quotes equal to or below R30 000.00 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;
- (h) responsive and acceptable offers of more than R30 000.00 (VAT included), which are subject to the preference points system (PPPFA and associated Regulations and policy), must be awarded to the bidder who scored the highest points;

18.2 No official shall engage in contact with a prospective supplier in respect of a quotation which the supplier intends to submit except on prior



authorisation by the SCM manager or the CFO, where clarification of specifications is required from either party, or where the Accounting Officer or his delegate may negotiate with identified preferred bidders. Any such communication must be recorded and appropriately filed with the quote or formal quote documentation.

## **19. COMPETITIVE BIDDING PROCESS**

- 19.1 Goods or services above an estimated transaction value of R200 000.00 (Vat included) and long-term contracts may only be procured through a competitive bidding process, subject to paragraph 11.2 of the SCM regulations which is referring to section 110(2) of the MFMA; and
- 19.2 No requirement for goods or services above an estimated transaction value of R200 000.00 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.
- 19.3 No official shall engage in contact with a prospective bidder in respect of a bid which the supplier intends to submit except where clarification of specifications is required from either party, or where the Accounting Officer may negotiate with identified preferred bidders. Any such communication must be recorded and appropriately filed with the bid documentation and requires pre-authorisation by the SCM manager or CFO

## **20. PROCESS FOR COMPETITIVE BIDDING**

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

- (a) Compilation of bidding documentation as detailed in paragraph 21;
- (b) Public invitation of bids as detailed in paragraph 22;
- (c) Site meetings or briefing sessions as detailed in paragraph 22;
- (d) Handling of bids submitted in response to public invitation as detailed in paragraph 23;
- (e) Evaluation of bids as detailed in paragraph 28;
- (f) Award of contracts as detailed in paragraph 29;
- (g) Administration of contracts: After approval of a bid, the Accounting Officer and the bidder must enter into a written agreement unless the

bidding documentation constitutes an acceptable contract (refer to the Contract Management Framework in this policy); and

- (h) Proper record keeping: Original and legal copies of written agreements should be kept in a secure place for reference purposes, in terms of relevant legislation.

## 21. BID DOCUMENTATION FOR COMPETITIVE BIDS

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

- (a) take into account-
  - i. the general conditions of contract and any special conditions of contract, if specified;
  - ii. any Treasury guidelines on bid documentation;
  - iii. the requirements of the Construction Industry Development Board, as contemplated in the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000) and regulations, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
- (b) include the preference points system to be used as contemplated in the Preferential Procurement Regulations (refer to the Preferential Procurement Policy included as part B of this policy) and evaluation and adjudication criteria, including any criteria required by other applicable legislation; and
- (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish-
  - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements-
    - (aa) for the past three years; or
    - (bb) since their establishment if established occurred during the past three years;
  - (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services

towards a municipality or other service provider in respect of which payment is overdue for more than 30 days.

- (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract; and
  - (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality is expected to be transferred out of the Republic;
  - (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), arbitration, or, when unsuccessful, in a South African court of law, in terms of the GCC;
- 21.2 A non-refundable charge shall be raised for each bid document (forms, plans, specifications, samples and any other bid documentation), depending on the nature, magnitude and value of technical information or samples provided by the municipality for bids and tenders as determined by the Municipal Manager from time to time. Such charge shall be paid in advance, payable in cash, electronic fund transfer or bank guaranteed cheque. Electronic bid documents may be used as provided on the Municipal Website as determined by the municipality. No charges will apply to web tender documents sited by the municipality. Suppliers/Vendors will be found non-responsive when tampering or changing, re-typing any tender document or part thereof.
- 21.3 Bid documents may allow bidders to bid for one or more items or for a part of one or more items but the Municipality reserves the right to accept part of a bid or a complete bid or quotation even if it is not the lowest, provided the interests of the Municipality be best served thereby. Bid documents must be specific as certain contracts, e.g. the construction of a bridge, may require that the whole contract is to be completed by the same contractor.
- 21.4 After bid/quotations have been opened bidders may not supplement their original offer if the original offer was incomplete.

## 22. PUBLIC INVITATION FOR COMPETITIVE BIDS

22.1. The procedure for the invitation of competitive bids is as follows:

- (i) (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, but not limited thereto:
  - (i) the municipal website,
  - (ii) the National Treasury e-Tender portal and
  - (iii) on the i-Tender website of the CIDB for construction procurement related transactions
  - (iv) notice boards of the municipality or
  - (v) any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and in newspapers commonly circulating locally.
- (b) the information contained in a public advertisement, must include-
  - I. the closure date and time for the submission of bids, which may not be less than 30 days in the case of transaction over R10 million (VAT included), or which are of a long-term nature or of a large complex nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to paragraph 22.2 of this policy;
  - II. a statement that bids may only be submitted on the bid documentation provided by the municipality;

22.2 The Accounting Officer may determine a closure date for the submission Of bids which is less than 30 days requirement, or 14 days, 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.

22.3 Bids submitted must be sealed and marked as indicated in the bid advertisement and the bid document.

22.4 Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies

22.5 the charge for the bid documentation as determined in terms of paragraph 21.2 of this Policy;

## 23. PROCEDURE FOR HANDLING, OPENING AND RECORDING BIDS

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

- (a) Bids-
  - (i) must be opened and read out only in public;
  - (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
- (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price;
- (c) The Accounting Officer must-
  - (i) record in a register all bids received in time;
  - (ii) make the register available for public inspection;
  - (iii) publish the entries in the register and the bid results on the website; and
  - (iv) notify the successful and unsuccessful bidders in writing **immediately** after the award is **made**.
- e) An independent observer from another internal department can be requested to attend the opening of bid documents at the request of the Supply Chain Management representative.

Commented [MP19]: Not part of SCM Regs, additionally added

### 23.2 Stamping of bids and reading out of names

23.2.1 As each bid is opened the name of the bidder and the amount shall be read out. An employee shall date-stamp the bid or quotation and all enclosures related to prices, delivery periods and special conditions. Bids and quotations shall be numbered in the sequence in which they have been opened and the words "and last" shall be endorsed on the last bid or quotation. In instances where only one bid has been received the words "and only" shall be endorsed on such bid.

23.2.2 Where prices have not been inserted in all relevant spaces on the form and such items have not been deleted by bidders, such spaces shall be indicated "no price" by the employee who opens the bids or quotations.

Note: It is the policy of the Municipality to disclose bid prices. With regard to quotations of a value below R200 000.00 (VAT included), names of bidders and prices will also be read out, will be registered in a register and will be available for inspection at the Supply Chain Management Unit.

23.2.3 Details on how bidders responded to the relevant evaluation criteria e.g. SMME contribution, community benefits, job creation, environmental impact, etc. should not be disclosed.

### 23.3 Late bids

23.3.1 Bids or quotations arriving after the specified closing time shall not be considered and where practicable and cost effective shall be returned to the bidder unopened with a letter explaining the circumstances OR the un-opened offer will be archived.

23.3.2 Bid documents must clearly state the venue where the bidding box is situated for each bid. Any bid delivered to the wrong bid box will not be considered, even if it was delivered on time.

23.3.3 Where it's necessary to open a late bid or quotation to obtain the name and address of the sender, each page of the document shall be stamped "late bid" before the bid is returned to the bidder. The envelope must be stamped and initialled in like manner and must be retained for record purposes.

### 23.4 Amendments before the closing date

23.4.1 The Municipality is entitled to amend any bid condition, validity period, specification or plan, or extend the closing date of such a bid or quotation before the closing date, provided that such amendments or extensions are advertised or that all bidders to whom bid documents have been issued, are advised in writing per registered post or by fax or by e-mail of such amendments or of the extension clearly reflecting the new closing date and time. For this reason, employees and authorised service providers issuing bids shall keep a record of the names, addresses and contact numbers of the persons or enterprises to whom bid documents have been issued. Bidders who obtained web bid documents should ensure that they confirm on the day or prior to the submission date, that there was no additional communication regarding extensions or changes to the original website placement.

### 23.5 Dealing with bids and quotations if the closing date thereof has been extended.

23.5.1 Where the closing date of a bid or quotation is extended, the notice which makes known such extensions shall also mention the bids or quotations already received, will be retained unopened in the bidding box and be duly considered after the expiry of the extended period, unless the bidder requests that such bid or quotation to be returned to the bidder or unless the bidder cancels it by submitting a later dated bid or quotation before the extended closing date.

23.6 No amendments after the closing date allowed.

23.6.1 The municipality is not entitled to amend any bid condition, specification or plan, after the closing date of the bid and before the acceptance of a bid or quotation has been notified.

23.6.2 No person may amend or tamper with any tenders, quotations, contracts or bids after their submission.

## **24. NEGOTIATIONS WITH PREFERRED BIDDERS**

24.1 The Accounting Officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation-

- (a) does not allow any preferred bidder a second or unfair opportunity;
- (b) is not to the detriment of any other bidder;
- (c) does not lead to a higher price than the bid as submitted; and
- (d) does not lead to a lower price in respect of sale of land / goods.

24.2 Minutes of such negotiations must be kept for record purposes and as far as practical be made part of the final contract.

24.3 No unauthorised communication with bidders and prospective providers.

- (a) Where bids and quotations have been submitted to the municipality, a bidder may not communicate with any councillor, official, or authorised service provider on any matter regarding his bid, quotation or offer other than a notice of withdrawal.
- (b) No municipal personnel may communicate with a bidder or any other party who has an interest in a bid, during the period between the closing date for the receipt of the bid or quotation (or date of receipt of an offer), and the date of notification of the successful

bidder of acceptance of his bid, quotation or offer, except as provided for in paragraph (c) below. Every such case of unauthorised communication shall forthwith be reported to the Supply Chain Management Unit as well as the relevant chairperson of the Bid Adjudication Committee. A bid or quotation in respect of which unauthorised communication has occurred may be disqualified.

- (c) The chairperson of the Bid Adjudication Committee, as determined in paragraph 29(2), may authorise an employee or authorised service provider, in writing, to communicate with a bidder during the period mentioned in subsection (b) above for the purpose of-
  - i) explaining and verification of declarations made in the bid response;
  - ii) confirming technical particulars and the compliance thereof with specifications;
  - iii) clarifying delivery times/quantities;
  - iv) extending the validity period of a bid;
  - v) clarifying any other commercial aspect.
- (d) In all cases where authority has been granted to communicate with bidders in terms of paragraph (c) above, it should be clearly stated in the submission to the Bid Adjudication Committee the nature of the communication as well as by whom such authority to communicate has been granted.

## **25. TWO-STAGE BIDDING PROCESS**

25.1 A two-stage bidding process is allowed for-

- (a) large complex projects;
- (b) projects where it may be undesirable to prepare complete detailed technical specifications; or
- (c) long term projects with a duration period exceeding three years, subject to section 33 of the Act.

25.2 In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.



25.3 In the second stage, final technical proposals and priced bids should be invited.

25.4 A two envelope system differs from a two-stage (prequalification) 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.

## **26. COMMITTEE SYSTEM FOR COMPETITIVE BIDS**

26.1 A committee system for competitive bids is hereby established, consisting of the following committees for each procurement or cluster of procurements as the Accounting Officer may determine:

a. Competitive bids system consisting of:

(i) Bid Specification Committee;

(ii) Bid Evaluation Committee; and

(iii) Adjudication Committee.

b. The Accounting Officer appoints the members of each committee, taking into account section 117 of the Act;

c. A neutral or independent observer, appointed by the Accounting Officer, must attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.

