



**RAYMOND  
MHLABA**  
MUNICIPALITY  
\*\*\*\*\*  
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## **Supply Chain Management Policy for Goods and Services**



## Summary

### Related Legislation/Applicable Section of Legislation

- Constitution of the Republic of South Africa Act 108 of 1996, Section 217
- Municipal Finance Management Act 56 of 2003
- Municipal Supply Chain Management Regulations
- Preferential Procurement Policy Framework Act 5 of 2000
- Broad-Based Black Economic Empowerment Act 53 of 2003
- Construction Industry Development Board Act 38 of 2000
- Local Government : Municipal Systems Act 32 of 2000
- Promotion of Raymond Mhlaba Municipality administrative Justice Act 3 of 2000

### Related Policies, Procedures, Guidelines, Standards, By-laws, Frameworks

Supply Chain Management Policy for Infrastructure Procurement and Delivery Management

### Applies to

All Raymond Mhlaba employees

### Key Words

Supply Chain Management Policy Goods Services

### Status

Final

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## **1. TITLE**

- Supply Chain Management Policy for Goods and Services.

## **2. PURPOSE**

- To manage the way in which the Municipality procures goods and/or services giving effect to section 217 of the Constitution of the Republic of South Africa Act 108 of 1996;
- To implement a policy that is fair, equitable, transparent, competitive and cost effective;
- To comply with all applicable provisions of the Municipal Finance Management Act 56 of 2003, as well as all other applicable legislation;
- To ensure sound, sustainable and accountable supply chain management with the Raymond Mhlaba Municipality, whilst promoting black empowerment as a priority of Raymond Mhlaba Municipality.

## **3. SCOPE**

- This Policy applies to the planning, acquisition, contracts management, disposal of all goods and services, construction works, consultancy services and the treatment of unauthorised expenditure, irregular expenditure, and fruitless and wasteful expenditure; and is applicable to all officials involved in supply chain management.

## **4. POLICY DETAIL**

- The policy manages the way in which goods and/or services are procured, disposed, management of contracts entered into through the supply chain management system, construction works, and consultancy services and strives to prevent irregular and fruitless and wasteful expenditure.
- The implementation of the policy strives to ensure that the Municipality obtains an unqualified/clean audit.
- The objectives of this Policy are:
  - To give effect to section 217 of the Constitution of the Republic of South Africa Act 108 of 1996;
  - To implement a policy that is fair, equitable, transparent, competitive and cost effective;
  - To comply with all applicable provisions of the Municipal Finance Management Act 56 of 2003;
  - To ensure consistency with all other applicable legislation, including:
    - the Preferential Procurement Policy Framework Act 5 of 2000;
    - the Broad-Based Black Economic Empowerment Act 53 of 2003;
    - the Construction Industry Development Board Act 38 of 2000;
    - the Local Government : Municipal Systems Act 32 of 2000; and
    - the Promotion of Raymond Mhlaba Municipal Administrative Justice Act 3 of 2000.
  - This policy will also strive to ensure that the objectives for uniformity in supply chain management systems between organs of state in all spheres, is not undermined and that consistency with national economic policy on the promotion of investments and doing business with the public sector is maintained.

## Chapter 1: Empowerment Goals

- 4.1.1 The Supply Chain Management Policy seeks to encourage socio-economic transformation within its region in line with the PPPFA, BBBEE and CIDB Acts.
- 4.1.2 The Policy seeks to achieve the above by implementing the principles of the relevant applicable legislation referred to above by providing employment opportunities to BEE companies and communities, enabling socio-economic transformation objectives to be linked to fair, transparent, equitable, competitive and cost effective procurement practices. In this regard, the following empowerment goals are proposed to be used as measures by Council in assessing the impact of its policy in realizing the socio-economic transformation agenda of government in all spheres.
- 4.1.3 Council aims to have allocated its projects to BEE companies that have attained the B-BBEE status level of contributor in accordance with the table below:

<b>B-BBEE Status Level of Contributor</b>	<b>% Allocated</b>
1	100%
2	90%
3	80%
4	70%
5	60%
6	50%
7	40%
8	30%
Non-Compliant Contributor	0%

- 4.1.4 For purposes of monitoring the allocation of bids along the empowerment goals mentioned above, Supply Chain Management shall table a report as part of consideration of the bids, detailing how many of the bids that were adjudicated during a particular quarter and if there are any variations to the stated objectives. A progress report will also be tabled every quarter to the Mayoral Committee and Council for noting and/or comments where there is deviation or lack of visible progress. Refer to sections from Acts and Regulations regarding Council oversight.

## **4.2 Chapter 2: Legislative Framework Guiding the Establishment and the Implementation of Supply Chain Management Policy and Compliance Matters**

### **4.2.1 Supply chain management policy**

- (1) The RAYMOND MHLABA MUNICIPALITY resolves in terms of section 111 of the Municipal Finance Management Act 56 of 2003 to have and implement a supply chain management policy that –
  - (a) gives effect to –
    - (i) section 217 of the Constitution; and
    - (ii) Part 1 of Chapter 11 and other applicable provisions of the Act;
  - (b) is fair, equitable, transparent, competitive and cost effective;
  - (c) complies with –
    - (i) the regulatory framework prescribed in Chapter 2 of the Regulations; and
    - (ii) any minimum norms and standards that may be prescribed in terms of section 168 of the Municipal Finance Management Act 56 of 2003;
  - (d) is consistent with other applicable legislation;
  - (e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
  - (f) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.
- (2) The RAYMOND MHLABA MUNICIPALITY may not act otherwise than in accordance with this supply chain management policy when–
  - (a) procuring goods or services;
  - (b) disposing of goods no longer needed;
  - (c) selecting contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
  - (d) selecting external mechanisms referred to in section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.

### **4.2.2 Amendment of the supply chain management policy**

- (1) the accounting officer must:
  - (a) at least annually review the implementation of this policy; and

- (b) when the accounting officer considers it necessary, submit proposals for the amendment of this policy to the Council.

#### 4.2.3 Delegation of supply chain management powers and duties

- (1) The RAYMOND MHLABA MUNICIPALITY hereby delegates such additional powers and duties to the accounting officer so as to enable the accounting officer –
  - (a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
    - (i) Chapter 8 or 10 of the Municipal Finance Management Act 56 of 2003; and
    - (ii) this policy;
  - (b) to maximise Raymond Mhlaba Municipality Administrative and operational efficiency in the implementation of the supply chain management 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 Municipal Finance Management Act 56 of 2003.
- (2) Sections 79 and 106 of the Municipal Finance Management Act 56 of 2003 apply to the sub-delegation of powers and duties delegated to an accounting officer in terms of subsection 4.2.4(1) of this policy.
- (3) The council or accounting officer may not delegate or sub-delegate any supply chain management powers or duties to a person who is not an official of the RAYMOND MHLABA MUNICIPALITY or to a committee which is not exclusively composed of officials of the RAYMOND MHLABA MUNICIPALITY;
- (4) This section 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 section 4.5.16 of this policy.

#### 4.2.4 Sub-delegations

- (1) The accounting officer may in terms of section 79 or 106 of the Municipal Finance Management Act 56 of 2003 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 sub-section 4.2.4(2) and section 4.2.3 of this policy.
- (2) The power to make a final award –
  - (a) above R10 million (VAT included) may not be sub-delegated by the accounting officer;
  - (b) above R2 million (VAT included), but not exceeding R10 million (VAT included), may be sub-delegated but only to –

- (i) the chief financial officer;
  - (ii) a senior manager (reporting to the accounting officer); or
  - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member;
  
- (c) not exceeding R2 million (VAT included) may be sub-delegated but only to –
  - (i) the chief financial officer;
  - (ii) a senior manager (reporting to the accounting officer); or
  - (iii) a manager directly accountable to the chief financial officer or a senior manager; or
  - (iv) a bid adjudication committee.
  
- (3) An official or bid adjudication committee to which the power to make final awards has been sub-delegated in accordance with this policy must within five days of the end of each month submit to the official referred to in subsection 4.2.4(4) of 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.
  
- (4) A written report referred to in subsection 4.2.4(3) of this policy must be submitted –
  - (a) to the accounting officer, in the case of an award by –
    - (i) the chief financial officer;
    - (ii) a senior manager (reporting to the accounting officer); or
    - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member;
  
  - (b) to the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by –
    - (i) a manager referred to in subsection 4.2.4(2)(c)(iii) of this policy; or
    - (ii) a bid adjudication committee of which the chief financial officer or a senior manager is not a member.
  
- (5) Subsections 4.2.4(3) and (4) of this policy do not apply to procurements out of petty cash.
- (6) This section 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 4.5.16 of this policy.
- (7) No supply chain management decision-making powers may be delegated to an advisor or consultant.

#### 4.2.5 Oversight role of council

- (1) The Municipal Finance Management Act 56 of 2003 prohibits a councillor from being a member of a bid committee or any other committee evaluating or approving quotations or bids nor may a councillor attend any such meeting as an observer.
- (2) Council, however has an oversight role to ensure that the accounting officer implements all supply chain management activities in accordance with this Policy.
- (3) For the purposes of such oversight the accounting officer must –
  - (a)
    - (i) within 30 days of the end of each financial year, submit a report on the implementation of the supply chain management policy of the municipality and of any municipal entity under its sole or shared control of the municipality, to the council of the municipality,
    - (ii) whenever there are serious and material problems in the implementation of the Supply Chain Management Policy, immediately submit a report to the Council of the Municipality.
- (4) The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the Executive Mayor.
- (5) The reports must be made public in accordance with section 21A of the Municipal Systems Act.

#### 4.2.6 Supply chain management unit

- (1) The accounting officer must establish a supply chain management unit to implement this policy.
- (2) The supply chain management unit must operate under the direct supervision of the chief financial officer or an official to whom this duty has been delegated in terms of section 82 of the Municipal Finance Management Act 56 of 2003.

#### 4.2.7 Training of supply chain management officials

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

## **4.3 Chapter 3: Concept of Supply Chain Management**

### **4.3.1 Supply Chain Management Defined**

SCM involves the management of working capital that is invested in goods, stores and services with the objective of optimizing the economic return on such investment. The process begins when the needs are identified during the strategic planning phase of the organisation when service delivery targets are identified, to the point of finally disposing of an asset.

### **4.3.2 Objectives of Supply Chain Management**

As a concept, Supply Chain Management has the following broad objects:

- (a) Promoting uniformity in the processes relevant to the repealing of bid board legislation in the various spheres of government and devolving the responsibility and accountability for procurement-related functions to accounting officers or authorities.
- (b) Promoting uniformity in the various spheres of government in the interpretation of government's preferential procurement legislation and policies, also in the context of other broad-based but related legislative and policy requirements of government.
- (c) Replacing the outdated procurement and provisioning practices in government with a supply chain management function and a systematic competitive procedure for the appointment of consultants as an integral part of financial management in government that conforms to internationally accepted best practice principles.
- (d) Introducing parameters for the promulgation of a regulatory framework in terms of the Public Finance Management Act (PFMA) and MFMA to ensure compliance to minimum norms and standards, but in such a manner that the principles of co-operative governance are observed.
- (e) To give effect to the provisions of the Constitution.
- (f) To give effect to the provisions of the MFMA and PFMA.
- (g) To transform procurement and provisioning practices into an integrated SCM function.
- (h) To introduce a systematic approach for the appointment of consultants.
- (i) To create an understanding of Government's preferential procurement policy objectives.
- (j) To make significant improvement to financial management.
- (k) To promote consistency in respect of supply chain policy and other related policy initiatives.
- (l) To adhere to international best practices.

### **4.3.3 Improving Accountability**

The MFMA aims to improve accountability by placing responsibility for decisions in the hands of each accounting officer, and by ensuring that there is support from National Treasury, for example in the form of "best practice" guidelines, to assist managers in delivering services to communities as efficiently and effectively as possible.

The accountability chain is the most critical driver for improving financial management in the public sector. The Annual Report and the report of the Auditor-General will indicate achievement against the intentions specified in each municipality's or municipal entity's Integrated Development Plan (IDP) and may highlight areas that require improvement.

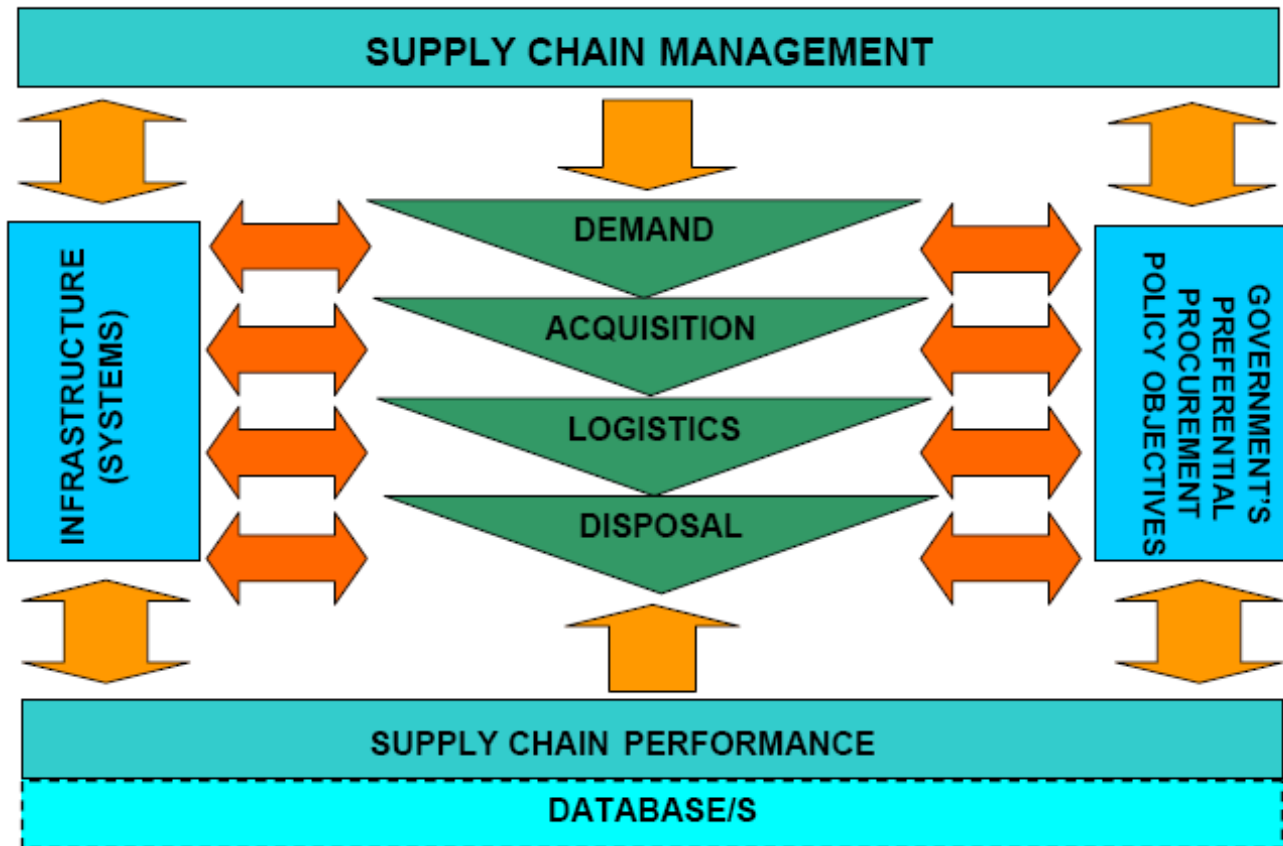
A particular requirement of the MFMA is that each accounting officer undertakes a "risk assessment" for his or her municipality or municipal entity. Risk management acknowledges that all the activities of an organization involve some element of risk. Management should decide what is an acceptable level of risk (given cost and other social factors) by objectively assessing the factors (risks) that may prevent a particular activity from meeting its objective? In the case of SCM, this will include ensuring, on a case-by-case basis, that clearly worded and unambiguous contract documents, guarantees or insurance arrangements are in place (i.e. managers must manage).

In addition, the award and management of contracts is an area where fraud and corruption has been found in the part, and the Municipality's Anti-Fraud Management Strategy should reflect this, through cost-effective use of control measures and procedures and an ethical culture.

#### **4.3.4 Good Governance**

In order to achieve the ideals of good corporate governance and to address deficiencies in SCM, fundamental institutional reforms will have to be implemented. Such reforms need to promote efficient and effective procurement and provisioning systems and practices that enable municipalities/municipal entities to deliver the required quality and quantity of services to its clients. The establishment of uniformity in procedures, policies, documentation and contract options and the implementation of sound systems of control and accountability should form the cornerstone of institutional reform.

#### **4.3.5 The Elements / Framework of Supply Chain Management**



(1) This supply chain management policy provides systems for:

(a) **Demand Management**

This is the beginning of the supply chain, and must begin with a needs assessment, to ensure:

- (i) that goods or services are required in order to deliver the agreed service;
- (ii) that specifications are precisely determined;
- (iii) that requirements are linked to the budget; and
- (iv) that the supplying industry has been analyzed.

This phase will bring the supply chain practitioner close to the end user, to ensure that value for money is achieved. This policy provides for an effective system of demand management in order to ensure that the resources required to support the strategic and operational commitments of the Municipality, are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy the needs of the Municipality.

(b) **Acquisition Management**

This refers to the management of procurement by a municipality. The Municipality must:

- (i) decide on the manner in which the market will be approached;

- (ii) establish the total cost of ownership of a particular type of asset;
- (iii) ensure that bid documentation is complete, including evaluation criteria;
- (iv) evaluate bids in accordance with published criteria; and
- (v) ensure that proper contract documents are signed.

(c) **Logistics Management**

This aspect addresses the setting of inventory levels, placing of orders, receiving and distribution of material and goods, stores, warehouse and transport management, expediting orders, the review of vendor performance, maintenance and contract Raymond Mhlaba Municipality administration. From these processes, the financial system is activated to generate payments.

(d) **Disposal Management**

A supply chain management policy must provide for an effective system of disposal management for the disposal or letting of assets no longer needed, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the MFMA.

At this stage, consideration must be given to:

- (i) obsolescence planning;
- (ii) maintaining a data base of redundant material;
- (iii) inspecting material for potential re-use;
- (iv) determining a disposal strategy; and
- (iv) executing the physical disposal process.

(e) **Risk Management**

A supply chain management policy must provide for an effective system of risk management for the identification, consideration and avoidance of potential risks in the supply chain management system. Risk management must include:

- (i) the identification of risks on a case-by-case basis;
- (ii) the allocation of risks to the party best suited to manage such risks;
- (iii) acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
- (iv) the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
- (v) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

(f) **Performance Management**

This is a monitoring process, undertaking a retrospective analysis to determine whether the proper processes have been followed and whether the desired objectives were achieved. Some of the issues that may be reviewed are:

- (i) compliance to norms and standards;
- (ii) cost efficiency of procurement process (i.e. the cost of the process itself); and
- (iii) whether supply chain practices are consistent with Government's broader policy focus.

#### 4.3.6 Five pillars of procurement

- (1) Value for money: The term "value for money" includes the monetary value as well as the quality and the utilisation of the procurement system to achieve government's policy objectives (see the Regulations pertaining to the PPPFA). Due consideration should, however, be given to the quality of goods required, the time to Raymond Mhlaba Municipality administrate the process, and the cost effectiveness of the ensuing contracts. This is an essential test against which a municipality or municipal entity must justify a procurement outcome.
- (2) Open and effective competition: The pillar of public sector procurement requires the following:
  - (a) a framework of procurement laws, policies, practices and procedures that is transparent; in other words they must be readily accessible to all parties;
  - (b) openness in the procurement process;
  - (c) encouragement of effective competition through procurement methods suited to market circumstances; and
  - (d) observance of the provisions of the PPPFA.
- (3) Ethics and fair dealing: All parties involved in procurement should comply with the following ethical standards:
  - (a) deal with each other on a basis of mutual trust and respect; and
  - (b) conduct their business in a fair and reasonable manner and with integrity,
- (4) Accountability and reporting: This involves ensuring that individuals and organizations are answerable for their plans, actions and outcomes. Openness and transparency in Raymond Mhlaba Municipality administration, by external scrutiny through public reporting, is an essential element of accountability
- (5) Equity: The word "equity" in the context of the five pillars of public sector procurement means the application and observance of government policies that are designed to advance persons or categories of persons disadvantaged by unfair discrimination. This fifth pillar is vital to public sector procurement in South Africa. It ensures that Government is committed to economic growth by implementing measures to support the industry in general. No public procurement system should be operated if it is not founded on this pillar.

## 4.4 Chapter 4: Demand Management

### 4.4.1 System of demand management

- (1) The accounting officer must establish, through operational procedures, an effective system of demand management in order to ensure that the resources required to support the strategic and operational commitments are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy the needs.
- (2) The demand management system must:
  - (a) include timely planning and management processes to ensure that all goods and services required by the Municipality are quantified, budgeted for and timely 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) take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature; and
  - (c) provide for the compilation of the required specifications to ensure that its needs are met;
  - (d) to undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.
- (3) The RAYMOND MHLABA MUNICIPALITY's Integrated Development Plan (IDP) is a comprehensive strategy document setting out how the RAYMOND MHLABA MUNICIPALITY intends to tackle its development challenges in a financial year. It is on the basis of the IDP that the resources of the Municipality will be allocated and on which the budget is based.
- (4) The objective is to ensure that the resources required to fulfil the needs identified in the IDP are delivered at the correct time, price and place, and that the quantity and quality will satisfy those needs.
- (5) In order to achieve the objectives of good governance and to address deficiencies in supply chain management, fundamental institutional reforms will have to be implemented. These reforms will promote efficient and effective provisioning and procurement systems and practices to enable the RAYMOND MHLABA MUNICIPALITY to deliver the required quantity and quality of services to the communities.
- (6) The establishment of uniformity in policies, procedures, documents and contract options and the implementation of sound systems of control and accountability shall form the cornerstone of institutional reform.
- (7) The development of a world-class professional supply chain management system should result in continuing improvement in affordability and value for money, based on total cost of ownership and quality of procurement as competition amongst suppliers is enhanced.
- (8) Resources required for the fulfilment of the Municipality's obligations will be clearly analysed. This includes a detailed analysis of the goods, works and services required.
- (9) In dealing with suppliers and potential suppliers, the RAYMOND MHLABA MUNICIPALITY shall respond promptly, courteously and efficiently to enquiries, suggestions and complaints.



#### 4.4.2 **The Demand Management Process**

- (1) This is the beginning of the supply chain where the following major activities associated with the identifying demand should take place:
  - (a) establishing requirements;
  - (b) determining needs; and
  - (c) deciding on appropriate procurement strategies.
  
- (2) Demand management accordingly shall involve the following activities:
  - (a) SCM integration in the strategic planning process;
  - (b) understanding the future needs;
  - (c) identifying critical delivery dates;
  - (d) identifying the frequency of need;
  - (e) linking the requirement to the budget;
  - (f) conducting an expenditure analysis based on past expenditures;
  - (g) determining requirements;
  - (h) compiling of specifications;
  - (i) conducting a commodity analysis in order to check for alternatives;
  - (j) conducting a market/industry analysis; and
  - (k) providing regular feedback to and from the roleplayers.

This is a cross-functional exercise that brings the supply chain practitioner closer to the end user and ensuring that value for money is achieved.

#### 4.4.3 **Strategy for achieving the Preferential Procurement Policy Framework Act (PPPFA) objectives and linking the system to Black Economic Empowerment (BEE) objectives**

In order to achieve the objectives as stated in Chapter 1 of this Policy, the Municipality will use the public sector SCM system as a tool to achieve the BEE objectives/goals. This will be achieved within the prescribed framework of the PPPFA and its Regulations.

The accounting officer or the delegated official will approve all specifications drafted by the Bid Specification Committee prior to publication.

#### 4.4.4 **Planning and stipulation of preference point system to be utilized**

An organ of state must, prior to making an invitation for tenders:

1. properly plan for, and, as far as possible, accurately estimate the costs of the provision of services, works or goods for which an invitation for tenders is to be made;
2. determine and stipulate the appropriate preference point system to be utilized in the evaluation and adjudication of the tenders; and
3. determine whether the services, works or goods for which an invitation for tenders is to be made has been designated for local production and content in terms of regulation 9.

#### 4.4.5 **Sourcing strategy**

1. A sourcing strategy must be completed by the BSC and submitted to the Acquisition unit for approval by the relevant BAC before the acquisition process commence.
2. The intention to commence an acquisition process with a value threshold above R10 million must be approved by the Chief Financial Officer before any the acquisition process commences.
3. The sourcing strategy must be submitted to the BAC for consideration.
4. The sourcing strategy must specify:
  - (a) the value threshold of the contract;
  - (b) the designated CIDB grading of contractors to which the contract applies (if applicable)
  - (c) the form of contract that is applicable to the bid or quote;
  - (d) the criteria applicable to the bid or quote, which includes;
    - (i) the acquisition procedure;
    - (ii) the evaluation method applicable;
    - (iii) the weighting applicable to quality and price
    - (iv) the scores for preference;
  - (e) departure from the standard acquisition process must be approved by the relevant BAC;
  - (f) responsiveness criteria, which includes:
    - (i) the responsive criteria applicable to the bid or quote; and
    - (ii) the additional information that may be required to evaluate the bid or quote;
    - (iii) the bid or quote advertisement period;
    - (iv) the validity period of the bid or quote;
    - (v) the price of the bid documents; and
    - (vi) any other comments that are applicable to the particular bid or quote.

#### 4.4.6

#### **Procurement Planning**

1. The Accounting officer of RAYMOND MHLABA MUNICIPALITY may, upon request, make available to the relevant treasury a procurement plan containing all planned procurement for the financial year, in respect of the procurement of goods, services and infrastructure projects which exceed R200 000 (all applicable taxes included).
2. This procurement plan must be approved by the accounting officer or his or her delegate.
3. Accounting officers of municipal entities must submit the procurement plans to the accounting officer of their parent municipality.
4. All user departments are required to submit their procurement plans to the Head of Supply Chain Management in the RAYMOND MHLABA MUNICIPALITY or municipal entity to improve planning and management of resources.
5. The relevant information should preferably be furnished in the format contained in the Procurement Plan Template provided by National Treasury under Circular Notice 62.
6. The RAYMOND MHLABA MUNICIPALITY / municipal entity may customize and utilize the template with minimum changes necessary to address the municipality's/municipal entity's specific issues.
7. The template should however cover the following minimum information:
  - (a) Description of goods / services / infrastructure projects;
  - (b) Estimated value (including all applicable taxes);
  - (c) Envisaged date of advertisement in website, newspaper or other media;
  - (d) Envisaged closing date of bid;
  - (e) Envisaged date of award;
  - (f) Responsible office.

## 4.5 Chapter 5: Acquisition Management

### 4.5.1 System of acquisition management

- (1) The accounting officer must establish, through operational procedures, an effective system of acquisition management in order to ensure –
  - (a) that goods and services are procured by the Municipality in accordance with authorised processes only;
  - (b) that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Municipal Finance Management Act 56 of 2003;
  - (c) that the threshold values for the different procurement processes are complied with;
  - (d) that bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
  - (e) that any Treasury guidelines on acquisition management are properly taken into account.
  - (f) The Construction Industry Development Board (CIDB) has been established by government to promote the uniform application of policy to the construction industry. When calling for infrastructure related bids, the standard bidding documents issued by the CIDB must be utilised.
  
- (2) This supply chain management policy, except where provided otherwise in the policy, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Municipal Finance Management Act 56 of 2003, including –
  - (a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
  - (b) electricity from Eskom or another public entity, another municipality or a municipal entity.
  
- (3) The following information must be made public wherever goods or services contemplated in section 110(2) of the Municipal Finance Management Act 56 of 2003 are procured other than through the supply chain management system –
  - (a) the kind of goods or services; and
  - (b) the name of the supplier.

## 4.5.2

## Range of procurement processes

STRUCTURE OF APPROVAL		
GOODS/SERVICE VALUE	PROCUREMENT METHOD MINIMUM	APPROVAL AUTHORITY
R0 – R2 000	Petty Cash : One Quote	Supply Chain Management
R2 001 – R10 000	Three Quotations	Supply Chain Management
R10 001 – R30 000	Three Quotations	Supply Chain Management
R30 001 – R200 000	1 Week Bulletin Notice and Advertisement via Website : Three Quotations	Supply Chain Management
R200 001 – R2 Million	Competitive Bidding Process	Accounting Officer
R2 Million – R10 Million	Competitive Bidding Process	Accounting Officer
Above R10 Million	Competitive Bidding Process	Accounting Officer

(1) The procurement of goods and services through this policy is provided by way of –

- (a) petty cash purchases, up to a transaction value of R2 000 (VAT included);
- (b) written or verbal quotations for procurements of a transaction value over R2 000 up to R10 000 (VAT included);
- (c) formal written price quotations for procurements of a transaction value over R10 000 up to R200 000 (VAT included); and
- (d) a competitive bidding process for–
  - (i) procurements above a transaction value of R200 000 (VAT included); and
  - (ii) the procurement of long term contracts.

(2) The accounting officer may in writing -

- (a) lower, but not increase, the different threshold values specified in subsection (1); or,
- (b) direct that –

- (i) written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000;
- (ii) formal written price quotations be obtained for any specific procurement of a transaction value lower than R10 000; or
- (iii) a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000.

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

#### 4.5.3 **General preconditions for consideration of written quotations or bids**

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

- (a) has furnished that provider's –

- (i) full name;
- (ii) identification number or company or other registration number; and
- (iii) tax reference number and VAT registration number, if any;

- (b) has authorised RAYMOND MHLABA MUNICIPALITY to obtain a tax clearance from the South African Revenue Services that the provider's tax matters are in order; and

- (c) has indicated –

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

#### 4.5.4 **Lists of accredited prospective providers**

(1) The accounting officer must –

- (a) use CSD accredited prospective providers of goods and services that must be used for the procurement requirements of the RAYMOND MHLABA MUNICIPALITY through written or verbal quotations and formal written price quotations;

#### 4.5.5 **Petty cash purchases**

(1) In certain cases it is not possible or economically viable to procure goods and services through written or competitive bidding processes. This situation will arise where the total costs of engaging in written quotation or competitive bidding far outweigh the value of the items or services being sought. This situation is envisaged for items or services below R2 000.00 VAT inclusive only.

(2) The accounting officer must establish the conditions for procurement of goods by means of petty cash purchases referred to in section 22 (1) (a) of this 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 is considered necessary; and
- (d) requiring monthly reconciliation reports from each manager to the chief financial officer, including –
  - (i) the total amount of petty cash purchases for that month; and
  - (ii) receipts and appropriate documents for each purchase.