26.2 The committee system must be consistent with-

(a) paragraph 27, 28 and 29 of this Policy; and

(b) any other applicable legislation.

26.3 The Accounting Officer may apply the committee system to formal written price quotations.

## **27. BID SPECIFICATION COMMITTEE**

27.1 The appropriate Bid Specification Committee must compile the specifications for each procurement transaction of goods or services by the municipality.

27.2 Specifications-

(a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;

- (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;
- (c) must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
- (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification;
- (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word "equivalent";
- (f) must indicate each specific goal or functionality for which points may be awarded in terms of the points system set out in the Preferential Procurement Policy Framework Act, 2000, read with the Preferential Procurement Regulations of 2017, as amended; and
- (g) must be approved by either the Chief Financial Officer or senior manager Supply Chain Management prior to publication of the invitation for bids in terms of paragraph 22 of this policy.

A Bid Specification Committee must be composed of one or more officials of the municipality, including, but not limited to:-

- a) a delegated supply chain management practitioner;
- b) the manager responsible for the function involved (budget holder)
- c) when appropriate, include external specialist advisors.

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

## **28. BID EVALUATION COMMITTEES**

28.1 A Bid Evaluation Committee must-

- (a) evaluate bids in accordance with-

- (i) the specifications for a specific procurement;
- (ii) the general criteria to evaluate technical and financial ability;
- (iii) the framework for the adjudication of bids as contained in Part B of the Preferential Procurement Policy; and
- (iv) the points system set out in terms of paragraph 27(2)(f).

- (b) evaluate each bidder's ability to execute the contract;
- (c) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears,
- (d) submit to the Bid Adjudication Committee a report and recommendations regarding the award of the bid or any other related matter; and
- (e) consider only those bidders who has submitted and complied with the material terms and requirements of the bid documentation;
- (f) when calculating comparative prices, take into account any discounts which have been offered unconditionally, however, a discount which has been offered conditionally must, despite not being taken into account for evaluation purposes, be implemented when payment is effected;

28.2 A Bid Evaluation Committee must as far as possible be composed of-

- (i) the budget holder and other officials from departments requiring the goods or services
- (ii) at least one delegated supply chain management practitioner.

28.3 A senior Supply Chain Management practitioner delegated by the CFO or a budget holder delegated by the relevant director may be the chairperson of the Bid Evaluation Committee.

28.4 The quorum for each meeting of the Bid Evaluation Committee is at least one senior Supply Chain Management practitioner and representative(s) of the relevant directorates.

## **29. BID ADJUDICATION COMMITTEES**

29.1 A Bid Adjudication Committee must-

- (a) consider the report and recommendations of the Bid Evaluation Committee; and

(b) either-

- (i) depending on its delegations, make a final award or a recommendation to the Accounting Officer to make the final award; or
- (ii) make another recommendation to the Accounting Officer how to proceed with the relevant procurement.

29.2 A Bid Adjudication Committee must consist of at least four of the following officials—

- (a) the Chief Financial Officer, or if the Chief Financial Officer is not available, a manager in the budget and treasury office reporting directly to the Chief Financial Officer and designated by the Chief Financial Officer; and
- (b) the senior manager Supply Chain Management unit or if the manager Supply Chain Management unit is not available, at least one senior Supply Chain Management practitioner or delegate;
- (c) and ~~two~~ **three** of the following technical experts who are officials of the municipality;

- 1) the Director: Strategic Support Services or his designated delegate; and/or
- 2) the Director: Community Services or his designated delegate; and/or;
- 3) the Director: Public Services or his designated delegate; and/or
- 4) the Director: ~~Engineering Technical~~ Services or his designated delegate; and/or

**Commented [MP20]:** SCM REGS 29(2) Clarified by NT

**Commented [MP21]:** Additional Directorate/s with new names

- (d) if deemed necessary, a technical expert in the relevant field who is an official, if such an expert exists.

29.3 The Accounting Officer may appoint the CFO as Chairperson of the committee. If the Chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting and will be documented in the minutes.

29.4 Neither a member of a Bid Evaluation Committee, nor an advisor or person assisting the evaluation committee, may be a member of a Bid Adjudication Committee.

- 29.5 a) If the Bid Adjudication Committee decides to award a bid other than the one recommended by the Bid Evaluation Committee, the Bid Adjudication Committee must prior to awarding the bid-
- (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;
  - (ii) notify the Accounting Officer.
- b) The Accounting Officer may,
- (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the Bid Adjudication Committee referred to; and
  - (ii) if the decision of the Bid Adjudication Committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- 29.6 The Accounting Officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- 29.7 The Accounting Officer must comply with section 114 of the Act., within 10 working days .
- 29.8 The chairperson of the Bid Evaluation Committee may present their reports to the Bid Adjudication Committee and clarify any uncertainties. However, such members will not have any voting power or considered when determining a quorum.
- 29.9 If the Bid Adjudication Committee decides NOT to award a bid, either in support of the recommendation by the Bid Evaluation Committee or on their own decision, the Bid Adjudication Committee may: -
- (a) refer the evaluation report back to the Bid Evaluation Committee for review and/or reconsideration or clarification, or
  - (b) refer the bid document to bid specification to revise and advertise; or
  - (c) cancel the bidding process.
- 29.10 If the Bid Adjudication Committee or other delegated official has resolved that a bid be accepted, the successful and unsuccessful bidders shall be notified in writing of this decision.

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29.11 Every notification of decision shall be sent via registered mail and either faxed or sent via electronic mail to the address chosen by the bidder, with a copy of proof of transmission kept for record purposes, or shall be delivered by hand, in which case acknowledgement of receipt must be signed and dated on a copy of such notification and kept for record purposes.

29.12 Members of the Bid Specification Committee, Bid Evaluation Committee and technical advisors may attend the Bid Adjudication Committee to provide clarity, but has no decision-making rights pertaining to the award.

### **30. PROCUREMENT OF BANKING SERVICES**

30.1 A contract for banking services –

- (a) must be procured through competitive bids;
- (b) must be consistent with section 7 or 85 of the Act; and
- (c) may not be for a period of more than five years at a time.

30.2 The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.

30.3 The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of this policy. Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

### **31. PROCUREMENT OF IT RELATED GOODS AND SERVICES**

31.1 The Accounting Officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.

31.2 Both parties may enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.

31.3 The Accounting Officer may notify SITA together with a motivation of the IT needs if -

- (a) the transaction value of IT related goods or services required in any financial year will exceed R50 million (VAT included); or

- (b) the transaction value of a contract to be procured whether for one or more years exceeds R50 million (VAT included).

31.4 If SITA comments on the submission and the municipality disagree with such comments, the comments and the reasons for rejecting or not following such comments may be submitted to the council, the National Treasury, the relevant provincial treasury and the Auditor General.

### **32. PROCUREMENT OF GOODS AND SERVICES UNDER CONTRACTS SECURED BY OTHER ORGANS OF STATE**

32.1 The Accounting Officer may procure goods or services under a contract secured by another organ of state, but only if –

- (a) the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
- (b) there is no reason to believe that such contract was not validly procured;
- (c) there are demonstrable discounts or benefits to do so; and
- (d) that other organ of state and the provider have consented to such procurement in writing.

32.2 Paragraph 32.1 (c) and (d) do not apply if-

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

### **33. PROCUREMENT OF GOODS NECESSITATING SPECIAL SAFETY ARRANGEMENTS**

33.1 The acquisition and storage of goods in bulk (other than water) which necessitate special safety arrangements, including gasses and fuel, should be avoided wherever possible.

33.2 Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership, cost advantages and environmental impact and must be approved by the Accounting Officer.

### 34. PROUDLY SA CAMPAIGN AND LOCAL CONTENT

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

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**35. APPOINTMENT OF CONSULTANTS**

- 35.1 The Accounting Officer must procure consulting services, including advisors, provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made (Refer to the Cost Containment Regulations of NT regarding appointment of consultants).
- 35.2 Consultancy services must be procured through competitive bids if -
- (a) the value of the contract exceeds R200 000.00 (VAT included); or
  - (b) the duration period of the contract exceeds one year.
- 35.3 In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of-
- (a) all consultancy services provided to an organ of state in the last five years; and
  - (b) any similar consultancy services provided to an organ of state in the last five years.
- 35.4 The Accounting Officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the municipality.
- 35.5 Due consideration must be given to the Cost Containment Regulations, when appointing consultants.

**36. DEVIATION FROM, AND RATIFICATION OF MINOR BREACHES OF, PROCUREMENT PROCESSES**

- (1) The Accounting Officer may –
- (a) Dispense with the official procurement processes established by this Policy and procure any required goods or services through any convenient process, which may include direct negotiations, but only;
    - (i) In an emergency;
    - (ii) If such goods or services are produced or available from a single provider only;
    - (iii) For the acquisition of special works of art or historical objects where specifications are difficult to compile;

- (iv) Acquisition of animals for zoos and/or nature and game reserves; or
- (v) In any other exceptional case where it is impractical or impossible to follow the official procurement processes; and

(b) Ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties, which are purely of a technical nature.

(c) In any other exceptional case where it is impractical or impossible to follow the official procurement processes including, but not limited to-:

- (i) 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;
- (ii) the acquisition of services of attorneys and advocates;
- (iii) the acquisition of accommodation, car rental and air travel for official purposes, subject thereto that the acquisition of such services be dealt with in terms of the applicable council policy.
- (iv) the use of couriers for official documents/parcels;
- (v) the appointment of sheriffs of the court for the issuing of judicial summons, judgements and warrants.
- (vi) oil and fuel
- (vii) The appointment of medical examiners or related fields

(2) The Accounting Officer must record the reasons for any deviations in terms of this policy and report them to the next ordinary meeting of the council and include it as a note to the annual financial statements.

(3) Sub-paragraph (2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this policy

### 37. UNSOLICITED BIDS

37.1 In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.

37.2 The Accounting Officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if -

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

- (b) the product or service will be exceptionally beneficial to or have exceptional cost advantages;
- (c) the person who made the bid is the sole provider of the product or service; and
- (d) the reasons for not going through the normal bidding processes are found to be sound by the Accounting Officer.

37.3 If the Accounting Officer decides to consider an unsolicited bid that complies with paragraph 37.2 of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with-

- (a) reasons as to why the bid should not be open to other competitors;
- (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
- (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.

37.4 The Accounting Officer must submit all written comments received pursuant to paragraph 37.3, including any responses from the unsolicited bidder, to the National Treasury and the relevant provincial treasury for comment.

37.5 The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the Accounting Officer, depending on its delegations.

37.6 A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.

37.7 When considering the matter, the adjudication committee must take into account -

- (a) any comments submitted by the public; and
- (b) any written comments and recommendations of the National Treasury or the relevant provincial treasury.

37.8 If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the Accounting Officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.

37.9 Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality to the bid may be entered into or signed within 30 days of the submission.

### **38. COMBATING OF ABUSE OF SUPPLY CHAIN MANAGEMENT SYSTEM**

38.1 The Accounting Officer must and is hereby enabled to—

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

- (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
- (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
- (g) reject the bid of any bidder if that bidder or any of its directors-
  - (i) has abused the Supply Chain Management system of the municipality or has committed any improper conduct in relation to such system;
  - (ii) has been convicted for fraud or corruption during the past five years;
  - (iii) has wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - (iv) has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (Act No 12 of 2004).

38.2 The Accounting Officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subparagraphs 38.1 (b)(ii), (e) or (f) of this policy.

**38.3 Restrictive practices are prohibited:**

- a) In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder is or a contractor was involved in collusive bidding.
- b) If a bidder or contractor, based on reasonable grounds or evidence obtained by the municipality, has engaged in the restrictive practice referred to above, the municipality may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No. 89 of 1998.
- c) If a bidder or contractor has been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the

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bidder or contractor from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder or contractor concerned.

### **PART 3: LOGISTICS, CONTRACT, DISPOSAL, RISK AND PERFORMANCE MANAGEMENT**

#### **39. LOGISTICS MANAGEMENT**

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, vendor performance, and maintenance and contract administration.

#### **40. DISPOSAL MANAGEMENT**

40.1 Subject to the provisions of the Municipal Asset Transfer Regulations:

- (a) 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 municipality;
- (b) immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
- (c) in the case of the free disposal of computer equipment, the provincial department of education must first be approached to indicate within 30 days whether any of the local schools are interested in the equipment;
- (d) in the case of fire arms, the National Conventional Arms Control Committee must approve any disposal of firearms.
- (e) where assets are traded in for other assets, the highest possible trade in price is negotiated.

40.2 The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act, are as follows:

- (a) A municipality may not transfer ownership as a result of sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.
- (b) A municipality may transfer ownership or otherwise dispose of capital asset other than one contemplated in subparagraph 40.1, but only after the municipal council, in a meeting open to the public-
  - (a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and
  - (b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.

40.3 Immovable property may only be let 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 immovable property are annually reviewed.

40.4 Assets may be disposed of by –

- (i) Transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
- (ii) Transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
- (iii) Selling the asset; or
- (iv) Destroying the asset.

#### **41. RISK MANAGEMENT**

41.1 The Accounting Officer has established and implemented an effective system of risk management for the identification, consideration and avoidance of potential risks in the Supply Chain Management system.

41.2 Risk management must include –

- (a) The early and systematic identification of risks on a case-by-case basis;

- (b) The allocation and acceptance of risks to the party best suited to manage such risks;
- (c) Acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
- (d) The management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
- (e) The assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

#### **42. PERFORMANCE MANAGEMENT**

- 42.1 The Accounting Officer must establish and implement an internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised Supply Chain Management processes were followed and whether the objectives of this Policy were achieved.
- 42.2 The quarterly report and annual report on the implementation of this policy, the monitoring of the service delivery and budget implementation plan (SDBIP) and the Annual Report may be used as tools to perform a retrospective analysis of Supply Chain Management processes.

#### **PART 4: OTHER MATTERS**

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

- 43.1 No award above R30 000.00 may be made in terms of this policy to a person whose tax matters have not been declared by South African Revenue Service to be in order.
- 43.2 Before making an award to a person the Accounting Officer must first check with SARS whether that person's tax matters are in order.
- 43.3 If SARS does not respond within 7 days such person's tax matters may for purposes of subparagraph (1) be presumed to be in order.
- 43.4 It is the supplier's responsibility to provide the municipality with a valid and original tax number and pin code to prove that their tax matters are in order.

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



44.1 Irrespective of the procurement process followed, no award may be made to a person in terms of this Policy –

- (a) Who is in the service of the state;
- (b) If that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
- (c) A person who is an advisor or consultant contracted with the municipality with the purpose of assisting the municipality with the defining of requirements, drafting of specifications or the evaluation of the bids.

44.2 Persons and business must declare their interest as stated in this policy when completing their supplier database application forms and bid documents. Failure to do so may lead to disqualification and/or restriction from the municipal or National Treasury's database for up to 10 years.

44.3 The municipality may utilise mechanisms at its disposal to determine whether a person is in the service of the state.

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

45.1 The Accounting Officer must ensure that the notes to the annual financial statements disclose particulars of any award of more than R2 000.00 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –

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

45.2 The municipality does not encourage the awarding of contract by employees in decision-making positions to close family members or friends. To this extent the municipality requires all employees to make full disclosures of businesses owned by close family members and/ or friends and it is further expected that such individuals must not directly or indirectly be involved in the awarding of such business.

**46. ETHICAL STANDARDS**

- 46.1 A code of ethical standards as set out in the “National Treasury’s code of conduct for Supply Chain Management practitioners and other role players involved in Supply Chain Management”, attached hereto as Annexure A, is hereby established for officials and other role players in the Supply Chain Management system of the municipality in order to promote –
- (a) mutual trust and respect; and
  - (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
- 46.2 An official or other role player involved in the implementation of the Supply Chain Management policy –
- a) must treat all providers and potential providers equitably;
  - b) may not use his or her position for private gain or to improperly benefit another person;
  - c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
  - d) notwithstanding subparagraph (2)(c), must declare to the Accounting Officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
  - e) must declare to the Accounting Officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the Municipality;
  - f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
  - g) must be scrupulous in his or her use of property belonging to the municipality;
  - h) must assist the Accounting Officer in combating fraud, corruption, favouritism and unfair and irregular practices in the Supply Chain Management system; and

- i) must report to the Accounting Officer any alleged irregular conduct in the Supply Chain Management system which that person may become aware of, including –
  - i) any alleged fraud, corruption, favouritism or unfair conduct;
  - ii) any alleged contravention of paragraph 47(1) of this policy; or
  - iii) any alleged breach of this code of ethical standards.

46.3 Declarations in terms of subparagraphs (2)(d) and (e) -

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

46.4 The National Treasury's code of conduct and Schedule 2 of the Systems Act must be adhered to by supply chain management practitioners and other role players involved in supply chain management.

Commented [MP27]: PART OF EXISTING SCM REGS – TO BE ADDED

46.4.5 A breach of the code of ethics must be dealt with as follows:

- (a) in the case of an employee, in terms of the disciplinary procedures of the municipality envisaged in section 67(1)(h) and schedule 2 of the Municipal Systems Act;
- (b) in the case a councillor, in terms of Schedule 1 of the Systems Act;
- (c) in the case a role player who is not an employee, through other appropriate means in recognition of the severity of the breach.
- (d) In all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act.

#### 47. INDUCEMENTS, REWARDS, GIFTS AND FAVOURS TO MUNICIPALITIES (OR MUNICIPAL ENTITIES), OFFICIALS AND OTHER ROLE PLAYERS

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

- (a) any inducement or reward to the municipality for or in connection with the award of a contract; or
- (b) any reward, gift, favour or hospitality to-
  - (i) any official; or
  - (ii) any other role player involved in the implementation of the Supply Chain Management policy.

47.2 The Accounting Officer must promptly report any alleged contravention of paragraph 47.1 to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.

47.3 Paragraph 47.1 does not apply to gifts less than R350.00 in value.

#### **48. SPONSORSHIPS**

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

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

#### **49. OBJECTIONS AND COMPLAINTS**

Persons aggrieved by decisions or actions taken in the implementation of this Supply Chain Management system, may lodge within 214 days of the decision or action, a written objection or complaint against the decision or action.

#### **50. RESOLUTION OF DISPUTES, OBJECTIONS, COMPLAINTS AND QUERIES**

50.1 The Accounting Officer must appoint an independent and impartial person, not directly involved in the Supply Chain Management processes –

- (a) to assist in the resolution of disputes between the municipality and other persons regarding-

- (i) any decisions or actions taken in the implementation of the Supply Chain Management system; or
    - (ii) any matter arising from a contract awarded in the course of the Supply Chain Management system; or
  - (b) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.
- 50.2 Grievred suppliers must provide details of the reasons for their appeal including any non-compliance with this Policy, the Act or any other related legislation. The Accounting Officer shall provide written acknowledgement of the receipt of appeals to the appellant and endeavour to finalise appeals within 14 days of their receipt. Where this is not possible the Accounting Officer shall advise the appellant in writing of the reasons for the delay.
- 50.3 If the appeal is based on a technically complex matter, the Accounting Officer may engage an impartial external advisor, provided that their engagement is compliant with this Policy and sufficient budgetary provision exists. The Accounting Officer is not bound by any opinion provided.
- 50.4 The Accounting Officer will decide if an appeal constitutes sufficient grounds for delay of procurement from the approved supplier, and if a delay is practical. If the Accounting Officer determines there are grounds for the delay, the approved supplier must be advised without delay in writing of the reasons for the delay.
- 50.5 As soon as a ruling on an appeal has been made, the Accounting Officer must advise the appellant, and the approved supplier when applicable, in writing of the outcome.
- 50.6 The Accounting Officer, or another official designated by the Accounting Officer, is responsible for assisting the appointed person to perform his or her functions effectively.
- 50.7 The person appointed must -
- (a) strive to resolve promptly all disputes, objections, complaints or queries received; and
  - (b) submit monthly reports to the Accounting Officer on all disputes, objections, complaints or queries received, attended to or resolved.
- 50.8 A dispute, objection, complaint or query may be referred to the relevant provincial treasury if -

- (a) the dispute, objection, complaint or query is not resolved within 60 days; or
- (b) no response is forthcoming within 60 days.

50.9 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.

50.10 This paragraph must not be read as affecting a person's rights to approach a court at any time.

## **51. RIGHT OF APPEAL**

51.1 In terms of Section 62 of the Municipal Systems Act (Act 32 of 2000 as amended), a person whose rights are affected by a decision taken by the municipality, in terms of a delegated authority, in the implementation of its Supply Chain Management system, may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of receipt of the notification of the decision.

51.2 Bid documents must state that any appeal in terms of this policy must be submitted to the Municipal Manager, and must contain the following:

- (a) reasons and/or grounds for the appeal;
- (b) the way in which the appellants rights have been affected; and
- (c) the remedy sought by the appellant.

51.3 The Municipal manager shall establish an appropriate appeal authority in terms of section 62 of the Systems Act, to consider appeals received in terms of paragraph 64(1) above.

51.4 The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

## **52. CONTRACTS PROVIDING FOR COMPENSATION BASED ON TURNOVER**

If a service provider acts on behalf of a municipality to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for

the service or the amount collected, the contract between the service provider and the municipality must stipulate-

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

### 53. SHORT TITLE AND COMMENCEMENT

This part of the policy is called the Supply Chain Management (SCM) policy for goods and services of the Breede Valley Municipality.

This policy will come into effect on 1 July 2018 and will be reviewed at least annually by way of a Council resolution.

|                 |                         |                  |          |                  |          |
|-----------------|-------------------------|------------------|----------|------------------|----------|
| POLICY SECTION: | SUPPLY CHAIN MANAGEMENT |                  |          |                  |          |
| CURRENT UPDATE  | May 2022                | PREVIOUS REVIEW: | May 2021 | PREVIOUS REVIEW: | May 2020 |
| PREVIOUS REVIEW |                         | PREVIOUS REVIEW  |          | PREVIOUS REVIEW: |          |



## **MUNICIPAL SUPPLY CHAIN MANAGEMENT POLICY:**

### **PART B**

#### **PREFERENTIAL PROCUREMENT POLICY**

**PREFERENTIAL PROCUREMENT POLICY** adopted in terms of section 2 of the Preferential Procurement Policy Framework Act, No. 5 of 2000 and the Preferential Procurement Regulations, 2017.

#### **PREAMBLE**

**WHEREAS** the Breede Valley Municipality aims to improve the quality of life of the local community and to free the potential of each person within a framework of facilitating service delivery, through effective governance and the Council takes into account the need for transparent procedures that give the effect to the principle of preferential procurement;

**AND WHEREAS** local economic development plays a crucial role in creating a prosperous, equitable, stable and democratic society and the overall national vision of economic development is one of decent work and living standards for all in the context of qualitative improved equality in ownership, skills and access to opportunities;

**NOW THEREFORE** the Council of the Breede Valley Municipality resolves in terms of section 2 of the Preferential Procurement Policy Framework Act, No. 5 of 2000 that the principles embodied in the Preferential Procurement Regulations, 2017 are herewith integrated into the Breede Valley Municipality's Supply Chain Management Policy to form the basis of the evaluation criteria for quotations and competitive tenders.