#### 4.5.6 **Written or verbal quotations**

- (1) The accounting officer must establish the conditions for the procurement of goods or services through written or verbal quotations, which must include conditions stating that–
  - (a) quotations must be obtained from at least three different accredited providers registered in the National Treasury's Central Supplier Database (CSD);
  - (b) Providers not registered on the National Treasury's CSD will only be considered if no technically suitable suppliers are registered on the National Treasury's CSD and/or if it would be in the best interests of RAYMOND MHLABA MUNICIPALITY that such suppliers be considered, provided that such providers meet the listing criteria required by section 4.5.8(3)(c) of this policy;
  - (c) as far as possible all suppliers must be afforded an opportunity to quote on a rotational basis;
  - (d) to the extent feasible, providers must be requested to submit such quotations in writing;
  - (e) if it is not possible to obtain at least three quotations, then the reasons must be recorded and reported quarterly to the accounting officer or another official designated by the accounting officer;
  - (f) the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices;
  - (g) if a quotation was submitted verbally, then the order may be placed only against written confirmation by the selected provider; and
  - (h) splitting of requirements with the sole intention of circumventing any of the procurement mechanism listed, is not allowed.

#### 4.5.7 **Formal written price quotations**

- (1) The accounting officer must establish the conditions for the procurement of goods or services through formal written price quotations, which must include conditions stating that–
  - (a) quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the Municipality;
  - (b) Providers not registered on the database will only be considered if no technically suitable suppliers are registered on the data base and/or if it would be in the best interests of RAYMOND MHLABA MUNICIPALITY that such suppliers be considered, provided that such providers meet the listing criteria required by section 4.5.8(3)(c) of this policy;
  - (c) if it is not possible to obtain at least three quotations, then the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer;

- (d) the accounting officer must record the names of the potential providers and their written quotations; and
  - (e) splitting of requirements with the sole intention of circumventing any of the procurement mechanism listed is not allowed.
- (2) A designated official referred to in subsection (1)(c) must within three days of the end of each month report to the chief financial officer on any approvals given during that month by that official in terms of that subsection.

4.5.8 **Procedures for procuring goods or services through written or verbal quotations and formal written price quotations**

- (1) The accounting officer must determine the operational procedure for the procurement of goods or services through written or verbal quotations or formal written price quotations, which must stipulate that–
  - (a) when using the list of accredited prospective providers the accounting officer must promote ongoing competition amongst providers, including the invitation of providers to submit quotations on a rotation basis;
  - (b) all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of section 4.5.34, be advertised for at least seven days on the website and an official notice board of the Municipality;
  - (c) offers received must be evaluated on a comparative basis taking into account unconditional discounts;
  - (d) if there are frequent procurements of the same or similar goods or services, and where the amount per transaction is less than R200 000.00, then such procurements must be consolidated and a single contract must be concluded after having followed a competitive bidding process;
  - (e) 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;
  - (f) the accounting officer or chief financial officer 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;
  - (g) offers below R30 000 (vat included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;
  - (h) proper record keeping must be maintained, including the requirements therefor;
  - (i) splitting of requirements with the sole intention of circumventing any of the procurement mechanism listed is not allowed.
  
- (2) With regard to the procurement of goods and services with a transaction value lower than R200 000 -
  - (a) the procurement of goods and services between R0 and R30 000 falls within the scope of the supply chain management section;
  - (b) the procurement of goods and services between R30 001 and R200 000 falls within the scope of the supply chain management section;

- (3) For purposes of the procurement of goods and services in terms of sub-section 2 –
- (a) the regulation thereof will be assessed and monitored by the supply chain management unit to ensure alignment with the empowerment goals set out in Chapter 1;
  - (b) the Municipality must utilise the National Treasury’s CSD;
  - (c) if not registered on the National Treasury’s CSD, in order to be considered for the supply and delivery of any goods and or services, a service provider or supplier must produce proof of compliance with the following prerequisites:
    - (i) current original certificate of good standing in terms of VAT/Income Tax;
    - (ii) offices should preferably be in the jurisdiction of the RAYMOND MHLABA MUNICIPALITY;
    - (iii) company registration with the registrar of businesses in terms of the Companies Act, 1973 (Act No. 61 of 1973); and,
    - (iv) registration with a professional body, where relevant;
    - (v) food caterers must comply with the regulations governing general hygiene compliance for food premises and the transport of food, and be in possession of a certificate of acceptability, as required by Regulation GNR 918 of 30 July 1991, made by the Minister of Health in terms of section 35, read with section 40, of the Health Act, 1977 (Act No. 63 of 1977).
    - (vi) contractors must be registered with the Construction Industry Development Board (CIDB) and be in possession of a grading certificate.
    - (v) ensure, in respect of the preferred bidder, that the bidder’s municipal rates and taxes and municipal service charges are not in arrears.
  - (d) the supply chain management unit must submit a quarterly report, including an analysis of the achievement of set goals.
  - (e) The Supply Chain Management unit will submit a quarterly report on the procurement of goods and services above R30 000. An analysis will be provided stating the achievement and/or failure in compliance with the set goals.

#### 4.5.9 **Competitive bidding process**

- (1) Goods or services above a transaction value of R200 000 (VAT included) and long term contracts may only be procured through a competitive bidding process, subject to section 22(2) of this policy.
- (2) No requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.
- (3) Prospective service providers must be registered as VAT vendors in order to tender for bids of any value.

#### 4.5.10 Process for competitive bidding

- (1) The accounting officer must establish procedures for a competitive bidding process for each of the following stages:
  - (a) the compilation of bidding documentation;
  - (b) the public invitation of bids;
  - (c) site meetings or briefing sessions, if applicable;
  - (d) the handling of bids submitted in response to public invitation;
  - (e) the evaluation of bids;
  - (f) the award of contracts;
  - (g) the Raymond Mhlaba Municipality administration of contracts: after approval of a bid, the accounting officer or delegated authority and the bidder must enter into a written agreement.
  - (h) proper record keeping: original/legal copies of written contracts agreements should be kept in a secure place for reference purposes.

#### 4.5.11 Bid documentation for competitive bids

- (1) The accounting officer must establish the criteria to which bid documentation for a competitive bidding process must comply, which in addition to section 20 of this policy, the bid documentation 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; and
    - (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
  - (b) include the preference points system to be used, goals as contemplated in the Preferential Procurement Regulations and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
  - (c) 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;
  - (d) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (2) Bids exceeding R10 million
  - (a) If the value of the transaction is expected to exceed R10 million (VAT included), then the bid documentation must stipulate that bidders are required to furnish–
    - (i) their audited annual financial statements if required by law to do so –

- (aa) for the past three years; or
- (bb) since their establishment, if established during the past three years,

in the event that the bidder is required by law to prepare annual financial statements for auditing;

- (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.
- (b) The bid documentation must also stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

(3) Construction works

If the bid relates to construction works as contemplated by the Construction Industry Development Board Act then the requirements of that Act must be taken into account in the bid documentation.

#### 4.5.12 Public invitation for competitive bids

- (1) The accounting officer must determine the procedure for the invitation of competitive bids, which must stipulate that:
  - (a) any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the Municipality or any other appropriate ways (which may include an advertisement in the National Treasury's eTender Publication Portal); and
  - (b) the information contained in a public advertisement, must include –
    - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subsection (2) of this policy; and
    - (ii) a statement that bids may only be submitted on the bid documentation provided by the Municipality.
- (2) The accounting officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on

the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.

(3) Bids submitted must be sealed.

(4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

#### 4.5.13 Procedure for handling, opening and recording of bids

The accounting officer must determine the procedures for the handling, opening and recording of bids, which must:

- (a) stipulate that bids:
  - (i) must be opened only in public; and
  - (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired;
  - (iii) received after the closing time should not be considered and returned unopened immediately.
- (b) any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price;
- (c) no information, except the provisions in sub-para (b) relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
- (d) the accounting officer :
  - (i) to record in a register all bids received in time;
  - (ii) to make the register available for public inspection; and
  - (iii) to publish the entries in the register and the bid results on the website.

#### 4.5.14 Negotiations

- (1) The negotiation process may be used when:
  - (a) procuring goods and services from single or sole suppliers;
  - (b) negotiating the terms and conditions of the contract concluded with the preferred bidder; and
  - (c) negotiating annual price increases.
- (2) The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation –
  - (a) does not allow any preferred bidder a second or unfair opportunity;
  - (b) is not to the detriment of any other bidder; and
  - (c) does not lead to a higher price than the bid as submitted.
- (3) The bidding document or request for quotation document must specify that negotiations will be conducted in finalizing the award.
- (4) Minutes of such negotiations must be kept for record purposes.
- (5) The approval or mandate to negotiate with any supplier must be obtained in writing from the accounting officer or delegated official, as contemplated in terms of the RAYMOND MHLABA MUNICIPALITY's delegation policy.
- (6) The approval or mandate to negotiate must address at least the following:
  - (a) reasons for negotiations;
  - (b) negotiation parameters;

- (c) objectives of the negotiations; and
  - (d) supplier(s) to be negotiated with.
- (7) The outcome of the negotiation must be approved by the Bid Adjudication Committee before the contract can be awarded to the preferred bidder.
- (8) Records of all negotiations must be kept and submitted to the BAC during the award.

#### 4.5.15 Two-stage bidding process

- (1) A two-stage bidding process is allowed for –
  - (a) large complex projects;
  - (b) projects where it may be undesirable to prepare complete detailed technical specifications; or
  - (c) long term projects with a duration period exceeding three years.
- (2) In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.
- (3) In the second stage final technical proposals and priced bids should be invited.

#### 4.5.16 Committee system for competitive bids

- (1) The accounting officer is required to –
    - (a) establish a committee system for competitive bids consisting of at least –
      - (i) a bid specification committee;
      - (ii) a bid evaluation committee; and
      - (iii) a bid adjudication committee;
    - (b) appoint the members of each committee, taking into account section 117 of the Municipal Finance Management Act 56 of 2003; and
    - (c) provide for an attendance or oversight process by a neutral or independent observer, appointed by the accounting officer, when this is appropriate for ensuring fairness and promoting transparency.
  - (2) The committee system must be consistent with –
    - (a) sections 39, 40 and 41 of this policy; and
    - (b) any other applicable legislation.
      - (i) The accounting officer may apply the committee system to formal written price quotations.
      - (ii) A member of a bid committee may not be a member of any other bid committee to ensure segregation of duties.
- (111)



#### 4.5.17 Bid specification committees

- (1) The bid specification committee must compile the specifications for each procurement of goods or services by the Municipality.
- (2) Specifications –
  - (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
  - (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;
  - (c) 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) subject to (h), below, 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 words “equivalent”;
  - (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in terms of the PPPFA;
  - (g) must be approved by the accounting officer prior to publication of the invitation for bids in terms of section 30 of this policy; and
  - (h) may stipulate that an item of a particular trade mark, name, patent, design, type, specific origin or producer must be supplied in the event that such item is a component of existing equipment that is of the same trade mark, name, patent, design, type, specific origin or producer.
- (3) The bid specification committee must be composed of one or more officials of the Municipality, preferably the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.
- (4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.

#### 4.5.18 Bid evaluation committees

- (1) The bid evaluation committee must –
  - (a) evaluate bids in accordance with –
    - (i) the specifications for a specific procurement; and
    - (ii) the points system set out in terms of the PPPFA;
  - (b) evaluate each bidder’s ability to execute the contract;
  - (c) ensure in respect of the recommended bidder that his or her or its municipal rates and taxes and municipal service charges are not in arrears;

- (d) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
- (2) The bid evaluation committee must as far as possible be composed of –
  - (a) officials (technical experts) from departments requiring the goods or services;
  - (b) at least one supply chain management practitioner of the Municipality to ensure compliance with SCM procedures.
- (3) Subject to subsection (2):
  - (a) the composition of the bid evaluation committee may change to accommodate different scenarios;
  - (b) members from the bid specification committee may also form part of the bid evaluation committee; and
  - (c) a member from the bid evaluation committee may present reports to the bid adjudication committee, but only as an advisor.

#### 4.5.19 Bid adjudication committees

- (1) The bid adjudication committee must –
  - (a) consider the report and recommendations of the bid evaluation committee; and
  - (b) either –
    - (i) depending on the extent of its delegated authority, make a final award or a recommendation to the accounting officer to make the final award; or
    - (ii) make another recommendation to the accounting officer how to proceed with the relevant procurement.
- (2) The bid adjudication committee must consist of at least four senior managers of the Municipality which must include –
  - (i) the chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer;
  - (ii) the senior manager responsible for the bid or another manager reporting directly to that senior manager;
  - (ii) at least one senior supply chain management practitioner who is an official of the Municipality; and
  - (iii) a technical expert in the relevant field who is an official, if such an expert exists.
- (3) The accounting officer must appoint the chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.
- (4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.



- (5) (a) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid–
  - (i) check in respect of the preferred bidder whether that bidder’s municipal rates and taxes and municipal service charges are not in arrears, and;
  - (ii) notify the accounting officer.
- (b) The accounting officer may –
  - (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in subsection (a); and
  - (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (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.
- (7) If a tender other than the recommended tender is approved, then the accounting officer must comply with section 114 of the Municipal Finance Management Act 56 of 2003 within 10 working days.

#### 4.5.20. Consider sourcing strategy

- (1) The BAC will consider the sourcing strategy and ensure that most favourable acquisition process is followed.
- (2) When considering the sourcing strategy, the BAC will consider whether the sourcing strategy is in keeping with the principles of fair, transparent, equitable, cost effective and competitive. Where the sourcing strategy does not comply with the above principles, the BAC must consider any motivations provided for non compliance.
- (3) Should the relevant BAC be satisfied with the sourcing strategy, they may approve. However if the BAC is not satisfied that the correct sourcing strategy is being applied, they must refer the matter back to the Project Manager to revise.

#### 4.5.21 Functionality/ prequalification/ quality evaluation panels

- (1) In respect of functionality assessment, the accounting officer may evaluate each technical bid/proposal using an evaluation panel consisting of three or more specialists in their field of expertise. For the sake of impartiality, members of bid committees in respect of the bid under consideration should not act as panel members.
- (2) Officials conducting the functionality assessment must be appointed by the Head of SCM after consultation with the relevant head of department.
- (3) Should specialists in their field of expertise not exist internally, external specialists may be appointed.

- (4) A supply chain management official, appointed by the Head of SCM, must be present at each functionality assessment to ensure that the process is fair.
- (5) That 10% below and above cost estimate will be used to assess the objective criteria (risk assessment).

#### 4.5.22 Bid Raymond Mhlaba Municipality administration section

- (1) The accounting officer shall establish an administration section in the SCM unit of the Municipality to handle all the administrative tasks pertaining to the bidding process.
- (2) The duties of the officials in this section shall entail, inter alia:
  - (a) the invitation for bids;
  - (b) the opening of bids on the closing date;
  - (c) the processing of the bid documents;
  - (d) consultation; and,
  - (e) the submission of a recommendation by the bid evaluation committee to the bid adjudication committee.

#### 4.5.23 Advisors

- (1) The accounting officer may procure the services of advisors to assist in the execution of the supply chain management function. In this regard:
  - (a) these services must be obtained through a competitive bidding process;
  - (b) no advisor may, participate in the final decision-making process regarding the award of bids; and,
  - (c) the accounting officer may not delegate decision-making authority to an advisor.