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## 1 Definitions

In this policy, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

|   |   |
|---|---|
| <b>"all applicable taxes"</b>                                 | includes Value-Added Tax, Pay-as-you-Earn, Income Tax, Unemployment Insurance Fund Contributions and Skills Development Levies;   |
| <b>"B-BBEE"</b>   | means Broad-Based Black Economic Empowerment as defined in Section 1 of the Broad-Based Black Economic Empowerment Act;   |
| <b>"B-BBEE status level of contributor"</b>                   | means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act; |
| <b>"black designated groups"</b>                              | has the meaning assigned to it in the codes of good practice issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;   |
| <b>"black people"</b>   | has the meaning assigned to it in section 1 of the Broad-Based Black Economic Empowerment Act;  |
| <b>"Broad-Based Black Economic Empowerment Act" (B-BBEEA)</b> | means the Broad-Based Black Economic Empowerment Act, 2003 (Act No.53 of 2003);   |
| <b>"co-operative"</b>   | means a co-operative registered in terms of section 7 of the Cooperatives Act, 2005 (Act No. 14 of 2005);   |
| <b>"Comparative price"</b>                                    | means the price after the factors of a non-firm price and all unconditional discounts that can be utilised have been taken into consideration;  |
| <b>"Consortium or Joint Venture"</b>                          | means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;   |
| <b>"Contract"</b>   | means the agreement that results from the acceptance of a tender by the Breede Valley Municipality;   |
| <b>"designated group"</b>                                     | means-<br>(a) black designated groups;<br>(b) black people;<br>(c) women;<br>(d) people with disabilities; or<br>(e) small enterprises, as defined in section 1 of the National Small Enterprise Act, 1996  |

|                                   |  |
|-----------------------------------|--|
|                                   | (Act No. 102 of 1996);   |
| <b><i>“designated sector”</i></b> | means a sector, sub-sector or industry or product designated in terms of clause 8(1)(a);   |
| <b><i>“EME”</i></b>               | means an exempted micro enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;  |
| <b><i>“Firm price”</i></b>        | is 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 a law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract; |
| <b><i>“Functionality”</i></b>     | means the measurement according to predetermined norms, as set out in the tender documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a tenderer;   |
| <b><i>“imported content”</i></b>  | means that portion of the tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad, plus freight and direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry;              |
| <b><i>“local content”</i></b>     | means that portion of the tender price which is not included in the imported content, provided that local manufacture does take place;   |
| <b><i>“military veteran”</i></b>  | has the meaning assigned to it in section 1 of the Military Veterans Act, 2011 (Act No. 18 of 2011);   |
| <b><i>“Municipality”</i></b>      | The Breede Valley Municipality;  |
| <b><i>“National Treasury”</i></b> | has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);  |
| <b><i>“Non-firm prices”</i></b>   | means all prices other than "firm" prices;   |
| <b><i>“organ of state”</i></b>    | The definition of organ of state in section 1 of the Act in paragraph (a) to (e) includes- <ul style="list-style-type: none"> <li>• a national or provincial department as defined in the Public Finance Management Act, 1999;</li> <li>• a municipality as contemplated in the Constitution;</li> </ul>   |

|  |  |
|--|--|
|  | <ul style="list-style-type: none"> <li>• a constitutional institution as defined in the Public Finance Management Act;</li> <li>• Parliament;</li> <li>• a provincial legislature.</li> </ul> <p>Paragraph (f) of the definition of organ of state in section 1 of the Act includes any other institution or category of institutions included in the definition of “organ of state” in section 239 of the Constitution and recognised by the Minister by notice in the Government Gazette as an institution or category of institutions to which the Act applies. Government Notice R. 501 of 8 June 2011 recognises, with effect from 7 December 2011, all public entities listed in Schedules 2 and 3 to the Public Finance Management Act, 1999, as institutions to which the Act applies. Note should be taken of notices issued from time to time in terms of paragraph (f) of this definition. The application of these Regulations is also subject to applicable exemptions approved in terms of section 3 of the Act.</p> |
| <b>“Person”</b>                                      | includes reference to a juristic person;   |
| <b>“people with disabilities”</b>                    | has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998);   |
| <b>“Policy”</b>                                      | Means the Preferential Procurement Policy of the Breede Valley Municipality  |
| <b>“price”</b>                                       | includes all applicable taxes less all unconditional discounts;  |
| <b>“proof of B-BBEE status level of contributor”</b> | <p>means-</p> <ul style="list-style-type: none"> <li>(a) the B-BBEE status level certificate issued by an authorised body or person;</li> <li>(b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or</li> <li>(c) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act;</li> </ul>  |
| <b>“QSE”</b>   | means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;  |
| <b>“Rand value”</b>                                  | means the total estimated value of a contract in Rand, calculated at the time of the tender invitation;  |
| <b>“rural area”</b>                                  | <p>means-</p> <ul style="list-style-type: none"> <li>(a) a sparsely populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or</li> </ul>  |

|                                       |  |
|---------------------------------------|--|
|                                       | (b) an area including a large settlement which depends on migratory labour and remittances and government social grants for survival, and may have a traditional land tenure system;   |
| <b>"stipulated minimum threshold"</b> | means the minimum threshold stipulated in terms of clause 8(1)(b);   |
| <b>"Sub-Contract"</b>                 | means the primary contractor's assigning or leasing or making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;   |
| <b>"Tender"</b>                       | means a written offer in a prescribed or stipulated form in response to an invitation by the Breede Valley Municipality for the provision of services, works or goods, through price quotations, advertised competitive tender processes or proposals;                   |
| <b>"the Act"</b>                      | means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);   |
| <b>"Total revenue"</b>                | bears the same meaning assigned to this expression as in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, 2003 and promulgated in the Government Gazette on 9 February 2007; |
| <b>"township"</b>                     | means an urban living area that any time from the late 19th century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994;   |
| <b>"treasury"</b>                     | has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and  |
| <b>"Trust"</b>                        | 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; and  |
| <b>"Trustee"</b>                      | 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.  |
| <b>"youth"</b>                        | has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).   |

## 2 Application

These Regulations apply to organs of state as envisaged in the definition of organ of state in section 1 of the Act.

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

1) The Municipality must-

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

**4 Pre-qualification criteria for preferential procurement**

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

viii) an EME or QSE.

- 2) A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender.

## 5 Tenders to be evaluated on functionality

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

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

- 1) The following formula must be used to calculate the points out of 80 for price in respect of a tender (including price quotations) with a Rand value equal to, or above R 30 000 and up to a Rand value of R50 million inclusive of all applicable taxes:

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

Where;

$P_s$  = Points scored for price of tender under consideration;  
 $P_t$  = Price of tender under consideration; and  
 $P_{min}$  = Price of lowest acceptable tender.

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

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

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



- ii) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
  - iii) if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.
- b) If a market-related price is not agreed as envisaged in paragraph (a)(iii), the Municipality must cancel the tender.

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

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

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

Where

$P_s$  = Points scored for price of tender under consideration;

$P_t$  = Price of tender under consideration; and

$P_{min}$  = Price of lowest acceptable tender

- 2) The following table must be used to calculate the score out of 10 for BBBEE:

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

- 3) A tenderer must submit proof of its B-BBEE status level of contributor.
- 4) A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but-
- a) may only score points out of 90 for price; and

- b) scores 0 points out of 10 for B-BBEE.
- 5) A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.
- 6) The points scored by a tenderer for B-BBEE in terms of sub-clause (2) must be added to the points scored for price under sub-clause (1).
- 7) The points scored must be rounded off to the nearest two decimal places.
- 8) Subject to sub-clause (9) and clause 11, the contract must be awarded to the tenderer scoring the highest points.
- 9) If the price offered by a tenderer scoring the highest points is not market-related, the Municipality may not award the contract to that tenderer.
  - a) The Municipality may-
    - i) negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
    - ii) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
    - iii) if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.
  - b) If a market-related price is not agreed as envisaged in paragraph (a)(iii), the Municipality must cancel the tender.

## **8 Local Production and Content**

- 1) The Department of Trade and Industry may, in consultation with the National Treasury-
  - a) designate a sector, sub-sector or industry or product in accordance with national development and industrial policies for local production and content, where only locally produced services or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content, taking into account economic and other relevant factors; and
  - b) stipulate a minimum threshold for local production and content.
- 2) The Municipality must, in the case of a designated sector, advertise the invitation to tender with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered.

- 3) The National Treasury must inform organs of state of any designation made in terms of regulation 8(1) through a circular.
- 4a. If there is no designated sector, the Municipality may include, as a specific condition of the tender, that only locally produced services or goods or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered.
- 4b. The threshold referred to in paragraph (a) must be in accordance with the standards determined by the Department of Trade and Industry in consultation with the National Treasury.
5. A tender that fails to meet the minimum stipulated threshold for local production and content is an unacceptable tender.

#### **9 Subcontracting as a condition of tender**

1. If feasible to subcontract for a contract above R30 million, the Municipality must apply subcontracting to advance designated groups.
2. If the Municipality applies subcontracting as contemplated in sub-clause (1), the Municipality must advertise the tender with a specific tendering condition that the successful tenderer must subcontract a minimum of 30% of the value of the contract to-
  - a) an EME or QSE;
  - b) an EME or QSE which is at least 51% owned by black people;
  - c) an EME or QSE which is at least 51% owned by black people who are youth;
  - d) an EME or QSE which is at least 51% owned by black people who are women;
  - e) an EME or QSE which is at least 51% owned by black people with disabilities;
  - f) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
  - g) a cooperative which is at least 51% owned by black people;
  - h) an EME or QSE which is at least 51% owned by black people who are military veterans
  - i) more than one of the categories referred to in sub-clauses (a) to (h).
3. The Municipality must make available the list of all suppliers registered on a database approved by the National Treasury to provide the required goods or services in respect of the applicable designated groups mentioned in sub-clause (2) from which the tenderer must select a supplier.

#### **10 Criteria for breaking deadlock in scoring**

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

#### **11 Award of contracts to tenderers not scoring highest points**

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

#### **12 Subcontracting after award of tender**

1. A person awarded a contract may only enter into a subcontracting arrangement with the approval of the organ of state.
2. A person awarded a contract in relation to a designated sector, may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
3. A person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

#### **13 Cancellation of tender**

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

3. The Municipality may only with the prior approval of the relevant treasury cancel a tender invitation for the second time.

#### 14 Remedies

1. Upon detecting that a tenderer submitted false information regarding its B-BBEE status level of contributor, local production and content, or any other matter required in terms of this policy which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any subcontracting arrangements, the Municipality must-
  - a) inform the tenderer accordingly;
  - b) give the tenderer an opportunity to make representations within 14 days as to why-
    - i) the tender submitted should not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part;
    - ii) if the successful tenderer subcontracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and
    - iii) the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state; and
  - c) if it concludes, after considering the representations referred to in sub-clause (1)(b), that-
    - i) such false information was submitted by the tenderer-
      - a) disqualify the tenderer or terminate the contract in whole or in part; and
      - b) if applicable, claim damages from the tenderer; or
    - ii) the successful tenderer subcontracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.
- 2a. An organ of state must-
  - i) inform the National Treasury, in writing, of any actions taken in terms of sub-clause (1);
  - ii) provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and
  - iii) submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.

2b. The National Treasury may request an organ of state to submit further information pertaining to sub-clause (1) within a specified period.

1. The National Treasury must-

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

### 15 Circulars and guidelines

1. The National Treasury may issue-

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

### 16 SHORT TITLE AND COMMENCEMENT

This part of the policy is called the Preferential Procurement Policy of the Breede Valley Municipality.

This policy will come into effect on 1 April 2017 and will be reviewed at least annually by way of a Council resolution.

|                 |                         |                  |                      |                  |          |
|-----------------|-------------------------|------------------|----------------------|------------------|----------|
| POLICY SECTION: | SUPPLY CHAIN MANAGEMENT |                  |                      |                  |          |
| CURRENT UPDATE  | May 2020<br>May 2022    | PREVIOUS REVIEW: | May 2019<br>May 2021 | PREVIOUS REVIEW: | May 2020 |
| PREVIOUS REVIEW |                         | PREVIOUS REVIEW  |                      | PREVIOUS REVIEW: |          |



# BREED VALLEY

MUNICIPALITY • MUNISIPALITEIT • UMASIPALA

**PART C ~~D~~: BREED VALLEY**  
**MUNICIPALITY**  
**CONTRACT MANAGEMENT**  
**FRAMEWORK**

**Commented [MP28]:** WAS NOT REMOVED PREVIOUS YEAR

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## 1. PRE-AMBLE

All transactions undertaken by the Breede Valley Municipality involves a contract whether explicitly agreed in writing, or implicitly implied through actions.

Properly managed contracts by all stakeholders involved, can ensure that services are delivered within specifications as set and agreed by all during the SCM specifications phase and at the agreed cost , (Inclusive of escalation paragraphs in contracts) time period and qualities of the goods and services procured.

All contracts must be managed throughout the SCM Contract Life Cycle, based on the level of management control appropriate for the classification of that contract.

Improperly managed contracts may impact negatively on service delivery. Adverse effects of ineffective contract management include but are not limited to:

- 1.1 goods and services outside of specification;
- 1.2 cost overruns;
- 1.3 poor suppliers-, buyer- or other stakeholder relations;
- 1.4 negative public perception, and
- 1.5 potentially complete service delivery failures.
- 1.6 irregular expenditure or un-authorized expenditure

Hence, good contract management by all stakeholders involved is essential for good financial management and will contribute greatly to the effectiveness and efficiency of service delivery. In effect it would give strategic direction to all directorates following a centralised strategy of contract management. This policy must be read in coincidence with the SCM Policy of the Breede Valley Municipality.

This Policy Framework is applicable to Breede Valley Municipality, for contracts that are:

Valued greater than R100 000.00 (VAT Incl);

Only SCM contracts that went through either:

- a. a Bid process;
- b. a Formal quotation (Above R100 000(VAT incl.)) process;
- c. a Deviation process (Above R100 000(VAT incl.) - ;
- d. a SCM Regulation 32 process (Transversal Agreement using other organs of state contracts which went through a bidding process);
- e. Contracts that is amended/extended as described above, of which the original contract value was greater than R100 000

This Policy Framework is not applicable to Breede Valley Municipality, for contracts that are Human Resource -; other organs of state and fix property contracts in nature that did not went through a SCM process.

## 2. DEFINITIONS:

In this Policy, unless the context indicates otherwise-

|   |  |
|---|--|
| <b>Accounting Officer<br/>(in relation to a municipality)</b> | Means the municipal official referred to in section 60 of the MFMA (2003); and include a person acting as the Accounting Officer.  |
| <b>Act or MFMA</b>  | Means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);   |
| <b>Circular 62</b>  | Means communication from National Treasury by means of a Circular to enhance compliance and accountability to SCM Regulations and the MFMA of 2003.  |
| <b>Construction Industry Development Board (CIDB):</b>        | Means the Construction Industry Development Board (CIDB), a national body established by an Act of Parliament (Act 38 of 2000) to oversee the sustainability and growth of construction enterprises across the country.  |
| <b>Contract</b>   | Means the agreement that results from the acceptance of a bid by the Municipality (mutual agreement)   |
| <b>Contract Alteration</b>                                    | Means changing technical writing or input errors to the agreement of the contract without changing the scope of contract.  |
| <b>Contract Amendment</b>                                     | Means changing the scope, nature, duration, purpose or objective of the agreement or contract (In context of Circular 62 and section 116 (3) of the MFMA).   |
| <b>Contract Administrator</b>                                 | Means the official/s within a specific department, responsible for all day to day administrative and management activities (including performance management and dispute resolution) during the life cycle of the contract (with delegated powers to perform this function). |
| <b>Contract Management</b>                                    | Means the holistic term of all role players involved in an agreement (SLA/SDA) or contract and include the; Contract Management Officer, Contract Owner, Contract Manager, Contract Administrator and supplier.  |
| <b>Contract</b>   | Means the SCM official responsible for monitoring,   |

|   |  |
|---|--|
| <b>Management Officer</b>                           | regulating and reporting on all contract related activities as set out in Section 116 of the MFMA.   |
| <b>Contract Manager</b>                             | Means the deputy director, senior manager or manager, as the case may be, that is ultimately accountable for all activities during the life cycle of the contract. The Contract Manager can also be seen as the Budget holder.   |
| <b>Contract Owner</b>                               | Appointment according to sect 56 of the Systems Act (Municipal Director)   |
| <b>Delegation<br/>(in relation to a duty)</b>       | Includes an instruction or request to perform or to assist in performing the duty.   |
| <b>Force Majure</b>                                 | Is the expression used to denote irresistible superior force which might cause damage or prevent the execution of an obligation, therefore suppliers is not liable for damages caused by force majeure or for failure to carry out a contract if prevented (Term and conditions in this regard will be determined by every individual contract/s). |
| <b>Official<br/>(In relation to a municipality)</b> | Means: <ul style="list-style-type: none"> <li>• an employee of a municipality;</li> <li>• a person seconded to a municipality to work as a member of the staff of the municipality; or</li> <li>• a person contracted by a municipality to work as a member of the staff of the municipality otherwise than as an employee.</li> </ul>             |
| <b>Users</b>  | Means all officials as set out in the organogram of the Breede Valley Municipality involved with contracts.  |
| <b>User Department</b>                              | Refers to the official/s responsible within the relevant department of a directorate, as set out in the organogram of the Breede Valley Municipality involved with contracts.  |

### 3.ABREVIATIONS:

|               |  |
|---------------|--|
| <b>BEE</b>    | Black Economic Empowerment             |
| <b>B-BBEE</b> | Broad-Based Black Economic Empowerment |
| <b>GCC</b>    | means General Conditions of contract.  |

|            |  |
|------------|--|
| <b>MSA</b> | means Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).              |
| <b>NT</b>  | means National Treasury established by section 5 of the Public Finance Management Act. |
| <b>SCC</b> | means Special Conditions of Contract.  |
| <b>SCM</b> | means Supply Chain Management  |
| <b>SDA</b> | means Service Delivery Agreement.  |
| <b>SLA</b> | means Service Level Agreement.   |

#### 4. OBJECTIVES:

##### 4.1 To give effect to Section 217 of the Constitution of South Africa (1996) that stipulate:

4.1.1 When an organ of state in the National, Provincial or Local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is:

- 4.1.1.1 equitable
- 4.1.1.2 transparent
- 4.1.1.3 competitive
- 4.1.1.4 cost-effective and
- 4.1.1.5 fair

##### 4.2 The effective and efficient control of contracts procured through the SCM system ensuring:

- 4.2.1 proper recording and enforcement of contracts throughout the contract life cycle (specifications to contract reviews);
- 4.2.2 support to the demand management framework as set out in Circular 62 of National Treasury (August 2012), optimizing proper planning, resulting in effective service delivery;
- 4.2.3 management of Contract Performance;
- 4.2.4 compliance with the regulatory framework;
- 4.2.5 to assist officials in understanding their legal and managerial responsibilities with regards to contract management;
- 4.2.6 the optimization of efficient and sustainable financial wellbeing of the municipality, resulting in lower cost drivers, and

4.2.7 the continuous development of effective Management Information systems, resulting in strategic support and risk preventions.

4.3 To ensure that no contract procurement of goods and services (excluding land sales or rentals of Breede Valley Municipal Assets, which are managed by Property Management Services, takes place outside of the SCM System.

## 5. STATUTORY AND REGULATORY FRAMEWORK FOR MANAGING CONTRACTS

### 5.1 Application and Framework of the Contract Management Framework

5.1.1 All officials and other role players in the Supply Chain Management system of the Breede Valley Municipality must implement this Policy in a way that gives effect to:

- 5.1.1.1 Section 217 of the Constitution;
- 5.1.1.2 Section 116 of the MFMA;
- 5.1.1.3 Section 33 of the MFMA;
- 5.1.1.4 SCM Policy;
- 5.1.1.5 SCM Regulations
- 5.1.1.6 any other legislation pertaining to SCM.

5.1.2 This Policy applies when the Municipality:

- 5.1.2.1 procures goods or services;
- 5.1.2.2 disposes of goods no longer needed; and
- 5.1.2.3 selects service providers and suppliers to provide assistance in the provision of municipal services including circumstances where Chapter 8 of the Municipal Systems Act applies.

### 5.2 Adoption, Amendment and Implementation of the Contract Management Framework

5.2.1 The Accounting Officer must:

- 5.2.1.1 at least annually review the implementation of this Policy; and

5.2.1.2 when the Accounting Officer considers it necessary, submit proposals for the amendment of this Policy to Council;

5.2.1.3 in terms of section 62(1) (f) (iv) of the Act, take all reasonable steps to ensure that the Contract Management Framework is implemented.

### 5.3 Conditions of Contract

5.3.1 A contract or agreement procured through the Supply Chain Management System of the Municipality must:

5.3.1.1 be in writing;

5.3.1.2 stipulate the terms and conditions of the contract or agreement, which must provide for:

5.3.1.2.1 the termination of the contract or agreement in the case of non- or underperformance;

5.3.1.2.2 dispute resolution mechanisms to settle disputes between the parties;

5.3.1.2.3 a periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years; and

5.3.1.2.4 any other matters that may be prescribed.

### 5.4 Administrative Capacity

5.4.1 The relevant Director (Contract Owner), with delegated powers from the Municipal Manager, must establish capacity in his/her directorate to assist the Accounting Officer in carrying out the duties set out in section 116(2) of the MFMA.

### 5.5 Management of Contracts

5.5.1 The Accounting Officer and delegated officials must take all reasonable steps to:

5.5.1.1 ensure that a contract or agreement procured through the supply chain management policy of the municipality is properly enforced;

5.5.1.2 monitor on a monthly basis the performance of the contractor under the contract or agreement.

5.5.1.3 administrate the contract with the necessary competencies and delegations, ensuring effective management of contracts.

5.5.2 The Contract Manager must ensure that Contract Administrators submit suppliers' performance reports to the Contract Management Officer shortly after the end of each month.

5.5.3 The Contract Management Officer submits a consolidated report to the relevant Director and Contract Manager shortly after the end of each month for purposes of Section 116 (2)(b) of the Act.

5.5.4 The Contract Management Officer submits a consolidated report on the performance of contracts or agreements for purposes of Section 116 (2) (d), to the Senior Supply Chain Manager and the Accounting Officer shortly after the end of each quarter.