#### 4.5.24 Preference points system, evaluation of bids, awarding of bids not scoring highest points, cancellation and re-invitation of bids

- (1) **The 80/20 preference point system for the acquisition of services, works or goods up to a Rand value of R50 million**
  - (a) The following formula must be used to calculate the points for price in respect of bids (including price quotations) with a Rand value equal to, or above R30 000 and up to a Rand value of R50 000 000 (all applicable taxes included):

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

Where

$P_s$  = Points scored for comparative price of bid or offer under consideration

$P_t$  = Comparative price of bid or offer under bid consideration

$P_{min}$  = Comparative price of lowest acceptable bid or offer

- (b) The Municipality may apply the formula in (a) for price quotations with a value less than R30 000, if an when appropriate.

- (2) Subject to sub-section (3), points must be awarded to a bidder for attaining the B-BBEE status level of contributor in accordance with the table below:

<b>B-BBEE Status Level of Contributor</b>	<b>Number of Points</b>
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-Compliant Contributor	0

- (3) A maximum of 20 points may be allocated in accordance with sub-section (2).
- (4) The points scored by a bidder in respect of B-BBEE contribution contemplated in sub-section (2) must be added to the points scored for price as calculated in accordance with sub-section (1).
- (5) Subject to section 4.5.30, the contract must be awarded to the tenderer who scores the highest total number of points.
- (6) If the price offered by a tenderer scoring the highest points is not market related, the Municipality may not award the contract to the 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 6(a)(iii), the Municipality must cancel the tender.

4.5.25 (1) **The 90/10 preference point system for acquisition of services, works or goods with a Rand value above R50 million**

- (a) The following formula must be used to calculate the points for price in respect of bids/procurement with a Rand value above R50 000 000 (All applicable taxes included):

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

Where

$P_s$  = Points scored for comparative price of bid or offer under consideration

$P_t$  = Comparative price of bid or offer under consideration

$P_{min}$  = Comparative price of lowest acceptable bid or offer

- (2) Subject to sub-section (3), points must be awarded to a bidder for attaining the B-BBEE status level of contributor in accordance with the table below:

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 maximum of 10 points may be allocated in accordance with sub-section (2).
- (4) The points scored by a bidder in respect of the level of B-BBEE contribution contemplated in sub-section (2) must be added to the points scored for price as calculated in accordance with sub-section (1).
- (5) Subject to section 4.5.30, the contract must be awarded to the tenderer who scores the highest total number of points.
- (6) If the price offered by a tenderer scoring the highest points is not market related, the Municipality may not award the contract to the 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 6(a)(iii), the Municipality must cancel the tender.

#### 4.5.26 Planning and Stipulation of preference point system to be used

- (1) Prior to making an invitation for tenders, the Municipality must:
- (a) properly plan for, and, as far as possible, accurately estimate the costs of the provision of services, works or goods for which an invitation for tenders is to be made;
  - (b) determine and stipulate the appropriate preference point system to be utilized in the evaluation and adjudication of the tenders; and
  - (c) determine whether the services, works or goods for which an invitation for tender is to be made has been designated for local production and content.

#### 4.5.27 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 with a 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 4.5.27(1) through a circular as stated in the latest Preferential Procurement Regulations.
- (4) 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.
- (5) The threshold referred to in (4) above, must be in accordance with the standards determined by the Department Trade and Industry in consultation with the National Treasury.

- (6) A tender that fails to meet the minimum stipulated threshold for local production and content is an unacceptable tender.
- (7) The municipal bidding documents (MBD 6.2) must be completed in line with the requirements of the SABS approved technical specification number SATS 1286:2011 and the Department Trade and Industry Guidance Document for the Calculation of Local Content together with the Local Content Declaration Templates (Annex C: Local Content Declaration - Summary Schedule, Annex D: Imported Content Declaration - Supporting Schedule to Annex C and Annex E: Local Content Declaration - Supporting Schedule to Annex C obtainable from Department Trade and Industry). All these documents are important for the calculation, measurement and verification of local content.

#### 4.5.28 Subcontracting as 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 (1) above, 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 at least 51% owned by black people living in rural or under-developed 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 paragraphs (a) to (h) above.
3. The Municipality must make available the list of 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 paragraph (2) above from which the tenderer must select a supplier.

#### 4.5.29 Evaluation of bids on functionality

- (1) The Municipality must, in the bid documents, indicate if, in respect of a particular bid invitation, bids will be evaluated on functionality.
- (2) Pre-Qualification criteria for *preferential* procurement: if the Municipality decides to apply pre-qualification criteria to advance certain designated groups, the Municipality must advertise the tender with a specific tendering condition that only one or more of the following tenderers may respond-
  - (a) a tenderer having a stipulated minimum B-BBEE status level of contributor;
  - (b) an EME or QSE;
  - (c) a tenderer subcontracting a minimum of 30% to-
    - (i) an EME or QSE which is at least 51% owned by black people;
    - (ii) an EME or QSE which is at least 51% owned by black people who are youth;
    - (iii) an EME or QSE which is at least 51% owned by black people who are women;
    - (iv) an EME or QSE which is at least 51% owned by black people with disabilities;
    - (v) an EME or QSE which is at least 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;
- (3) The evaluation criteria for measuring functionality must be objective.
- (4) When evaluating tenders on functionality, the following must be clearly specified in the bid document:
  - (a) evaluation criteria for measuring functionality;
  - (b) weight of each criterion;
  - (c) applicable values; and
  - (d) minimum qualifying score for functionality.
- (5) No tender must be regarded as an acceptable tender if it fails to achieve the minimum qualifying score for functionality as indicated in the tender documents.
- (6) 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.
- (7) Points scored for functionality must be rounded off to the nearest two decimal places.
- (8) Tenders that have achieved the minimum qualification score for functionality must be evaluated further in terms of the preference point systems prescribed in sections 4.5.21 and 3.4.22.

#### **4.5.30 Broad-Based Black Economic Empowerment Status Level Certificates**

- (1) Bidders with annual total revenue of R5 million or less qualify as Exempted Micro Enterprises (EMEs) in terms of the Broad-Based Black Economic Empowerment Act, and must submit a certificate issued by a registered auditor, accounting officer (as contemplated in section 60(4) of the Close Corporation Act, 1984 (Act No. 69 of 1984)) or an accredited verification agency.
- (2) Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating.
- (3) The submission of such certificates must comply with the requirements of instructions and guidelines issued by the National Treasury and be in accordance with notices published by the Department of Trade and Industry in the Government Gazette.
- (4) The B-BBEE status level attained by the bidder must be used to determine the number of points contemplated in sections 4.5.24 and 4.5.25.

#### **4.5.31 Award of contract to bid not scoring the highest number of 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 PPPFA.
- (2) If the Municipality intends to apply objective criteria in terms of section 2(1)(f) of the PPPFA, the Municipality must stipulate the objective criteria in the tender documents.

**4.5.32 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 to subcontract more that 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 that the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the contract.

**4.5.33 Cancellation of tender**

- (1) An organ of state may, before the award of a tender, cancel a tender invitation if-
  - (b) 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 bids are received; or
  - (d) there is a material irregularity in the tender process.
- (2) The decision to cancel a tender in terms of sub-section (1) must be published in the same manner in which the original tender invitation was advertised.
- (3) An organ of state may only with the prior approval of the relevant Treasury cancel a tender invitation for the second time.

**4.5.34 General Conditions in the evaluation of bids**

- (1) When evaluating written quotations and/or bids the written quotation or bid may not be awarded unless the provider who submitted the quotation or bid has –

No.	Normal Goods and/or Services	Infrastructure related goods and/or services
1.	Priced and signed the Invitation to Bid (MBD 1)	Completed and signed the Form of Offer;
2.	Completed the bid document in non-erasable ink.	Completed the bid document in non-erasable ink.
3.	Not used correctional fluid (tippex) on the pricing schedule, Invitation to Bid (MBD 1) and any of the declaration forms.	Not used correctional fluid (tippex) on the Bill of Quantities, Form of Offer and any of the declaration forms.

4.	Attended the compulsory briefing session (attendance register to be attached to bid report).	Attended the compulsory site inspection (attendance register to be attached to bid report).
5.	Has not complied with the specifications as listed in the schedule or terms of reference.	Has not complied with the specifications as listed in the Bill of Quantities.
6.	Fulfilled any other special conditions included in the bid document.	Fulfilled any other special conditions included in the bid document.
7.	Attached to the bid document a signed Joint Venture Agreement in the event of a joint venture having been concluded between the parties submitting a proposal.	Attached to the bid document a signed Joint Venture Agreement in the event of a joint venture having been concluded between parties submitting a proposal.
8.	Attached to the bid document audited Annual Financial Statements for the past three (3) years for bids exceeding R10m.	Attached to the bid document audited Annual Financial Statements for the past three (3) years for bids exceeding R10m.
9.	Attached to the bid document particulars of any contracts awarded to the bidder by an organ of state in the past five (5) years for bids exceeding R10m.	Attached to the bid document particulars of any contracts awarded by an organ of state in the past five (5) years for bids exceeding R10m.
10.	Attached to the bid document proof that rates and taxes are not in arrears for the past three (3) months and/or lease agreement or affidavit confirming that the bidder is not liable to pay rates and taxes.	Attached to the bid document proof that rates and taxes are not in arrears.
11.	Separated the technical and financial proposal where the Two-Envelope Tender System has been utilized.	Separated the technical and financial proposal where the Two-Envelope Tender System has been utilized.
12.	Provided a valid Tax Clearance Certificate indicating a tax clearance certificate number and VAT number.	Provided a valid Tax Clearance Certificate indicating a tax clearance certificate number and VAT number.
13.	Not listed in the Register for Tender Defaulters in terms section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004) or has not been listed on National Treasury's database as a person prohibited from doing business with the public sector.	Not listed in the Register for Tender Defaulters in terms section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004) or has not been listed on National Treasury's database as a person prohibited from doing business with the public sector.
14.	Is not in the Service of the State.	Is not in the Service of the State.
15.	When sub-contracting a portion of the works, has the service provider submitted details of the sub-contract together with the names of the sub-contractor to RAYMOND MHLABA	When sub-contracting a portion of the works, has the service provider submitted details of the sub-contract together with the names of the sub-contractor to RAYMOND MHLABA

	<p>MUNICIPALITY.</p> <p>If details of the subcontract are not disclosed, the bid will be set aside.</p> <p>If the sub-contracting firm has been involved with RAYMOND MHLABA MUNICIPALITY previously and has performed poorly and/or has been involved in any irregular activities, the tender may be set aside.</p> <p>No sub-contractors are to further sub-contract any portion of the works without disclosing details to RAYMOND MHLABA MUNICIPALITY for approval prior to commencement of works.</p>	<p>MUNICIPALITY.</p> <p>If details of the subcontract are not disclosed, the bid will be set aside.</p> <p>If the sub-contracting firm has been involved with RAYMOND MHLABA MUNICIPALITY previously and has performed poorly and/or has been involved in any irregular activities, the tender may be set aside.</p> <p>No sub-contractors are to further sub-contract any portion of the works without disclosing details to RAYMOND MHLABA MUNICIPALITY for approval prior to commencement of works.</p>
16.		<p>Completed and signed the Compulsory Enterprise Questionnaire. In the case of a JV, each partner of the JV must complete a separate Compulsory Enterprise Questionnaire. The bidder/s will only be disqualified if each party to the Joint Venture Agreement refuse to complete separate Compulsory Enterprise Questionnaires.</p>
17.		<p>Is registered with CIDB and has at least the required grade and in the required class of works.</p> <p>All joint venture partners must be registered with CIDB in the required class of works.</p>
18.		<p>If no offer is made in either words and/ or figures and/ or the bidder failed to sign the form of offer the bid will be disqualified.</p>
19	<p>Failure to comply with and submitting the MBD 6.2 and Annexure C reflecting that the minimum Local Production and Content % as stated in the tender document has been met.</p>	<p>Failure to comply with and submitting the MBD 6.2 and Annexure C reflecting that the minimum Local Production and Content % as stated in the tender document has been met.</p>
20.	<p>Failure to complete and sign all declaration forms:</p> <p>(i) Declaration of Interest (in the service of the State) : MBD 4;</p> <p>(ii) Declaration of Procurement Above R10 million (all applicable taxes included):</p>	<p>Failure to complete and sign all declaration forms:</p> <p>(i) Declaration of Interest (in the service of the State) : MBD 4;</p> <p>(ii) Declaration of Procurement Above R10 million (all applicable taxes included):</p>

<p>MBD 5;</p> <p>(iii) Declaration of Bidders Past SCM Practices : MBD 8;</p> <p>(iv) Certificate of Independent Bid Determination : MBD 9.</p>	<p>MBD 5;</p> <p>(iii) Declaration of Bidders Past SCM Practices : MBD 8;</p> <p>(iv) Certificate of Independent Bid Determination : MBD 9.</p>
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- (2) The Municipality may, before a bid is adjudicated or at any time, require a bidder to substantiate claims it has made with regard to preference.
- (3) The Municipality must, when calculating comparative prices, take into account any discounts which have been offered unconditionally.
- (4) A discount which has been offered conditionally must, despite not being taken into account for evaluation purposes, be implemented when payment is effected.
- (5) In the event that different prices are tendered for different periods of a contract, the price for each period must be regarded as a firm price if it conforms to the definition of a “firm price” as defined in this policy.
- (6) Points scored, must be rounded off to the nearest 2 decimals.
- (7)
  - (a) 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.
  - (b) 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.
  - (c) If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.
- (8) A trust, consortium or joint venture will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- (9) A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate tender.
- (10) A person must not be awarded points for B-BBEE status level if it is indicated in the tender documents that such a tenderer intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a tenderer qualifies for, unless the intended sub-contractor is an exempted micro enterprise that has the capability and ability to execute the sub-contract.
- (11) A person awarded a contract in relation to a designated sector, may not sub-contract 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.

- (12) When an organ of state is in need of a service provided by only tertiary institutions, such services must be procured through a tendering process from the identified tertiary institutions.
- (13) Tertiary institutions referred to in sub-section (12) will be required to submit their B-BBEE status in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- (14) (a) Should the Municipality require a service that can be provided by one or more tertiary institution or public entity and enterprises from the private sector, the appointment of a contractor must be done by means of a tendering process;
- (b) Public entities will be required to submit their B-BBEE status in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

#### 4.5.35 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 the Preferential Procurement Regulations and 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 organ of state must-
  - (a) inform the tenderer accordingly;
  - (b) give the tenderer an opportunity to make representations within 14 days as to why-
    - (i) the tender submitted should not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part;
    - (ii) if the successful tenderer subcontracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10% of the value of the contract; and
    - (iii) the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state; and
  - (c) if it concludes, after considering the representations referred to in subregulation (1)(b), that-
    - (i) such false information was submitted by the tenderer-
      - (aa) disqualify the tenderer or terminate the contract in whole or in part; and
      - (bb) if applicable, claim damages from the tenderer; or
    - (ii) the successful tenderer subcontracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10% of the value of the contract.
- (2) (a) An organ of state must-
  - (i) inform the National Treasury, in writing, of any actions taken in terms of (1) above.

- (ii) provide written submission as to whether the tenderer should be restricted from conducting business with any organ of state.
  - (iii) submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.
- (b) The National Treasury may request an organ of state to submit further information pertaining to (1) above within a specified period.
- (3) The National Treasury must-
  - (a) after considering the representatives 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 website a list of restricted suppliers.

#### 4.5.36 **Declarations**

- (1) A bidder must, in the manner stipulated in the tender document, declare that-
  - (a) the information provided is true and correct;
  - (b) the signatory to the bid document is duly authorized; and
  - (c) documentary proof regarding any bid will, when required, be submitted to the satisfaction of the Municipality.