#### 5.6 Amendment of Contracts

5.6.1 A contract or agreement procured through the supply chain management policy of the municipality may be amended by the parties, in exceptional circumstances in order to mitigate abuse, in perception after the fact to prevent financial inefficiencies and influencing financial sustainability.

5.6.2 In terms of Section 116(3) of the MFMA, (56 of 2003), amendments (in compliance with SCM procedures), may only be made after:

5.6.2.1 the reasons for the proposed amendment have been tabled in the council; and

5.6.2.2 the local community has been given reasonable notice of the intention to amend the contract or agreement; and

5.6.2.3 has been invited to submit representations to the municipality.

5.6.3 Amendments of contracts where the expansion or variation is not more than (NT Circular 62):

5.6.3.1 20% (construction related goods, services and/or infrastructure projects), and

- 5.6.3.2 15% (all other goods and/or services) of the original value of the contract, must be submitted directly to the Contract Management Office for approval and further reference to the SCM committee system for approval.
- 5.6.4 Amendments of contracts where the expansion or variation is more than the threshold prescribed by National Treasury (Circular 62), must be dealt with in terms of the provisions of section 116(3) of the MFMA, and are exempt from the Circular 62 process.
- 5.6.5 Amendments to the contract, without influencing the value or term of the contract, within the scope of the original terms and conditions, may be altered, provided that both parties have consensus on the amendment and the contract amendment is in writing and signed by both parties.
- 5.6.6 No agreement to amend or vary a contract shall be valid and of any force unless such agreement to amend or vary is entered into in writing and signed by the contracting parties.
- 5.6.7 When an amendment has a budgetary implication for a term longer than 3 (three) years, section 33 of the MFMA will apply to this amendment (Section 116 (3) of the MFMA will be followed with section 33, when amending an existing contract for longer than 3 years). It remains the responsibility of the user department to give effect to section 33, following due process, as stipulated in Section 33 of the MFMA. The SCM Contract Management office will support the relevant user department in order to ensure that compliance to all SCM legislation is done.
- 5.6.8 All amendments (Circular 62 and Section 116(3)) that are greater than R200 0000.00 must go to Bid Adjudication Committee to be noted.
- 5.6.9 The Council delegate the power to approve amendment/s –
  - 5.6.9.1 above R10 million (VAT included) to the Accounting Officer only;
  - 5.6.9.2 above R200 000.00 (VAT included), but not exceeding R10 million (VAT included), to Contract Owner (Director) and
  - 5.6.9.3 not exceeding R200 000.00 (VAT Included) to the Senior Manager Supply Chain Management Unit.



## 6. MAINTENANCE AND CONTRACT ADMINISTRATION

- 6.1 Contract administration includes all administrative duties associated with a contract once it is adjudicated and implemented.
- 6.2 No rights in terms of an awarded contract will accrue before the SCM appeal or objection period and/or appeal has been finalised.
- 6.3 The contract should be signed by all parties concerned (The relevant official should also ensure that the suppliers have the delegated powers to sign and amend the contractual agreement).
- 6.4 The contract will only be enforceable after all the signatures of the relevant parties are documented.
- 6.5 A signed service level agreement (if applicable) must be compiled and signed which will incorporate all the relevant sections of the tender documentation.
- 6.6 All once-off purchases shall have a specified end delivery date.
- 6.7 All contracts need to be allocated Contract role players prior contract engagements.

## 7. ROLES AND RESPONSIBILITIES OF OFFICIALS:

### 7.1 Contract Management Officer:

- 7.1.1 The Contract Management Officer is the SCM official responsible for system administration, status and SCM performance reporting on all contracts related activities.
- 7.1.2 For the purposes of **contract management** activities performed by the relevant role players, the Contract Management Officer will monitor and report on the following activities:
  - 7.1.2.1 identification and classification of contracts for management purposes in terms of the SCM processes;
  - 7.1.2.2 recognition, measurement and disclosure;
  - 7.1.2.3 oversight of contract management as is provided for in this policy;
  - 7.1.2.4 oversight of contract management as is provided for in this policy;
  - 7.1.2.5 document and information management;
  - 7.1.2.6 relationship management;

- 7.1.2.7 performance management;
- 7.1.2.8 contract risk management.
- 7.1.2.9 ensure that all original contract documentation is lodged with Archives for record purposes;

## 7.2 Contract Administrator

- 7.2.1 The Contract Administrator is responsible for the following activities:
  - 7.2.2.1 ensure that purchase order information is captured accurately on the municipality's financial system in the form in accordance with the pricing schedule;
  - 7.2.2.2 ensuring that all applicable contract information is maintained in the applicable electronic contract system
  - 7.2.2.3 ensuring that purchase orders are processed on the financial system in accordance with the pricing schedule;
  - 7.2.2.4 maintaining adequate records (paper and/or electronic) in sufficient detail on an appropriate contract file to provide an audit trail;
  - 7.2.2.5 inform the Asset Management section of the Expenditure Department of the location of newly procured assets for asset register and insurance purposes; and
  - 7.2.2.6 where appropriate, in terms of Council's Delegations, authorise invoices due for payment.
  - 7.2.2.7 consultation with the Contract Manager and the Contract Management Officer, where a contractor is underperforming or is in default or breach of the contract.
  - 7.2.2.8 ensure administrative feedback and inputs to the system regarding the performance of suppliers and the management feedback to the appropriate terms and conditions of the contract is captured.
  - 7.2.2.9 Contract administration includes all administrative duties associated with a contract that has arisen

through the acquisition/procurement processes described in this policy

### 7.3

The Contract Manager is responsible for the following activities:

- 7.3.1 The Contract Manager will be responsible for all management related activities prior and during the contract management life cycle.
- 7.3.2 Ensuring that all the necessary legal formalities in entering into the contract are adhered to;
- 7.3.2 Oversee the maintenance of adequate records (paper and/or electronic) in sufficient detail on an appropriate contract file to provide an audit trail (Oversight and management of all other administrative functions);
- 7.3.3 Where appropriate, in terms of Council's Delegations, authorise invoices due for payment.
- 7.3.4 To take appropriate action in consultation with the Contract Manager and the Contract Management Officer, where a contractor is underperforming or is in default or breach of the contract.
- 7.3.5 Give feedback and inputs to the contract administrator (if different official) regarding the performance of suppliers and managing the appropriate terms and conditions of the contract accordingly.
- 7.3.6 The contract manager will typically be the internal project manager assigned to the project as a whole, but may also be a cost centre owner or other responsible official.
- 7.3.7 A contract manager must be assigned to each contract by the relevant director and, where possible, should be involved from the earliest stages of the acquisition process.
- 7.3.8 The contract manager's duties and powers shall be governed by the conditions of contract and the general law.
- 7.3.9 In administering a contract, the contract manager will be required to form opinions and make decisions, which, while in the Breede Valley Municipality's best interests, must be fair to all parties concerned.

- 7.3.10 where necessary, take appropriate action where a service provider is underperforming or is in default or breach of the contract and to report such failures promptly to the SCM unit and the relevant director;
  - 7.3.11 where appropriate, authorise payments due in terms of the contract by processing payment certificates (if applicable), and ensuring that the necessary Service Entry Sheets or Goods Received Notes are lodged with the Finance Department: Expenditure for capturing on the municipality's financial system;
  - 7.3.12 contract variation, amendment, extensions or change procedures are approved by the SCM unit, delegated director, accounting officer or council in writing which must be in line with the applicable general conditions of contract and this policy;
  - 7.3.13 administer disputes, in consultation with the Supply Chain Management Unit and the legal department, in terms of this policy and the applicable conditions of contract;
  - 7.3.14 conduct, as appropriate, post contract reviews;
  - 7.3.15 inform the Asset Management section of the location of newly procured assets for asset register and insurance purposes.
- 7.4 Contract Owner:
- 7.4.1 The Contract Owner is responsible for ensuring that Contract Administrators and Contract Managers from the user departments are assigned to all contracts above R100 000.
  - 7.4.2 The Contract Owner is ultimately accountable for management of the activities.
  - 7.4.3 The Contract Owner is responsible for signing and cancellation of contracts with the relevant service providers.
  - 7.4.4 The Contract Owner/director will receive the delegation of contract management from the accounting officer.

7.4.5 Directors shall be responsible for ensuring that contract managers and administrators are:

(a) Assigned to all contracts within the Director's area of responsibility; and

(b) Adequately trained so that they can exercise the necessary level of responsibility in the performance of their duties.

#### 8. RECORD KEEPING

- 8.1 Proper records regarding all aspects of the contract must be maintained and kept in accordance with relevant legislation.
- 8.2 All communication related to contracts must be linked to the master document on the electronic system, by the relevant SCM official.
- 8.3 Safe custody of all contract documents must be enforced by all relevant users.
- 8.4 Contract Administrators and Contract Managers are responsible for the electronic capturing of the contract information and maintenance thereof on the Contract Management system.
- 8.5 The original signed contract must be sent to the records department (by the contract management office) for safekeeping and storage.
- 8.6 The records department is responsible for the administration of archived contract documentation.

#### 9. CONTRACTS HAVING BUDGETARY IMPLICATIONS BEYOND THREE FINANCIAL YEARS

Breede Valley Municipality may not enter into any contract that will impose financial obligations beyond the three years covered in the annual budget for that financial year, unless the requirements of Section 33 of the Municipal Finance Management Act have been fully complied with.

#### 10. RESOLUTION OF DISPUTES, OBJECTIONS, COMPLAINTS AND QUERIES:

The Accounting Officer is responsible to establish a dispute resolution mechanism as per paragraph 5.3.1.2.2 and also as required by section 116(1) of the MFMA and paragraph 50 of the SCM Policy.

## 11. CONTRACT PRICE ESCALATIONS:

11.1 An appropriate contract price adjustment formula or specified terms of escalation must be specified in the bid documents

11.2 Escalation notification must be in writing and presented before the implementation date thereof.

11.3 User departments and Contract Management Office are responsible to manage, verify and implement price escalations as per originally agreed terms and conditions set out in the specifications of the contract and keep proof of evidence to the newly agreed escalations on the system for all other relevant stakeholders to access.

## 12. PERFORMANCE ON CONTRACTS:

12.1 In terms of the SCM Policy and the Municipal Systems Act, the Accounting Officer must implement an internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes were followed and whether the objectives of this Policy were achieved.

### 12.1.1 Municipality's Performance:

12.1.1.1 The municipality is required to pay creditors within 30 days of receiving all relevant invoices and statements.

12.1.1.2 The municipality is also required to create a favourable environment to receive services and goods without preventing the supplier to perform their duties.

12.1.1.3 All parties involved must perform according to the terms and conditions of the relevant contract, while the contract is active.

### 12.2.1 Supplier Performance:

12.2.1.1 The supplier of goods and services is required to perform as per terms and conditioned agreed upon and should inform the municipality if circumstances prevents them to perform, with reasons provided, within 5 working days (to be included in all contracts).

12.2.1.2 For all relevant deviations from the agreed terms and conditions of any contract, the key performance indicators (KPI's) should be reviewed as well as the alignment with the strategic objectives established in the IDP.

12.2.1.3 Suppliers performance will be reviewed by Breede Valley Officials on a monthly basis (every 25<sup>th</sup> of the month) giving effect to section 116 of the MFMA, 2003 and the Performance Management System Implementation Policy

12.2.1.4. Prescribed procedures to evaluate service providers must be complied with.

**13. THE FOLLOWING PROCEDURES NEED TO BE FOLLOWED:**

13.1 The requirements of this policy must be included in the contract of the service provider.

13.2 The performance of the service provider under the contract or service level agreement must be assessed monthly by the Contract Manager.