#### 4.5.37 Procurement of banking services

- (1) A contract for the provision of banking services to the Municipality:
  - (a) must be procured through competitive bids;
  - (b) must be consistent with section 7 or 85 of the Municipal Finance Management Act 56 of 2003; and
  - (c) may not be for a period of more than five years at a time.
- (2) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.
- (3) The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of section 4.5.12(1) of this policy. Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

#### 4.5.38 Procurement of IT related goods or services

- (1) The accounting officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.
- (2) Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.
- (3) The accounting officer must notify SITA together with a motivation of the IT needs if –
  - (a) the transaction value of IT related goods or services required in any financial year will exceed R50 million (VAT included); or
  - (b) the transaction value of a contract to be procured whether for one or more years exceeds R50 million (VAT included).
- (4) If SITA comments on the submission and the Municipality disagrees with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the provincial treasury and the Auditor General.

#### 4.5.39 Procurement of catering services

- (1) That Health and Protection Services must inspect the food handlers premises for health and hygiene compliance on an ongoing basis. **(To be requested from Amathole District Municipality)**
- (2) **Three quotations will be requested for catering services.**
- (3) In exceptional cases where catering is required on an ad-hoc/unplanned basis the service provider be allowed to deliver the required meals and invoice the RAYMOND MHLABA MUNICIPALITY. The user department to prepare a motivation for the approval of the Department Head and the Municipal Manager for payment of the invoice. When fast-food

outlets are being utilized in exceptional cases, the invoice must accompany the delivery of the goods.

**4.5.40 Procurement of Transport (Flights, Car Hire, Bus Hire, Taxi Hire, Shuttles), Accommodation (Hotels, Lodges, Bed and Breakfast, Self-Catering apartments) and Conferences facilities/ venue hiring.**

- (1) Transport, Accommodation and/or facilities for conferences, seminars, workshops, “lekgotlas” etc. will be procured by means of a panel system.
- (4) The panel for Transport, Accommodation and Conferencing/ venue hiring will be split per city/ municipal area and according to star grading. An overall assessment of the total package will be assessed (accommodation, travel, breakfast, dinner, lunch packs, etc.)
- (5) Price negotiations will be undertaken by the relevant delegated official to ensure value for money.
- (6) Accommodation will be rated/ graded per order of preference based on price and bundle of services.

**4.5.41 Procurement of goods and services under contracts secured by other organs of state**

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

#### 4.5.42 Procurement of goods necessitating special safety arrangements

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

#### 4.5.43 Proudly SA campaign

- (1) The accounting officer must determine internal operating procedures supporting the Proudly SA Campaign to the extent that preference is given, in the following order, to procuring local goods and services from suppliers and businesses located:
  - (a) within the jurisdiction of the RAYMOND MHLABA MUNICIPALITY;
  - (b) within the Eastern Cape Province; and
  - (c) within the RSA.

#### 4.5.44 Deviation from, and ratification of minor breaches of, procurement processes

- (1) The procedures governing procurement in this policy may be dispensed with and any required goods or services may be procured through any convenient process, which may include direct negotiations, but only:
  - (a) in an emergency as defined in section 4.5.45(1);
  - (b) if such goods or services are produced or available from a single provider only;
  - (c) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
  - (d) acquisition of animals for zoos;
  - (e) acquisition of breeding stock; and
  - (f) in any other exceptional circumstances where it is impractical or impossible to follow the official procurement process, including:
    - (i) any purchase made at a public auction;
    - (ii) any contract in respect of which compliance therewith would not be in the public interest;
    - (iii) ad-hoc repairs to plant and equipment where it is not possible to ascertain the nature or extent of the work required in order to call for bids; and
- (2) The accounting officer must record the reasons for any deviations in terms of sub-regulation (1) and report them to the next meeting of Council, or board of directors in the case of a municipal entity, and include as a note to the annual financial statements.
- (3) Sub-regulation 2 does not apply to the procurement of goods and services contemplated in section 110(2) of the MFMA, including:

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

#### 4.5.45 Emergency dispensation

- (1) The conditions warranting an emergency dispensation must include the existence of one or more of the following:
  - (a) the real and imminent risk of human injury or death;
  - (b) the prevalence of human suffering and deprivation of fundamental human rights;
  - (c) the real and imminent risk of substantial damage to property and the suffering or death of livestock or other animals;
  - (d) the significant interruption of essential services, including transportation, communication or other support services critical to the effective functioning of the RAYMOND MHLABA MUNICIPALITY as a whole;
  - (e) the real and imminent risk of serious damage occurring to the natural environment;
- (2) The afore-stated conditions must be of such a nature and scale that they cannot readily be alleviated by interim measures to permit the implementation of standard procurement procedures.
- (3) An emergency dispensation shall not be approved in respect of any circumstances other than those contemplated in sub-section 4.5.44(1).
- (4) In situations where time is of the essence, the emergency shall be approved immediately through electronic communication to the relevant Head of Department. The process must be formalized in a report to the relevant Head of Department. The accounting officer must be informed and must approve the deviation form.

#### 4.5.46 Amendments/ Expansion/ Extension/ Variation of contracts

- (1) Any amendments / expansion / extension / variation of a contract must be done in accordance with the provisions of the contract itself and in compliance with the RAYMOND MHLABA MUNICIPALITY's delegation policy, provided that:
  - (a) the requirements of section 33 of the MFMA are met; and
  - (b) the extension of the contract does not amount to the provision of new goods or services, such that the purposes of this policy are defeated.
  - (c) Project Managers must as far as possible refrain from extending/expanding contracts and/or allowing variation orders as it increases the risks, reflects possible flaws in the planning process and it creates an uncompetitive environment, possibly unfairly prejudicing other possible vendors.
  - (d) The extension of a contract must be finalised before the current expiry date of the contract.

- (e) Must comply with the provision of National Treasury Circular 62 that states that contracts may be expanded or varied by not more than 20% for construction related goods, services and/or infrastructure projects and 15% for all other goods and/or services of the original value of the contract.
- (f) Any expansion or variation in excess of the thresholds stipulated in (e) above must be dealt with in terms of the provisions of section 116(3) of the MFMA and will be regarded as an amendment to the contract.
- (g) Section (f) above, are not applicable to transversal term contracts, facilitated by the relevant treasuries on behalf of municipalities and municipal entities and, specific term contracts.

#### 4.5.47 **Renewal of contracts**

- (1) The renewal of contracts must be treated in accordance with the principles set out in section 4.5.43, applied mutatis mutandis to the contract in question.
- (2) In the case of computer software renewals/license fees, it is normally required that RAYMOND MHLABA MUNICIPALITY pay renewal / license fees for the continual use of the product. The Accounting Officer or the delegated authority must approve such renewals/license fees.

#### 4.5.48 **Unsolicited bids**

- (1) In accordance with section 113 of the MFMA there is no obligation to consider unsolicited bids received outside a normal bidding process.
- (2) The accounting officer may decide in terms of section 113(2) of the MFMA to consider an unsolicited bid, but 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 for, the Municipality;
  - (c) the person who made the bid is the sole provider of the product or service; and
  - (d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
- (3) In this regard, the SCM Unit must submit a report to the accounting officer, seeking approval to take the unsolicited bid process further.
- (4) If the accounting officer decides to consider an unsolicited bid that complies with subsection (2) of this policy, then 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 for the Municipality 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.
- (5) For purposes of transparency and fairness, an unsolicited bid must be advertised for fourteen (14) days, requesting proposals from other interested parties, provided that:
  - (a) the request for proposal must be of a standard format and must not prejudice the intellectual property rights of the unsolicited bidder; and
  - (b) prior to advertising the unsolicited bid, the bidder will be informed of the Municipality's intention in this regard.
- (6) All written comments received pursuant to subsection (4), including any responses from the unsolicited bidder, must be submitted to the National Treasury and the relevant provincial treasury for comment.
- (7) 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.
- (8) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (9) 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.
- (10) 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.
- (11) Such submission must be made within seven (7) 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.
- (12) The Municipality reserves the right to award the bid to any third party who responds to the request for a proposal, subject to the principles contained in this policy.
- (13) The Municipality may reject any bidder who submits an unsolicited bid prepared on the basis of privileged or confidential information.

#### **4.5.49 Deviation from, and Ratification of minor breaches of procurement processes**

- (1) Any minor breaches of the procurement processes which are purely of a technical nature, and which are perpetrated by an official or committee acting in terms of delegated powers or duties, shall be reported to the accounting officer for ratification.

#### **4.5.50 Contracts having budgetary implications beyond three financial years**

- (1) The RAYMOND MHLABA 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 MFMA have been fully complied with.



## **4.6 Chapter 6: Appointment of Consultants**

### **4.6.1 Introduction**

- (1) The purpose of this chapter is to explain the procedures for selecting, contracting, and monitoring consultants required for projects. In general, the procedures described in the previous chapters apply. Only the peculiarities of appointing consultants are dealt with herein, as the services to which these procedures apply are of an intellectual and advisory nature.

Where a conflict in interpretation or application arises between the contents of this chapter and the provisions contained elsewhere in this policy, the latter shall prevail.

### **4.6.2 Consultants Defined**

- (1) The term consultants includes 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 (NGO's), and individuals.
- (2) Accounting officers may use the organizations listed in subsection 69(1) above as consultants to help in a wide range of activities such as policy advice, accounting officer's/authority's reform management, engineering services, construction supervision, financial services, procurement services, social and environmental studies, and identification, preparation, and implementation of projects to complement accounting officers' capabilities in these areas.

### **4.6.3 Need for appointment**

- (1) Consultants should only be engaged when –
  - (a) the necessary skills and/or resources to perform a project/duty/study are not available; and
  - (b) the accounting officer cannot be reasonably expected either to train or to recruit people in the time available.

### **4.6.4 Nature of appointment**

- (1) Appointment by means of a formal contract
  - (a) The relationship between the accounting officer and the consultant should be one of purchaser/provider and not employer/employee.
  - (b) The work undertaken for the accounting officer by a consultant should be regulated by a contract.

- (c) In procuring consulting services the accounting officer should satisfy himself/herself that:
  - (i) the procedures to be used will result in the selection of consultants who have the necessary professional qualifications;
  - (ii) the selected consultant will carry out the assignment in accordance with the agreed schedule, and
  - (iii) the scope of the services is consistent with the needs of the project.
  
- (2) Selection methods for the appointment of consultants
  - (a) The accounting officer should be responsible for preparing and implementing the project, for selecting the consultant, awarding and subsequently Raymond Mhlaba Municipality administering the contract, as well as for the payment of consulting services under the project.
  - (b) While the specific rules and procedures to be followed for employing consultants depend on the circumstances of the particular case, at least the following four major considerations should guide the accounting officer on the selection process:
    - (i) the need for high-quality services;
    - (ii) the need for economy and efficiency;
    - (iii) the need to give qualified consultants an opportunity to compete in providing the services; and
    - (iv) the importance of transparency in the selection process.
  - (c) The particular method to be followed for the selection of consultants for any given project should be selected by the accounting officer in accordance with the criteria outlined in treasury guidelines.
  - (d) The method of selection is determined by the scope of the assignment, the quality of service, the complexity of the assignment and whether assignments are of a standard and routine nature.
  - (e) The following are the methods most generally used for the appointment of consultants:
    - (i) Quality and Cost Based Selection (QCBS)
      - (aa) In the majority of cases, the abovementioned major considerations can best be addressed through competition among firms in which the selection is based both on the quality of the services to be rendered and on the cost of the services to be provided, i.e. Quality and Cost-Based Selection (QCBS). This method is used in the event of an assignment not complex or specialized.
      - (bb) Cost as a factor of selection should be used judiciously.

- (cc) The relative weight to be given to the quality and cost should be determined for each case depending on the nature of the assignment.
  - (dd) Investment and commercial banks, financial firms, and fund managers hired by accounting officer for the sale of assets, issuance of financial instruments, and other corporate financial transactions, notably in the context of privatization operations, should be selected under QCBS.
  - (ee) Auditors typically carry out auditing tasks under well-defined Terms of Reference (TOR) and professional standards. They should be selected according to QCBS, or by the “Least Cost Selection”. When consultants are appointed to execute an audit function on behalf of the accounting officer, the tariffs agreed by the Auditor-General and the South African Institute for Chartered Accountants (SAICA) may be used as a guideline to determine the appropriate tariff or to determine the reasonableness of the tariffs. These tariffs can be obtained from SAICA’s website under [www.saica.co.za](http://www.saica.co.za). The tariffs are captured in a circular issued by SAICA.
  - (ff) In some circumstances, QCBS is not the most appropriate method for selecting consultants, and other methods are more appropriate. This section describes other selection methods and the circumstances under which they are generally appropriate.
- (ii) Quality Based Selection (QBS)
- (aa) QBS is appropriate for the following types of assignments:
    - (aaa) complex or highly specialized assignments for which consultants are expected to demonstrate innovation in their proposals (for example, financial sector reforms) for which it is difficult to define TOR and the required input from the consultants, and for which the client expects the consultants to demonstrate innovation in their proposals (for example, country economic or sector studies, multi-sectoral feasibility studies, design of a hazardous waste remediation plant or of an urban master plan, financial sector reforms);
    - (bbb) Assignments that have a high downstream impact and in which the objective is to have the best experts (for example, feasibility and structural engineering design of such major infrastructure as large dams, policy studies of national significance, management studies of large government agencies); and
    - (ccc) assignments that can be carried out in substantially different ways, such that proposals will not be comparable (for example, management advice, and sector and policy studies in which the value of the services depends on the quality of the analysis).

- (bb) In QBS, the Request for Proposals (RFP) may request submission of a technical proposal only (without the financial proposal), or request submission of both technical and financial proposals at the same time, but in separate envelopes (two-envelope system). The RFP should not provide the estimated budget, but it may provide the estimated number of key staff time, specify that this information is given as an indication only, and that consultants should be free to propose their own estimates.
  
- (cc) If technical proposals alone were invited, after evaluating the technical proposals using the same methodology as in QCBS, the accounting officer should request the consultant with the highest ranked technical proposal to submit a detailed financial proposal. The accounting officer and the consultant should then negotiate the financial proposal and the contract. All other aspects of the selection process should be identical to those of QCBS. If, however, consultants were requested to provide financial proposals initially together with the technical proposals, safeguards should be built in to ensure that the price envelope of only the selected proposal is opened and the rest returned unopened, after the negotiations are successfully concluded.

(iii) Selection under a fixed budget

The method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed. The RFP should indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes, within the budget. The TOR should be particularly well prepared to ensure that the budget is sufficient for the consultants to perform the expected tasks. Evaluation of all technical proposals should be carried out first as in the QCBS method where after the price envelopes should be opened in public. Proposals that exceed the indicated budget should be rejected. The consultant who has submitted the highest ranked technical proposal should be selected and invited to negotiate a contract.

(iv) Least-cost selection

This method is more appropriate to selection of consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, and so forth) where well-established practices and standards exist, and in which the contract amount is small. Under this method, a “minimum” qualifying mark for the “functionality” is established. Proposals to be submitted in two envelopes are invited. Potential suppliers may be obtained from the list of approved service providers. Technical envelopes are opened first and evaluated. Those securing less than the minimum mark should be rejected and the financial envelopes of the rest are opened in public. The firm with the highest points should then be selected. Under this method, the qualifying minimum mark should be established, keeping in mind that all proposals above the minimum compete only on “cost” and points for B-BBEE status level of contributor. The minimum mark to qualify should be stated in the RFP.

(v) Single-source selection

(aa) Single-source selection of consultants does not provide the benefits of competition in regard to quality and cost and lacks transparency in selection, and could encourage unacceptable practices. Therefore, single-source selection should be used only in exceptional cases. The justification for single-source selection should be examined in the context of the overall interests of the client and the project.

(bb) Single-source selection may be appropriate only if it presents a clear advantage over competition:

(aaa) for tasks that represent a natural continuation of previous work carried out by the firm;

(bbb) where rapid selection is essential (for example, in an emergency operation);

(ccc) for very small assignments; or

(ddd) when only one firm is qualified or has experience of exceptional worth for the assignment.

- (cc) The reasons for a single-source selection must be recorded and approved by the accounting officer or his/her delegate prior to the conclusion of a contract.
- (dd) When continuity for downstream work is essential, the initial RFP should outline this prospect and if practical, the factors used for the selection of the consultant should take the likelihood of continuation into account. Continuity in the technical approach, experience acquired, and continued professional liability of the same consultant may make continuation with the initial consultant preferable to a new competition, subject to satisfactory performance in the initial assignment. For such downstream assignments, the accounting officer should ask the initially selected consultant to prepare technical and financial proposals on the basis of TOR furnished by the accounting officer, which should then be negotiated.
- (ee) If the initial assignment was not awarded on a competitive basis or was awarded under tied financing or reserved procurement or if the downstream assignment is substantially larger in value, a competitive process acceptable to the accounting officer should normally be followed in which the consultant carrying out the initial work is not excluded from the consideration if it expresses interest.

(vi) Selection based on consultants' qualifications

This method may be used for very small assignments for which the need for preparing and evaluating competitive proposals is not justified. In such cases, the accounting officer should prepare the TOR, request expressions of interest and information on the consultants' experience and competence relevant to the assignment and select the firm with the most appropriate qualifications and references. Potential suppliers may be obtained from the list of accredited service providers. The selected firm should be requested to submit a combined technical-financial proposal and then be invited to negotiate the contract.

(vii) Selection of individual consultants

- (aa) Individual consultants may normally be employed on assignments for which:
  - (aaa) teams of personnel are not required;
  - (bbb) no additional outside (home office) professional support is required; and
  - (ccc) the experience and qualifications of the individual are the paramount requirement.
- (bb) When coordination, Raymond Mhlaba Municipalityinistration, or collective responsibility may become difficult because of the number of individuals, it would be advisable to employ a firm.
- (cc) Individual consultants should be selected on the basis of their qualifications for the assignment. They may be selected on the basis of

references or through comparison of qualifications among those expressing interest in the assignment or approached directly by the accounting officer. Individuals employed by the accounting officer should meet all relevant qualifications and should be fully capable of carrying out the assignment. Capability is judged on the basis of academic background, experience and, as appropriate, knowledge of the local conditions, such as local language, culture, Raymond Mhlaba Municipality Administrative system, and local government environment.

(dd) From time to time, permanent staff or associates of a consulting firm may be available as individual consultants. In such cases, the conflict of interest provisions described in these guidelines should apply to the parent firm.

(viii) Selection of particular types of consultants

(aa) Use of Nongovernmental Organisations (NGO's)

NGO's are voluntary non-profit organizations that may be uniquely qualified to assist in the preparation, management, and implementation of projects, essentially because of their involvement and knowledge of local issues, community needs, and/or participatory approaches. NGO's may be included in the short list if they express interest and provided that the accounting officer is satisfied with their qualifications. For assignments that emphasise participation and considerable local knowledge, the short list may comprise entirely NGO's. If so, the QCBS procedure should be followed, and the evaluation criteria should reflect the unique qualifications of NGO's, such as voluntarism, non-profit status, local knowledge, scale of operation, and reputation. An accounting officer may select the NGO on a single-source basis, provided the criteria outlined for single-source selection are fulfilled.

(bb) Inspection agents

Accounting officers may wish to employ inspection agencies to inspect and certify goods prior to shipment or on arrival in the country. The inspection by such agencies usually covers the quality and quantity of the goods concerned and reasonableness of price. Inspection agencies should be registered with the South African National Accreditation System (SANAS) and the services of these inspection agents should be obtained by means of competitive bidding.

(cc) Banks

Investment and commercial banks, financial firms, and fund managers hired by accounting officers for the sale of assets, issuance of financial instruments and other corporate financial transactions, notably in the context of privatization operations, should be selected under QCBS. The RFP should specify selection criteria relevant to the activity – for example, experience in similar assignments or network of potential purchasers – and the cost of the services. In addition to the conventional remuneration (called a “retainer fee”), the compensation includes a “success fee.” This fee can be fixed, but is usually expressed as a percentage of the value of

the assets or other financial instruments to be sold. The RFP should indicate that the cost evaluation will take into account the success fee, either in combination with the retainer fee or alone. If alone, a standard retainer fee should be prescribed for all short-listed consultants and indicated in the RFP, and the financial scores should be based on the success fee as a percentage of a pre-disclosed notional value of the assets. For the combined evaluation (notably for large contracts), cost may be accorded as weight higher or the selection may be based on cost alone among those who secure a minimum passing mark for the quality of the proposal. The RFP should specify clearly how proposals will be presented and how they will be compared.

(dd) Auditors

Auditors typically carry out auditing tasks under well-defined TOR and professional standards. They should be selected according to QCBS, with cost as a substantial selection factor, or by the “Least-Cost Selection.” When consultants are appointed to execute an audit function on behalf of the accounting officer, the tariffs agreed by the Auditor-General and the South African Institute for Chartered Accountants (SAICA) may be used as a guideline to determine the appropriate tariff or to determine the reasonableness of the tariffs. These tariffs can be obtained from SAICA’s website under [www.saica.co.za](http://www.saica.co.za). The tariffs are captured in a circular issued by SAICA.

(ee) “Service Delivery Contractors”

Projects in the social sectors in particular may involve hiring of large numbers of individuals who deliver services on a contract basis (for example, social workers, nurses and paramedics). The job descriptions, minimum qualifications, terms of employment and selection procedures should be described in the project documentation.

(ix) Association between consultants

Consultants may associate with each other to complement their respective areas of expertise, or for other reasons. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. The association may take the form of a joint venture or a sub-consultancy. In case of a joint venture, all members of the joint venture should sign the contract and are jointly and severally liable for the entire assignment. Once the bids or Requests for Proposals (RFP’s) from service providers are issued, any association in the form of joint venture or sub-consultancy among firms should be permissible only with the approval of the accounting officer or his/her delegate. Accounting officers should not compel consultants to form associations with any specific firm or group of firms, but may encourage associations with the aim to enhance transfer of skills.

#### 4.6.5 Invitation of bids/proposals, using QCBS

Appointing consultants to assist accounting officers with the execution of their duties implies the procurement of services. In all public sector procurement, the prescripts of the PPPFA, must be adhered to.

(1) Request for bids

In the request for bids the following steps would generally be followed in appointing consultants where clear Terms of Reference (TOR), including a detailed task directive, have been compiled and the objectives, goals and scope of the assignment are clearly defined:

(a) Preparation of Terms of Reference (TOR)

- (i) The accounting officer should prepare the TOR. The scope of services described should be compatible with the available budget. The TOR should define as clearly as possible the task directive (methodology), objectives, goals and scope of the assignment and provide background information (including a list of existing relevant studies and basic data) to facilitate the consultants' preparation of their bids.
- (ii) If the assignment includes an important component for training or transfer of knowledge and skills, the TOR should indicate the objectives, nature, scope, and goals of the training programme, including details on trainers and trainees, skills to be transferred, time frames, and monitoring and evaluation arrangements to enable consultants to estimate the required resources. The TOR should list the services and surveys necessary to carry out the assignment and the expected outputs (for example reports, data, maps, surveys, etc), where applicable.
- (iii) Time frames linked to various tasks should be specified, as well as the frequency of monitoring actions. The respective responsibilities of the accounting officer and the consultant should be clearly defined.
- (iv) A clear indication should be given of the preference point system to be used, as described in terms of the PPPFA and its associated Regulations.
- (v) Detailed information on the evaluation process should be provided and it must be stated whether the tender will be evaluated on functionality as prescribed in section 46.
- (vi) Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate should be based on the accounting officer's assessment of the resources needed to carry out the assignment such as staff time, logistical support and physical inputs (i.e. vehicles, laboratory equipment, etc). The cost of staff time must be estimated on a realistic basis for foreign and local personnel.
- (vii) The TOR should specify the validity period (normally 60 – 90 days).
- (viii) In more complicated projects, provision may also be made for pre-bid briefing sessions as part of the evaluation process.
- (ix) The TOR should form part of the standard bid documentation. At this stage the evaluation panel, consisting of least three members who are demographically representative in terms of race, gender and expertise, should also be selected and finalised.

(2) Request for proposals

This method should be followed where selection is based both on the quality of a proposal and on the cost of the service through competition among firms. This method will be applicable on more complex projects where consultants are requested and encouraged to propose their own methodology and to comment on the TOR in their proposals.

(a) Preparation and issue of a Request for Proposal (RFP)

When possible, accounting officers should include at least the following documents in the RFP:

(i) Letter of Invitation (LOI)

The LOI should state the intention to enter into a contract for the provision of consulting services, the details of the client and the date, time and address for submission of proposals.

(ii) Information to Consultants (ITC)

Whenever possible, the accounting officer should use RFPs, which include the ITC covering the majority of assignments. The ITC should contain all necessary information that would assist consultants to prepare responsive proposals. It should be transparent and provide information on the evaluation process by indicating the evaluation criteria and factors and their respective weights and the minimum qualifying score in respect of functionality. A clear indication should be given of which preference points system will be applicable in terms of the PPPFA and its regulations. The budget is not specified (since cost is selection criterion), but should indicate the expected input of key professionals (staff time). Consultants, however, should be free to prepare their own estimates of staff time necessary to carry out the assignment. The ITC should specify the proposal validity period (normally 60 – 90 days).

The ITC should include adequate information on the following aspects of the assignment:

- (aa) a very brief description of the assignment;
- (bb) standard formats for the technical and financial proposals;
- (cc) the names and contact information of officials to whom clarifications should be addressed and with whom the consultants' representative should meet, if necessary;
- (dd) details of the selection procedure to be followed, including:
  - (aaa) a description of the two-stage process, if appropriate;
  - (bbb) a listing of the technical evaluation criteria and weights given to each criterion;

- (ccc) the details of the financial evaluation;
  - (ddd) the relative weights for quality and cost in the case of QCBS;
  - (eee) the minimum pass score for quality; and
  - (fff) the details on the public opening of financial proposals;
- (ee) an estimate of the level of key staff inputs (in staff-months) required of the consultants, and an indication of minimum experience, academic achievement, and so forth, expected of key staff or the total budget, if a given figure can not be exceeded;
  - (ff) information on negotiations, and financial and other information that should be required of the selected firm during negotiation of the contract;
  - (gg) the deadline for submission of proposals;
  - (hh) a statement that the firm and any of its affiliates should be disqualified from providing downstream goods, works or services under the project if, in the accounting officer's judgement, such activities constitute a conflict of interest with the services provided under the assignment;
  - (ii) the method in which the proposal should be submitted, including the requirement that the technical proposals and price proposals be sealed and submitted separately in a manner that should ensure that the technical evaluation is not influenced by price;
  - (jj) request that the invited firm acknowledges receipt of the RFP and informs the accounting officer whether or not it will be submitting a proposal;
  - (kk) the shortlist of consultants being invited to submit proposals, and whether or not associations between short-listed consultants are acceptable;
  - (ll) the period for which the consultants' proposals should be held valid (normally 60 – 90 days) and during which the consultants should undertake to maintain, without change, the proposed key staff, and should hold to both the rates and total price proposed; in case of extension of the proposal validity period, the right of the consultants not to maintain their proposal;
  - (mm) the anticipated date on which the selected consultant should be expected to commence the assignment;
  - (nn) a statement indicating all prices should be VAT inclusive;

- (oo) if not included in the TOR or in the draft contract, details of the services, facilities, equipment, and staff to be provided by the accounting officer;
- (pp) phasing of the assignment, if appropriate; and likelihood of follow-up assignments;
- (qq) the procedure to handle clarifications about the information given in the RFP; and
- (rr) any conditions for subcontracting part of the assignment.

Notes:

- (1) If under exceptional circumstances, the accounting officer needs to amend the standard ITC, he or she should do so through the technical data sheet and not by amending the main text.
  - (2) Any granting of a substantial extension of the stipulated time for performance of a contract, agreeing to any substantial modification of the scope of the services, substituting key staff, waiving the conditions of a contract, or making any changes in the contract that would in aggregate increase the original amount of the contract by more than 15% percent, will be subject to the approval of the accounting officer or his/her delegate, and the provisions of this policy.
- (iii) The TOR

The TOR should be compiled by a specialist in the area of the assignment and the scope of services described should be compatible with the available budget. The TOR should define as clearly as possible the objectives, goals and scope of the assignment including background information to facilitate the consultant in the preparation of its proposal. The TOR should be compiled in such a manner that consultants are able to propose their own methodology and staffing and be encouraged to comment on the TOR in their proposal.

Depending on the circumstances, it may be indicated that proposals should be submitted in two separate clearly marked envelopes, one containing the technical proposal and the other the cost for the assignment.

In cases where pre-qualification/short-listing is required, the TOR should indicate the basis of pre-qualification/short-listing, for instance the number of minimum points to be scored to pre-qualify.

- (iv) The proposed contract

Accounting officers should use the appropriate Standard Form of Contract issued by the National Treasury. Any changes necessary to address specific project issues should be introduced through Contract Data Sheets or through Special Conditions of Contract and not by introducing changes in the wording of the General Conditions of Contract included in the Standard Form. When

these forms are not appropriate (for example, for pre-shipment inspection, training of students in universities), accounting officers should use other acceptable contract forms.

- (3) Establishment of a list of approved service providers
- (a) Where consultancy services are required on a recurring basis, a panel of consultants/list of approved service providers for the rendering of these services may be established. The panels/lists should be established through the competitive bidding process, usually for services that are of a routine or simple nature where the scope and content of the work to be done can be described in detail.
  - (b) The intention to establish a panel/list of approved service providers is published in the media and on the Municipality's website and the closing time and date for inclusion in the panel/list of approved service providers should be indicated. For this purpose, a questionnaire should be made available and should make provision for the following:
    - (i) composition of the firm in terms of shareholding;
    - (ii) personnel complement;
    - (iii) representation of expertise in respect of the disciplines required, e.g. accounting, legal, educational, engineering, computer, etc;
    - (iv) national/international acceptability of experts in the various professions;
    - (v) experience as reflected in projects already dealt with;
    - (vi) and financial position.

Requirements for Raymond Mhlaba Municipality to the list and criteria should be linked to the numeric value in terms of which applicants will be measured, for example qualifications, experience, acceptability, facilities and resources etc. A pre-determined standard method of awarding points should be followed.
  - (c) The applications received should be evaluated and any rejection of applicants should be motivated and recorded.
  - (d) Once the panel/list of service providers has been approved, only the successful applicants are approached, depending on the circumstances, either by obtaining quotes on a rotation basis, or according to the bid procedure when services are required, with the exception that the requirement is not advertised again.
  - (e) This list should be updated continuously, at least quarterly.

### **CONSULTANTS REDUCTION PLAN**

The aim of this plan is to reduce the dependence on consultants.