13.3 The assessment must be completed in the contract management system.

13.4 The quarterly assessment and reporting must be completed shortly after the end of each quarter.

13.5 The Contract Manager must provide a copy of the assessment to the Service Provider at the end of each quarterly assessment period and on completion or termination of the contract.

13.6 Supply Chain Management Unit (Contract Management Office) will review the quarterly Service Provider assessments shortly after the end of each quarter and submit a summary report to the Accounting Officer.

13.7 In the instance of under-performance:

13.7.1 The Municipality will facilitate support interventions to service providers in the identified areas of underperformance

13.7.2 Service providers who have been identified as under-performing in identified areas must be informed of these support interventions.

13.7.3 The impact of support interventions must be monitored by the Contract Manager.

13.7.4 Corrective action should be documented in writing within the contract management system

13.7.5 The records of the support interventions must be documented, signed by both parties and appropriately filed in the contract management system.

13.8 Breede Valley Municipality holds the right to reject any bid, as stipulated in paragraph 21(d)(iii) and 38(1)(g)(iii) of the SCM regulations referring to non-compliance to terms and conditions or disputes concerning the

execution of such contract OR if a supplier was convicted for fraud and corruption during the past 5 years. The municipality further holds the right to restrict non-performing suppliers on the National Treasury's database or from the municipal database, subject that the supplier has been informed from the occurrence of such non-performance or breach of contract, without considering the reasons of non-performance or breach of contract.

13.9 Unsatisfactory performance occurs when performance is not in accordance with the contract conditions, e.g.:

13.9.1 If the contractor fails to deliver any or all the goods, works or services within the period(s) specified or in contradiction to the warded prices in the contract, or within extension thereof granted by the SCMU pursuant to GCC;

13.9.2 If the contractor fails to perform any other obligation(s) under the contract, e.g.:

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

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

13.10 Procedure applicable to non-performance

13.10.1 Should the contractor not adhere to the contract conditions (non-delivery, delivery of an inferior product, etc.), the following procedure should be followed:

13.10.1.1 A registered letter must be sent to the supplier to inform him/her that he/she did not honour the contract conditions. The waybill number of the letter must be quoted on the relevant SCMUs copy.

13.10.1.2 The letter must be typed and concept letters should not be used. Each case should be handled individually.

13.10.1.3 The intention must be clearly stated in the letter (e.g. reprimand him on his delivery; etc.).



13.10.1.4 The contents of GCC paragraph 21 must be quoted for the contractor's convenience.

13.10.1.5 The bid/contract number, order-number, description of the item(s), quantities and value of contract must be clearly indicated in the letter.

13.10.6 The contractor must be afforded an opportunity of at least fourteen (14) but not less than seven (7) days to comment.

13.10.7 If the supplier fails to deliver any or all of the goods or to perform the service within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delayed until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC paragraph 23.

13.10.8 Whilst the above-mentioned procedure is in process and there is a need for the item/service, the minimum quantity must be purchased in accordance with delegated powers and properly recorded to be able to recover any adverse cost from the contractor.

#### 13.11 Procedure applicable to Buy-out transactions

13.11.1 When the time provided for the contractor to respond to the claim of non-performance has lapsed, the SCMU can proceed with the buy-out transaction. Another registered letter must be issued to the contractor, informing him/her that a buy-out transaction is now being initiated against him/her and that no further deliveries will be accepted as from date of the relevant letter in rectification of the breach of contract.

13.11.2 When the Municipality has to buy out at the contractor's expense, the loss to the Municipality must always be restricted to the minimum since it is difficult to justify the recovery of unreasonable additional costs from the contractor.

13.11.3 Only goods, works and services of the same quality can be obtained within delegated powers.

13.11.4 The difference in cost must be determined and any adverse costs must be recovered from the contractor.

13.11.5 The Senior Manager: Legal Services must therefore be furnished with all relevant information/documentation in order to act on behalf of the Municipality.

13.11.6 It is therefore important to keep proper record of all buy-out

transactions.

13.12 It is important that all letters that were addressed to the contractor should be recorded with the SCM unit on the contract management system.

13.13 A file should be opened by the SCM unit for each and every case and copies of all relevant documents and correspondence (copy of the order, letters addressed to the supplier, price quotations/bids invited in order to obtain the product, claim against the contractor, etc.)

13.14 Cases, which can be dealt with satisfactorily by the user departments' contract manager (reported to the SCMU unit) need not be referred to the Senior Manager: Legal Services for action. However, if a contractor repeatedly gives trouble and his/her actions cause the Municipality serious inconvenience, loss or embarrassment, the matter must be reported to the Senior Manager: **Supply Chain Management Legal Services** and a recommendation made regarding corrective steps, which should be taken.

13.15 Cancellation of contracts:

13.15.1 Cancellation of a contract may be considered for a variety of reasons, such as wrong preferences claimed, non-compliance with contract conditions, delayed deliveries, bribery, death or sequestration/liquidation of the contractor, default, performance, etc.

13.15.2 Cancellation of a contract is usually prejudicial to the Municipality. Therefore serious thought must be given to the grounds for considering cancellation. Clarity must be reached beforehand on the question of whether the contractor will have a claim against the Municipality or not, and if so, whether cancellation can be justified. If cancellation is decided upon, the legal department must confirm the matter, addressing:

13.15.2.1 The particular contract condition or section of the Act empowering the action;

13.15.2.2 what further arrangements will be made for completing the contract; and

13.15.2.3 whether additional costs will be recovered from the contractor.

13.15.2.4 whether the user department gave the supplier the opportunity to state their case or reasons for under- or non-performance (audio alterem partem principle) in writing.

13.15.2.5 If the additional costs cannot be determined precisely, a careful estimate must be made and mentioned in the submission to the legal department.

13.16 Restrictions of suppliers/bidders:

13.16.1 Circumstances may exist, when it might be an option to restrict a person/contractor or organisation from obtaining business from the public sector.

13.16.2 Should the Municipality opt to restrict the contractor and/or any other person(s) from obtaining business from the public sector, the Municipality must:

- (a) inform the contractor or person(s) by registered mail or by delivery of the notice by hand of the intention to impose the restriction, provide the reasons for such decision and the envisaged period of restriction;
- (b) Allow the contractor and/or person(s) fourteen (14) days to provide reasons why the envisaged restriction should not be imposed;
- (c) consider any reasons, submitted by the contractor and/or person(s) in terms of paragraph (b) above;
- (d) impose the restriction or amended restriction; and
- (e) inform the National Treasury within five (5) working days of such imposition of the name of the restricted person(s); the reason for restriction; the period of restriction and the date of commencement of the restriction.
- (f) Any restriction imposed on any person by the Municipality will, at the discretion of the Municipality also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Municipality actively associated.

(g) However, when considering the restriction of a contractor/person, care must be taken that the prescribed procedures have been strictly adhered to since the court may find that an administrative action, such as the imposition of a restriction, is not valid in cases where the person or organisation, for example, has not been given a reasonable time to put the other side of the case, or has not been fully informed of the results of his failure to react. It is also possible that, where contradictions or ambiguities exist, the court will give the benefit of doubt to the persons or organisations against whom a restriction has been imposed and may pass judgment in their favour.

#### 13.17 Amendment/upliftment of restrictions

13.17.1 Based on sound reasons, the Municipality is empowered to amend/ uplift any restriction imposed and must then inform the National Treasury accordingly.

13.17.2 A contractor or any other person restricted by the Municipality has a right to contest the restriction in a Court of Law, and the Municipality who imposed the relevant restriction will be responsible and accountable for the Court proceedings.

#### 13.18 Handling of proprietary information:

13.18.1 All information designed and prepared for the municipality is deemed as proprietary. No such information may be distributed, modified or customised for third parties without the written permission of the Accounting Officer.

13.18.2 All supplier information shall be treated as confidential, except as regulated by legislative prescripts (Section 75 of the MFMA etc.).

13.18.3 In appropriate instances, the municipality may require security clearance, SARS pin codes and confidentiality agreements to be entered into with.

### 14. REVIEW OF CONTRACTS

13.1 In terms of section 116 (1) of the MFMA, a contract or agreement procured through the Supply Chain Management system must have a periodic review once every three years in the case of a contract or agreement that are longer than three years.

**15 IMPLEMENTATION AND REVIEW PROCESS**

This policy will be effective from 1 July ~~20189~~ 2022

This policy will be reviewed at least annually or when required by way of a Council resolution.

|                            |                                 |
|----------------------------|---------------------------------|
| <b>POLICY SECTION:</b>     | <b>SUPPLY CHAIN MANAGEMENT</b>  |
| <b>CURRENT UPDATE</b>      | May <del>2022</del> <u>2019</u> |
| <b>PREVIOUS REVIEW</b>     | N/A                             |
| <b>PREVIOUS REVIEW</b>     | N/A                             |
| <b>APPROVAL BY COUNCIL</b> | May <del>2022</del> <u>2020</u> |

## **ANNEXURE A**

### **CODE OF CONDUCT FOR SUPPLY CHAIN MANAGEMENT PRACTITIONERS AND OTHER ROLE PLAYERS**

The purpose of this Code of Conduct is to promote mutual trust and respect and an environment where business can be conducted with integrity and in a fair and reasonable manner.

#### **1. General Principles**

The municipality commits itself to a policy of fair dealing and integrity in the conducting of its business. Officials and other role players involved in Supply Chain Management (SCM) are in a position of trust, implying a duty to act in the public interest. Officials and other role players should not perform their duties to unlawfully gain any form of compensation, payment or gratuities from any person, or provider/contractor for themselves, their family or their friends.

Officials and other role players involved in SCM should ensure that they perform their duties efficiently, effectively and with integrity, in accordance with the relevant legislation, policies and guidelines. They should ensure that public resources are administered responsibly.

Officials and other role players involved in SCM should be fair and impartial in the performance of their functions. They should at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual. They should not abuse the power and authority vested in them.

#### **2. Conflict of interest**

An official or other role player involved with Supply Chain Management –

- (a) must treat all providers and potential providers equitably;
- (b) may not use his or her position for private gain or to improperly benefit another person;
- (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
- (d) must declare to the Accounting Officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;

- (e) must declare to the Accounting Officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process, or in any award of a contract by the municipality;
- (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
- (g) must declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest;
- (h) should not place him/herself under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties; and
- (i) should not take improper advantage of their previous office after leaving their official position.

### 3. Accountability

Practitioners are accountable for their decisions and actions to the public.

Practitioners should use public property scrupulously.

Only Accounting Officers or their delegates have the authority to commit the municipality to any transaction for the procurement of goods and / or services.

All transactions conducted by a practitioner should be recorded and accounted for in an appropriate accounting system. Practitioners should not make any false or misleading entries into such a system for any reason whatsoever.

Practitioners must assist the Accounting Officer in combating fraud, corruption, favouritism and unfair and irregular practices in the Supply Chain Management system.

Practitioners must report to the Accounting Officer any alleged irregular conduct in the Supply Chain Management system which that person may become aware of, including:

- (i) Any alleged fraud, corruption, favouritism or unfair conduct;

- (ii) any alleged contravention of the policy on inducements, rewards, gifts and favours to municipalities or municipal entities, officials or other role players; and
- (iii) Any alleged breach of this code of conduct.

Any declarations made must be recorded in a register which the Accounting Officer must keep for this purpose. Any declarations made by the Accounting Officer must be made to the Mayor who must ensure that such declaration is recorded in the register.

#### **4. Openness**

Practitioners should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only if it is in the public interest to do so.

#### **5. Confidentiality**

Any information that is the property of the municipality or its providers should be protected at all times. No information regarding any bid / contract / bidder / contractor may be revealed if such an action will infringe on the relevant bidder's / contractors personal rights.

Matters of confidential nature in the possession of officials and other role players involved in SCM should be kept confidential unless legislation, the performance of duty or the provisions of law requires otherwise. Such restrictions also apply to officials and other role players involved in SCM after separation from service.

#### **6. Bid Specification / Evaluation / Adjudication Committees**

Bid specification, evaluation and adjudication committees should implement Supply Chain Management on behalf of the municipality in an honest, fair, impartial, transparent, cost-effective and accountable manner.

Bid evaluation / adjudication committees should be familiar with and adhere to the prescribed legislation, directives and procedures in respect of Supply Chain Management in order to perform effectively and efficiently.

All members of Bid Adjudication Committees should be cleared by the Accounting Officer at the level of "CONFIDENTIAL" and should be required to declare their financial interest annually.



No person should-

- (i) Interfere with the Supply Chain Management system of the municipality;  
or
- (ii) Amend or tamper with any price quotation / bid after its submission.

#### **7. Combative Practices**

Combative practices are unethical and illegal and should be avoided at all cost. They include but are not limited to:

- (i) Suggestions to fictitious lower quotations;
- (ii) Reference to non-existent competition;
- (iii) Exploiting errors in price quotations / bids;
- (iv) Soliciting price quotations / bids from bidders / contractors whose names appear on the Register for Tender Defaulters.

## ANNEXURE B (SCM DELEGATIONS)

### DELEGATION OF POWERS AND DUTIES

**As far as contractual obligations are concerned:** Personnel to be nominated in writing by the Municipal Manager, and Directors, subject to the under-mentioned criteria, and further subject to the municipality's Supply Chain Management Policy, financial regulations and council resolutions where applicable.

#### APPROVAL / AWARD OF QUOTATIONS, FORMAL QUOTATIONS AND TENDERS

| RAND VALUE (VAT inclusive) | LEVEL OF APPROVAL (With due regard to proper segregation of duties)        | QUOTATIONS / TENDERS PROCESS FOLLOWED   |
|----------------------------|--|---|
| Up to R2 000               | Level of approval as delegated by relevant director                        | Petty cash Purchases in terms of the Petty Cash Policy AND / OR One (1) written quotation |
| R2 000.01 – R30 000.00     | Manager Procurement; Supply Chain Management                               | Three (3) written price quotations in terms of Paragraph 17(1)(a) of the SCM Policy       |
| R30 000.01 – R200 000.00   | Manager Procurement; Supply Chain Management / <b>Senior Manager SCM</b>   | Formal written price quotations in terms of Paragraph 18(b) of the SCM Policy             |
| R200 000.01 – R10 million  | Bid Adjudication Committee   | Competitive Bidding – committee system  |
| > R10 million              | Municipal Manager after recommendation from the Bid Adjudication Committee | Competitive Bidding – committee system  |

#### APPROVAL OF DEVIATIONS

| RAND VALUE (VAT inclusive)                   | LEVEL OF APPROVAL  |
|--|--------------------|
| IN TERMS OF CLAUSE 36 ((1)(a)(v)(b) TO (i))  |                    |
| R0 – R200 000.00                             | Accounting Officer |
| >R200 000.00                                 | Accounting Officer |
| 36(1)(a)(v)(c) & (d)                         | Accounting Officer |
| IN TERMS OF CLAUSE 36 ((1)(a)(i) TO (v)(a) . |                    |
| R0 – R70 000.00                              | Accounting Officer |
| R70 000.01 – R200 000.00                     | Accounting Officer |
| >R200 000.00                                 | Accounting Officer |

#### APPROVAL OF REQUESTS FOR ORDERS & MUNICIPAL STORE ISSUES – Dealt with according to the financial delegations' policy of Breede Valley municipality

#### CERTIFICATION AND AUTHORIZATION OF ALL PAYMENTS - Dealt with according to the financial delegations policy of Breede Valley municipality

#### APPROVAL OF SPECIFICATIONS FOR COMPETITIVE BIDS, in terms of Paragraph 27(2)(g) of the SCM Policy

| Cryptic description of Power or Duty   | Sub-delegated to                                  | Remarks, Limitations or Conditions  |
|--|---|---|
| Specifications for Competitive Bids must be approved prior to the publication of the invitation for bids in terms of Paragraph 22 of the SCM Policy. | All Directors and Head of Supply Chain Management | This delegation applies in so far as each director's responsibility for managing the respective votes of the municipality and to whom powers and duties for this purpose have been delegated in terms of Section 79 of the MFMA (Act 56 of 2003). |

#### SIGNING AND CANCELLATION OF CONTRACTS

All creation (sign) and cancellation of contracts with a rand value from R100 000 and above is been sub-delegated from the **accounting officer to the directors.**

## NT DRAFT REGUSLATION 2022

### SCHEDULE

#### PREFERENTIAL PROCUREMENT REGULATIONS, 2022

##### Contents

1. Definitions
2. Application
3. Identification of preference point system
4. 80/20 preference point system for acquisition of goods or services with Rand value equal to or above R30 000 and up to R50 million
5. 90/10 preference point system for acquisition of goods or services with Rand value above R50 million
6. 80/20 preference points system for tenders to generate income or to dispose of or lease assets with Rand value equal to or above R30 000 and up to Rand value of R50 million
7. 90/10 preference point system for tenders to generate income or to dispose of or lease assets with Rand value equal to or above R50 million
8. Criteria for breaking deadlock in scoring
9. Award of contracts to tenderers not scoring highest points
10. Remedies
11. Repeal of regulations
12. Short title and commencement

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##### Definitions

1. 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—  
**“National Treasury”** has the meaning assigned to it in section 1 of the Public Finance

**Commented [MP29]:** DRAFT REGS CAN ALSO BE USED TO REPLACE 2017 REFS FROM 1 JULY 2022. THIS WILL IMPLY THAT BVM WILL 2017 TILL 30 JUNE 2022

Management Act, 1999 (Act No. 1 of 1999);

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

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

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

### **Application**

**2.** These Regulations apply to organs of state as defined in section 11 of the Act.

#### **Identification of preference point system**

**3.(1)** An organ of state must, in the tender documents, stipulate—

(a) the preference point system applicable to the tender as envisaged in regulations 4, 5, 6 or 7; and

(b) any specific goal as envisaged in section 2(1)(d) and (e) of the Act.

**(2)** If it is unclear whether the 80/20 or 90/10 preference point system applies—

(a) in the case of a tender to generate income or to dispose of or lease assets, the highest acceptable tender; or

(b) in the case of any other tender, the lowest acceptable tender, must 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 above R30 000 and up to R50 million**

**4.(1)** The following formula must be used to calculate the points out of 80 for price in respect of a tender with a Rand value equal to or above R30 000 and up to a Rand value of

R50 million, inclusive of all applicable taxes:

Ps

Pt P

P

--

--- --

80 1

min

min

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of lowest acceptable tender.

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

(a) R. 501 of 8 June 2011 recognises, with effect from 7 December 2011, all public entities listed in Schedules 2 and 3 to the Public Finance Management Act, 1999; and

(b) R. 571 of 15 June 2017 recognises, with effect from 17 June 2017, national and provincial government components listed in Schedule

3 to the Public Service Act, 1994 and municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000, as institutions to which the Act applies.

Note should be taken of notices issued from time to time in terms of paragraph (f) of this definition. The application of these Regulations is also

subject to applicable exemptions approved in terms of section 3 of the Act.

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(2) A maximum of 20 points may be awarded to a tenderer for the specified goals envisaged in section 2(1)(d) and (e) of the Act.

(3) The points scored must be rounded off to the nearest two decimal places.

(4) Subject to regulation 9, 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**

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

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of lowest acceptable tender.

(2) A maximum of 10 points may be awarded to a tenderer for the specified goals envisaged in section 2(1)(d) and (e) of the Act.

(3) The points scored must be rounded off to the nearest 2 decimal places.

(4) Subject to regulation 9, the contract must be awarded to the tenderer scoring the highest points.

**80/20 preference points system for tenders to generate income or to dispose of or lease assets with Rand value equal to or above R30 000 and up to Rand value of R50 million**

6.(1) The following formula must be used to calculate the points for price in respect of a tender to generate income or to dispose of or lease assets, with a Rand value equal to, or above R 30 000 and up to a Rand value of R50 million, inclusive of all applicable taxes:

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmax = Price of highest acceptable tender.

Ps

Pt P

P

--

— — — —  
—  
90 1  
min  
min

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(2) A maximum of 20 points may be awarded to a tenderer for the specified goals envisaged in section 2(1)(d) and (e) of the Act.

(3) The points scored must be rounded off to the nearest 2 decimal places.

(4) Subject to regulation 9, the contract must be awarded to the tenderer scoring the highest points.

**90/10 preference point system for tenders to generate income or to dispose of or lease assets with Rand value equal to or above R50 million**

7.(1) The following formula must be used to calculate the points for price in respect of a tender to generate income or to dispose of or lease assets, with a Rand value above R50 million, inclusive of all applicable taxes:

— — — — —  
— — — — —  
—

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmax = Price of highest acceptable tender.

(2) A maximum of 10 points may be awarded to a tenderer for the specified goals envisaged in section 2(1)(d) and (e) of the Act.

(3) The points scored must be rounded off to the nearest 2 decimal places.

(4) Subject to regulation 9, the contract must be awarded to the tenderer scoring the highest points.

**Criteria for breaking deadlock in scoring**

8.(1) If two or more tenderers score an equal total number of points, the contract must be

awarded to the tenderer that scored the highest points for specific goals.

(2) If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

**Award of contracts to tenderers not scoring highest points**

**9.** A contract may be awarded to a tenderer that did not score the highest points only in accordance with section 2(1)(f) of the Act.

**Remedies**

**10.**(1) Upon detecting that a tenderer submitted false information regarding specific goals or any other matter required in terms of these Regulations which will affect or has affected the evaluation of a tender, the organ of state must—

(a) inform the tenderer accordingly; and

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(b) give the tenderer an opportunity to make representations within 14 days as to why—

(i) the tender submitted 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;

and

(ii) the organ of state should not restrict the tenderer from conducting any business for a period not exceeding 10 years with any organ of state.

(2) After considering the representations referred to in subregulation (1)(b), the organ of state may—

(a) if it concludes that such false information was submitted by the tenderer—

(i) disqualify the tenderer or terminate the contract in whole or in part; and

(ii) if applicable, claim damages from the tenderer;

(b) if it concludes that the tenderer must be restricted, restrict the tenderer from doing business with any organ of state for a period not exceeding 10 years.

(3) An organ of state must, within five working days—

(a) inform the National Treasury, in writing, of any action taken in terms of subregulation (2); and

(b) if it decides to restrict a tenderer, request the National Treasury to publish the name of the tenderer in its list of restricted suppliers.

(4) The National Treasury must, within three working days after receiving a request in



terms of subregulation (3)(b), publish the name of the tenderer in its list of restricted suppliers.

**Repeal of regulations**

**11.** Any regulations made under section 5 of the Act are repealed.

**Short title and commencement**

**12.** These Regulations are called the Preferential Procurement Regulations, 2022 and take effect on the date of promulgation of these Regulations.