### **DEPENDENCY**

The Raymond Mhlaba Municipality is dependent on external consultants due to a lack of resources. The following resources impacts on the capability of the municipality to be self-sufficient and to limit the use of external consultants:

### **1. Human resources:**

The current staff establishment does not provide for the appointment of specialists in the various fields of local government competencies. Furthermore the vacancy rate, for unfunded posts, is extremely high due to the number of essential posts in various departments that need to be filled. The municipality is dependent on the external public works programme to fill gaps on lower levels of the staff establishment. The high overtime expenditure is also a further indicator of a lack of staff capacity. Various small contractors are being appointed through supply chain management processes to fill gaps in the administration and to execute essential tasks. The creation of one senior post will have to be funded through the freezing of a number of labour posts and the lower labour vacancy rate are already under pressure.

### **2. Structural responsibilities**

The managers appointed in terms of the organisational structure are responsible to manage the various existing works on a daily basis. They are overloaded with administrative work and compliance matters. They don't have the time and are not fully equipped in terms of their experience and professional training to act as a consultant for the municipality. They will also not be covered in terms of the current insurance policy of the municipality for professional failures. The insurance policy will have to be extended to include professional indemnity insurance. The municipality manages 6 towns and other rural areas from a centralised administration, making it very difficult to attend to community needs by professional people. If there are funds for extension of the staff establishment, it would be more reasonable to extend the management in the various towns rather than to appoint professional advisers and project managers.

### **3. Limited budget**

The municipality's budget is already under tremendous constraints and cannot accommodate the funding of additional posts. The high cost of employment is detrimental to the maintenance and operating budget and places a huge burden on service delivery.

### **4. Upper limits and task job limits**

The upper limits of municipal remuneration are not market related compared to the remuneration of professional people in the private sector. The municipality experience a serious challenge to attract and retain staff in professional fields of management and it will be much more difficult to appoint professional people for the achievement of specific objectives such as drafting tender specifications for bulk services projects; managing such projects and be accountable and taking the risk associated therewith. In many instances, more than one specialist is needed to draft tender specifications for a single project, such as civil-, structural- and electrical engineering, planners, environment specialist and planning designers/ architects to plan, design and construct a sewer plant or water purification works. There will have to be a huge hike in upper limits in order to appoint professionals in the various fields.

### **5. Offices and equipment**

The municipality is not equipped to accommodate additional staff as the current staff is already accommodated in remote buildings spread all over the town of Raymond Mhlaba. Additional office space will be needed and the municipality's capital budget is insufficient to accommodate this. There are no grant funds for the construction of office space. Furthermore, offices for certain professionals must be equipped with specialist equipment such as designer tables, designer's software, plan printers, laboratories, testing equipment and various other.

## **6. Systems and programmes**

There are a number of systems and programmes that the municipality need to maintain in order to render a cost effective, efficient and reliable service and to be compliant with legislation. The current systems entails:

- a) GIS;
- b) Service delivery and budget implementation;
- c) Performance Management;
- d) Risk Management;
- e) Compliance management;
- f) Document management and work flow;
- g) ICT and software licenses;
- h) Complaints Management.

### **JUSTIFICATION**

The use of consultants is currently non-negotiable for the municipality as it is of utmost importance to ensure service delivery and execute construction work of essential services. We, however recognise that any decision to employ consultants or any other external professional service must be fully justified, the procurement properly conducted, the assignment managed effectively and the costs recorded. Consultants are only used as and when the strategy, structure, management or operations of the specific department is under pressure to fulfil its mandate and render basic services. We endeavour to use consultants outside the 'business-as-usual' environment when in-house skills are not available and it will be time-limited. Such consultancy services are expected to either provide additional skills or expertise which are not available within the municipality and are engaged to carry out activities such as investigating problems, providing analysis or advice, or assisting with the development of new systems, new structures or new capabilities within the organisation and to prepare specifications and manage construction of essential services and works. In some areas of normal daily administration consultancy engagement is seen to be appropriate when:

- Internal capacity is unavailable to undertake a new area of work;
- Internal capacity is lacking due to a resignation and for the recruitment and training period as such, for instance where a specific system or programme is utilised;
- Independence/objectivity is required and cannot be provided within the municipality;
- Specialist knowledge or expertise is unavailable internally;
- Legislative requirement where a directive is required to be complied with arising from legislation or due to compliance.

### **SKILLS TRANSFER**

Skills transfer can only be applicable as and when there is internal capacity to be trained and utilised in future. We endeavour to always give explicit consideration to the potential for transferring skills, but it

will be limited to areas where capacity exist. Where skills transfer is not considered practical or appropriate, it will be recorded as such.

## **REDUCTION OPTIONS**

1. When the municipality does not have any form of oversight competency that can manage, guide or control the utilization of external consultancy for the execution of their mandate in a specific field of expertise the municipality will endeavour to get assistance from Provincial and National Government departments to take sole responsibility for the execution of such speciality engineering fields and/or construction projects where it will not impact on existing infrastructure, operational and maintenance functionality;
2. Implement a shared services model within the district for professional services;
3. Constantly inform other spheres of government on the cost of compliance and the unnecessary detail needed to comply with legislative requirements;
4. Appoint competent staff;
5. Annually evaluates the staff structure to establish opportunities to extend and fill vacant posts and provide for new posts. The municipality will annually during the budgetary process consider the annual management report on the appointment of consultants in order to decide on replacing consultants with full time staff.

## **4.8 Chapter 8: Disposal Management**

### **4.8.1 System of Disposal management**

- (1) The accounting officer must establish an effective system of disposal management for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act.
- (2) Assets must be disposed of by, inter alia -
  - (a) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
  - (b) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
  - (c) selling the asset; or
  - (d) destroying the asset.
- (3) With regard to the disposal of assets in general -
  - (a) immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
  - (b) movable 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;
  - (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; and

- (d) in the case of the disposal of firearms, the National Conventional Arms Control Committee has approved any sale or donation of firearms to any person or institution within or outside the Republic;
- (4) In connection with the letting of immovable property -
  - (a) immovable property must be let at market related rates except when the public interest or the plight of the poor demands otherwise; and
  - (b) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property must be annually reviewed; and
- (5) Where assets are traded in for other assets, the highest possible trade-in price must be negotiated.

#### 4.8.2 The Disposal Management Process

- (1) For purposes of the disposal management process, the accounting officer must ensure that the following steps are undertaken in respect of movable assets:
  - (a) Obsolescence planning must be effected, alternatively depreciation rates per item must be calculated;
  - (b) A data base of all redundant assets must be compiled and maintained;
  - (c) Assets identified for disposal must first be inspected for potential re-use;
  - (d) A strategy must be determined for the disposal of assets; and,
  - (e) The actual disposal of assets must be effected in compliance with this chapter.
- (2) Similar steps to those set out in terms of subsection (1) must be undertaken in respect of immovable assets.

## **4.9 Chapter 9: Supply Chain Performance**

### **4.9.1 The performance management process**

- (1) The accounting officer must establish an effective internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes are being followed and whether the desired objectives are being achieved.
- (2) Performance management shall accordingly be characterized by a monitoring process and retrospective analysis to determine whether:
  - (a) proper processes have been followed;
  - (b) value for money has been attained;
  - (c) desired objectives have been achieved;
  - (d) there is an opportunity to improve the processes;
  - (e) suppliers have been assessed and what that assessment is;
  - (f) there has been a deviation from procedures and, if so, what the reasons for that deviation are.

### **4.9.2 System of supply chain performance**

For purposes of internal monitoring, at least the following may be considered:

- (a) achievement of objectives;
- (b) compliance with norms and standards;
- (c) savings generated;
- (d) stores efficiency;
- (e) cost variance per item;
- (f) possible breaches of contract;
- (g) cost of the procurement process itself;
- (h) whether supply chain objectives are consistent with national government's policies;
- (i) increasingly alignment of material construction standards with international best practice;
- (j) observance of principles of co-operative governance; and
- (k) reduction of regional economic disparities are promoted.

### **4.9.3 Performance evaluation of the services provided by a contractor / service provider / supplier contracted by the Municipality**

- (1) Performance targets are identified as part of the initial planning for a contract, and set out in the business case and request for bid documentation. Targets are generally associated with cost, timeliness and the quality of products and services to be purchased as the outputs of the contract.
- (2) The project manager together with the contract management officials are expected to monitor and evaluate the contractor's performance. This is essential in determining whether the requirements are being met and to avoid any future conflicts over unsatisfactory performance.
- (3) Contractors should be required to report to the project manager on progress in accordance with the agreed timeframes and review schedules. The project manager must inform the contractor in writing where there is evidence that the contractor's performance is

- inadequate or behind schedule. If there is continuing concern that obligations are not being met, advice should be sought immediately from the Bid Adjudication Committee.
- (4) Disputes must be resolved promptly and not be allowed to escalate into costly legal battles.
  - (5) A copy of all performance reports and reports on contract outcomes should be forwarded to the SCM Unit. The SCM Unit must ensure that these reports are available for reference purposes to staff inquiring about a contractor's performance.

#### 4.9.4 Unsatisfactory performance

- (1) Unsatisfactory performance occurs when performance is not in accordance with the contract. Subject at all times to the terms and conditions of such contract, the contractor must be warned in writing (with a registered letter) that action will be taken against him/her unless he/she complies with the contract and delivers satisfactorily within a specified reasonable period. If the contractor still does not perform satisfactorily despite the warning, a recommendation may be made to the Accounting Officer to cancel the contract.
- (2) If during the guarantee period, a supplier does not comply with the requirements due to faulty material or otherwise, the contractor must be requested to repair or replace the faulty material at his or her cost without delay, and that it must be guaranteed for the same period as the original supplies.
- (3) Continuously communicate unsatisfactory performance to contractors in writing compelling the contractor to perform according to the contract and thus to rectify or to restrain from unacceptable actions.
- (4) If the performance is not rectified, the Project Manager must inform the SCM Unit of this fact.
- (5) Before action is taken in terms of the general conditions of contract or any other special contract condition applicable, the Municipality must warn the contractor by registered mail that action will be taken in accordance with the contract conditions unless the contractor complies with the contract conditions and delivers satisfactory supplies or services within a specified reasonable time. If the contractor still does not perform satisfactorily despite a final warning, the SCM Unit may make a recommendation to the Accounting Officer or the delegate for the appropriate penalties to be introduced or make a recommendation to the Accounting Officer for the cancellation of the contract concerned.
- (6) When correspondence is addressed to the contractor, reference must be made to the contract number, the item number and the number and date of any relevant invoice, statement or letter received from the contractor. Otherwise the number and date of the order, a short description of the supply or service and details of the destination if applicable, must be supplied.
- (7) When the Municipality has to satisfy its need through another provider (for the contractor's expense), the loss to RAYMOND MHLABA MUNICIPALITY must always be restricted to the minimum since it is difficult to justify the recovery of unreasonable additional costs from the contractor.
- (8) Record must be kept by the SCM Unit of details of all cases of non-performance by contractors. If rejected supplies are in the possession of the RAYMOND MHLABA MUNICIPALITY, the contractor must be requested to collect the supplies at his/her own expense, failing which the goods will be sent back and the cost will be for the contractor's account.

## **4.10 Chapter 10: Risk Management**

### **4.10.1 System of risk management**

- (1) The accounting officer must establish an effective system of risk management for the identification, consideration and avoidance of potential risks in the supply chain management system.
- (2) Managing risk must be part of the Municipality's philosophy, practices and business plans and should not be viewed or practiced as a separate activity in isolation from line managers.
- (3) Risk management shall be an integral part of effective supply chain management practice.
- (4) Risk management must include –
  - (a) the identification of risks on a case-by-case basis;
  - (b) the allocation of risks to the party best suited to manage such risks;
  - (c) acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
  - (d) the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
  - (e) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

### **4.10.2 The risk management process**

- (1) The risk management process shall be applied to all stages of supply chain management, be it the conceptual stage, project definition, specification preparation, acquisition approval or implementation to completion.
- (2) Risk management is an integral part of good management of acquisition activities and cannot be effectively performed in isolation from other aspects of acquisition management.
- (3) Appropriate risk management conditions should therefore be incorporated in contracts.

### **4.10.3 Key principles**

The key principles of managing risk in supply chain management include:

- (1) early and systematic identification of risk on a case-by-case basis, analysis and assessment of risk, including conflicts of interest and the development of plans for handling them;
- (2) allocation and acceptance of responsibility to the party best placed to manage such risk;
- (3) management of risk in a pro-active manner and the provision of adequate cover for residual risks;
- (4) assignment of relative risks to the contracting parties through clear and unambiguous contract documentation;
- (5) acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it; and
- (6) ensuring that the costs incurred in managing risks are commensurate with the importance of the purchase and the risks to the Municipality's operations.

### **4.10.4 Guidelines**

The Municipality shall demonstrate that in its supply chain management:

- (1) there exists a systematic approach to identifying risks including potential conflicts of interest, analyzing their possible likelihood, impacts and consequences and managing those risks as the project proceeds through the phases of pre-bid, post-bid and contract management;
- (2) the integrity and correctness of the process of risk identification analysis, assessment and treatment is such that the relevant municipal department can demonstrate the scope of the risk analysis is appropriate for the stated objectives;
- (3) all pertinent matters and assumptions have been tested adequately and that appropriate risk treatment techniques have been implemented;
- (4) the causes of risk are clearly identified;
- (5) the means of treating the identified risks are apparent;
- (6) the party who accepts the risks also accepts responsibility for management of those risks, except where informed, and objective decisions are taken to share risks;
- (7) alternatives have been evaluated; and
- (8) appropriate conditions are to be incorporated in contracts to avoid or minimize risk including warranties and penalties where appropriate.

#### 4.10.5 Steps in risk management

There are six steps in the risk management process, namely:

- (1) establish a framework;
- (2) risk identification;
- (3) risk analysis;
- (4) risk assessment;
- (5) risk treatment; and
- (6) implementation, monitoring and review.

#### 4.10.6 Combating of abuse of supply chain management system

- (1) The accounting officer must provide measures for the combating of abuse of the supply chain management system.
- (2) For purposes of subsection (1), the afore-stated measures must enable the accounting officer:
  - (a) to take all reasonable steps to prevent abuse of the supply chain management system;
  - (b) to 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) to 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) to 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



#### 4.10.8 Insurance

- (1) The accounting officer must ensure that steps are taken to:
  - (a) insure the Municipality against procurement related risks;
  - (b) establish risk management programmes; and
  - (c) make advance provision for losses associated with such risks.
- (2) The accounting officer shall further ensure that insurance related excesses do not cause the failure of emerging small and micro enterprises.

#### 4.10.9 Guarantees

- (1) The Municipality must adhere to the following general principles with regard to performance guarantees:
  - (a) the aforesaid performance guarantees must be commensurate with the degree of contractual risk to which the Municipality will be exposed;
  - (b) in the case of large and complex contracts, performance guarantees must be requested in order to discourage the submission of irresponsible bids; and,
  - (c) the risk of failure must be distributed between the contracting parties and should be managed so that the Municipality's costs resulting from any such failure are recoverable.
- (2) With regard to contracts pertaining to engineering and construction works:
  - (a) adequate provision should be made by the Municipality to ensure that funds are available to rectify defects; and,
  - (b) performance guarantees may be waived in the case of low value and low risk contracts or where a third party bears the risk of failure.

#### 4.10.10 Declaration

For purposes of establishing control measures to eliminate fraud and corruption:

- (a) a declaration schedule must form an integral part of all the Municipality's bid documents and must be completed and signed at the time of submitting the bid to the Municipality;
- (b) the municipality or municipal entity may not make any award to a person:
  - who is in the service of the state;
  - 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 who is an advisor or consultant contracted with the municipality or municipal entity"

#### 4.10.11 Declaration of interest by officials, suppliers, service providers and consultants

- (1) In order to obtain the disclosure of any interests that an official, supplier, service provider or consultant may have with regard to a bid, the declaration of interest schedule must be completed prior to the award of a bid.

- (2) The declaration of interest must be completed by the following persons:
- (a) all officials involved in the evaluation or approval of a bid;
  - (b) all suppliers, service providers or consultants who are involved in the preparation of bid documentation and bid reporting; and,
  - (c) any other person who played a role in the preparation, specification, evaluation and approval of a bid and who has an interest in the award thereof.

#### 4.10.12 General risk management

- (1) For purposes of establishing general risk management measures, the Municipality must apply the following principles:
- (a) business plans, where applicable, will be required for approval prior to the commencement of all projects;
  - (b) feasibility or design reports will be required by the RAYMOND MHLABA MUNICIPALITY before bids for projects are called;
  - (c) bid documents will be specific and detailed;
  - (d) applicable project standards must be made available for public perusal;
  - (e) officials must ensure time, cost and quality control while projects are being implemented;
  - (f) where applicable, bidders must obtain public liability insurance to cover the RAYMOND MHLABA MUNICIPALITY; and,
  - (g) variation orders will only be approved by the accounting officer or a duly delegated RAYMOND MHLABA MUNICIPALITY official, subject to the provisions of Chapter 16 of this policy.

#### 4.10.13 Surety

- (1) Sureties must be obtained in respect of construction projects, classified as follows:

AMOUNT	PERCENTAGE
R300 000	Nil
R300 001-R1 000 000	2.5%
R1 000 001-R3 000 000	5%
R3 000 001-R5 000 000	7.5%
R5 000 001- and above	10%

- (2) In the event that a contractor is unable to raise the required surety, the Municipality may allow such surety to be deducted in full or part from monies that are to become due to the contractor, in which event this shall be effected by way of deductions from the first three [3] payment certificates issued in favour of the contractor.
- (3) The Municipality may waive the requirement for a surety on construction contracts that are estimated to be equal to or lower than R1 000 000.
- (4) With regard to the waiving of sureties:
- (a) this may be permitted to assist emerging and HDI entrepreneurs in the small works sector of the construction industry;
  - (b) it may further be permitted where a surety, a performance guarantee or funds cannot be obtained with the assistance of the Eastern Cape Development Corporation (ECDC) or a similar institution, provided that a written indication thereof is submitted to the Municipality; and,
  - (c) the Municipality may bear the risks associated with such waiver in order to promote emerging and HDI entrepreneurs.
- (5) No contractor, supplier or service provider may be permitted to undertake more than two contracts simultaneously where sureties have been waived.
- (6) Sureties will be released from their obligations upon their application to the Municipality and provided that the Municipality is satisfied that the contract has been completed satisfactorily.

#### 4.10.14 Retention

- (1) A percentage of the costs in respect of construction contracts must be set aside as retention funds.
- (2) No more than 10% of the value of the construction contract must be set aside for purposes of subsection (1).
- (3) With regard to the release of retention funds:
- (a) half of the retention funds shall be released upon the issue of a completion certificate; and,
  - (b) the balance of the retention funds shall be released upon completion of the defects liability period.



#### 4.10.15 Cessions

- (1) A cession agreement may be concluded by the Municipality, a contractor, supplier, service provider or financial institution and any other third party in order to assist emerging and HDI entrepreneurs.
- (2) The municipality will allow a financial institution to assist a contractor, supplier or service provider to implement projects on behalf of the employer.
- (3) The conclusion of a cession agreement shall be approved at the discretion of the chief financial officer.

#### 4.10.16 Prohibition on awards to persons whose tax matters are not in order

- (1) The accounting officer must ensure that, irrespective of the procurement process followed, no award is given to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (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.
- (3) If SARS does not respond within seven (7) days such person's tax matters may for purposes of subsection (1) be presumed to be in order.

#### 4.10.17 Prohibition on awards to persons in the service of the state

- (1) The accounting officer must ensure that irrespective of the procurement process followed, no award may be given to a person –
  - (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) who is an advisor or consultant contracted with the Municipality.

#### 4.10.18 Awards to close family members of persons in the service of the state

- (1) The notes to the annual financial statements must disclose particulars of any award of more than R2 000 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.

#### 4.10.19 Compliance with ethical standards

- (1) In order to create an environment where business can be conducted with integrity and in a fair and reasonable manner, the RAYMOND MHLABA MUNICIPALITY will strive to ensure that the accounting officer and all representatives of the Municipality involved in supply chain management activities shall act with integrity and in accordance with the highest ethical standards.
- (2) All municipal representatives shall adhere to the code of conduct for municipal staff contained in Schedule 2 of the Municipal Systems Act and the RAYMOND MHLABA MUNICIPALITY's Code of Ethical Standards.
- (3) A Code of Ethical Standards is hereby established, in accordance with subsection (2), for officials and other role players in the supply chain management system 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.
- (4) 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;
  - (d) notwithstanding subsection (4)(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 subsection 103(1) of this policy; or
    - (iii) any alleged breach of this Code of Ethical Standards.

- (5) The Municipality shall ensure that:
- (a) all declarations in terms of subsections (4)(d) and (e) must be recorded in a register which the accounting officer must keep for this purpose;
  - (b) all declarations by the accounting officer must be made to the executive mayor of the Municipality who must ensure that such declarations are recorded in the register; and
  - (c) appropriate action is taken against any official or other role player who commits a breach of the code of ethical standards.

#### **4.10.20 Inducements, rewards, gifts and favours to the Municipality, officials and other role players**

- (1) No person who is a provider or prospective provider of goods or services to the Municipality, or a recipient or prospective recipient of goods disposed or to be disposed of by the Municipality, 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.
- (2) The accounting officer must promptly report any alleged contravention of subsection (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
- (3) Subsection (1) does not apply to gifts less than R350 in value.

#### **4.10.21 Sponsorships**

The accounting officer must promptly disclose to the National Treasury and the 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 to the Municipality; or
- (b) a recipient or prospective recipient of goods disposed or to be disposed of by the Municipality.

#### **4.10.22 Objections and complaints**

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

#### 4.10.23 Resolution of disputes, objections, complaints and queries

- (1) The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes:
  - (a) to assist in the resolution of disputes between the 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.
- (2) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.
- (3) The person appointed must:
  - (a) strive to resolve promptly all disputes, objections, complaints or queries received; and
  - (b) submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.
- (4) A dispute, objection, complaint or query may be referred to the provincial treasury if:
  - (a) the dispute, objection, complaint or query is not resolved within 60 days; or
  - (b) no response is forthcoming within 60 days.
- (5) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.
- (6) This section must not be read as affecting a person's rights to approach a court at any time.

#### 4.10.24 Contracts providing for compensation based on turnover

- (1) 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.

## **4.11 Chapter 11: Contract Management**

### **4.11.1 The contract management process**

The accounting officer must develop and implement mechanisms to effectively manage important aspects relating to contracts awarded through the supply chain management system of Council. A Municipality cannot operate at all without entering into contracts on a regular basis and the obligations and rights created by the conclusion of these contracts should be managed in order to protect the interests of both the Municipality and the other contracting party.

### **4.11.2 The concept of contract management**

Contract management consists of the process that enables the Municipality, as a party to a contract, to protect its own interests and to ensure that it complies with its duties, as agreed upon in the contract. Non-performance or inadequate performance of these will compromise the municipality's legal position and will have a detrimental impact on the effectiveness of the Municipality, with related financial losses.

The process to manage contracts properly involves the following distinct aspects: the Raymond Mhlaba Municipality administration process, and the delivery or performance process.

### **4.11.3 The Raymond Mhlaba Municipality administration process**

This process encompasses the totality of the Raymond Mhlaba Municipality Administrative management of contracts, which includes the following:

#### **(1) The co-ordination of all activities relating to contracts**

##### **(a) Centralised control point**

This is normally performed by the orate Budget and Treasury Department, which takes full responsibility as main contact point between the parties to the contract, on the one hand, and as contact point between the functionaries of the Municipality, on the other. All the following matters will thus be handled at the central point, namely:

- (i) enquiries;
- (ii) liaison; and
- (iii) correspondence.

##### **(b) Centralised registering point**

All contracts concluded must be recorded in a register. The contract register should preferably contain the following information:

- (i) name of party;
- (ii) type of contract (lease, loan, encroachment, etc);
- (iii) date concluded (this refers to the date on which the contract comes into operation and not the date of signing of the contract);
- (iv) date of expiry; and
- (v) action date (this indicates the ideal date on which action must be taken in order to either renew the existing contract or to implement appropriate action prior to termination of the contract).

The contract register must be kept electronically and in alphabetical order. All new contracts that have been entered into must immediately be recorded in the register. Contracts that have expired or no longer exist for whatever reason must be removed from the register and be recorded on a register or list for cancelled or terminated agreements.

(c) **Reproduction and distribution of contracts**

Once a contract is signed copies must be made and:

- (i) be placed in the relevant file;
- (ii) be furnished to relevant departments under cover of a memorandum. If, for example, the contract places a duty on the Budget and Treasury Office and the Engineering Services Department, copies must be furnished to those departments;
- (iii) the original document must be dealt with as indicated in subsection (1)(d) below; and
- (iv) an original contract must be furnished to the other party.

(d) **Safekeeping of contracts**

- (i) The original contract must always be archived centrally.
- (ii) It must be placed in a special file separate from other documents, which must be stored in a locked cabinet that is situated in a strong room.
- (iii) Only one official must exercise control over original contracts.
- (iv) Original contracts should preferably not be made available to persons other than the parties to the contract. If a third party is authorized to have sight of the contract, such third party must sign for receipt of the contract.

(e) **Contract formalisation**

- (i) On the award of a bid or quote the Acquisition Section shall forward the original submission together with details of the award to the Contract Raymond Mhlaba Municipality administration Section.

- (ii) The Contract Raymond Mhlaba Municipal administration will review the contract data and record the award.
- (iii) On notification of the award of contract the Contract Raymond Mhlaba Municipality administration Section and Legal Services will invite the authorised representative of the successful vendor, whose signature appears on the Resolution of Board of Directors, to attend a meeting where the following shall take place:
  - (aa) review of contract data;
  - (bb) submission of a surety, if any, in the amount stated in the Form of Guarantee;
  - (cc) submission by the vendor of contractual insurances, if any, for the various aspects and in the amounts stated in the bid or quotation document;
  - (dd) submission by the vendor of any other document and/or information stated in the bid or quotation document as a prerequisite for commencement of the contract; and
  - (ee) signature by the authorised representative of the successful vendor and a witness of all contractual documents.
- (iv) After the meeting, the Contract Raymond Mhlaba Municipality administration Section will forward the documentation to the Legal Services Unit. Upon receipt of the documentation Legal Services shall take the following steps:
  - (aa) in the case of infrastructure related contracts; ensure that the "acceptance" portion of the Form of Offer and Acceptance is signed on behalf of the "Employer" by the official with the delegated authority; or
  - (bb) in the case of all other categories of acquisition, ensure that the Part 2 of the Contract Form : Purchase of Goods/Works or Contract Form : Rendering of Service is signed on behalf of the "Employer" by the official with the delegated authority.
- (v) Contracts relating to information technology shall be prepared in accordance with the State Information Technology Act, 1998 (Act No. 88 of 1998), and any regulations made in terms of that Act.
- (vi) Under no circumstances will the Users/Project Managers communicate the award to the successful vendor or issue instructions to the successful vendor to commence with the contract unless the requirements of the above have been met.
- (vii) The Project Manager together with the Contract Raymond Mhlaba Municipality administration Section shall monitor performance of the contract to ensure that socio-economic objectives undertaken by the vendor at the bidding or quotation stage are adhered to.

- (viii) The contract should be written in English or in any other language chosen by the parties, and proper contract documents should be used.
- (ix) Contracts should be signed, after mutual consensus, by all parties to the contract.
- (x) All agreements regarding the supply of goods and services to the Municipality must be concluded in writing.
- (xi) Copies of the original contract must be made and must be kept in a secure place, as indicated in subsection (d)(iv) above.

(f) **Approval of contracts**

All contracts to be concluded by the Municipality must be approved by the accounting officer or the delegated official. All contracts must indicate the name of the responsible person delegated by the accounting officer to sign on his or her behalf. The full name and signature of the accounting officer or responsible person in question must be added in the space provided. No official can sign on behalf of someone else unless properly authorized to do so.

(g) **Signing of contracts**

The signing of a contract takes place as soon as possible after the approval thereof. The following must be prudently adhered to when a contract is signed:

- (i) the representative of the Municipality must have the required authority to sign the contract;
- (ii) if the other party is a company, a close corporation, partnership or other form of legal entity, then a written resolution must be produced and attached to the contract, authorizing the signatory to sign on behalf of the other party;
- (iii) that the committee resolution, in terms whereof the contract was approved, is recorded in the contract;
- (iv) that the contract is signed with a pen using indelible ink;
- (v) that the contract is signed in the presence of two witnesses; and
- (vi) that a sufficient number of copies of the original contract are made for the parties involved.

(h) **Expiry or termination of contracts**

The following action is required when a contract is terminated:

- (i) The Municipality must ensure that it notifies the other contracting party, in writing, of the imminent expiry of the contract.
- (ii) The notification referred to above must contain the information required in terms of the contract.

- (iii) When an option to renew has been granted to the other contracting party, such party must be notified of such option in writing, and well in advance of the date on which he, she or it is required to exercise the option.
- (iv) The termination of a contract prior to its expiry date can take place in any of the following ways:
  - (aa) in accordance with a termination clause;
  - (bb) as a consequence of the breach of contract by either party;
  - (cc) death of a party;
  - (dd) destruction of the object of the contract;
  - (ee) where the parties become one party, e.g. when two or more municipalities amalgamate;
  - (ff) by operation of law; and
  - (gg) where the cause of the relationship in terms of the contract ceases to exist, for whatever reason.
- (v) Termination of a contract must be done strictly in accordance with the terms and conditions set out in the termination clause.
- (vi) Termination of a contract, for whatever reason, must be dealt with judiciously and in consultation with the RAYMOND MHLABA MUNICIPALITY's legal advisor.
- (vii) As indicated in subsection (1)(b) above, all terminated contracts must be clearly indicated as such in a separate register.

(i) **Delivery or performance process**

This process commences as soon as a contract is concluded. The parties are entitled to exercise their respective rights and are obliged to fulfill the duties stipulated in the contract. The nature of management required will ultimately depend upon the type of each individual contract. In some cases, contracts can be managed adequately with little involvement, whilst in other cases proper management without a competent project team is impossible. A good example of the latter is capital projects or service delivery agreements of considerable extent.

The nature of a contract will also indicate which department of the Municipality will be required to accept responsibility for the successful implementation of the project.

Circumstances will dictate the responsibility of the various departments involved and what level of management will be required.

#### 4.11.4 Managing contracts

- (1) The Municipality must ensure that contracts are Raymond Mhlaba Municipality administered in terms of the specifications and conditions contained in the contract, as well as any applicable legal provisions of a general nature.
- (2) The contract must be implemented according to proposed strategy, with reference to the budget, strategic and procurement plan.
- (3) The contract register for the Municipality should be checked on a regular basis to ensure that it is up to date and accurate.
- (4) The outcomes of a contract must be monitored with reference to any documented expectations to ensure that the benefits realized by the Municipality are in line with such expectations.
- (5) The lifespan of the project must be monitored in line with the available budget approved.
- (6) Delivery must be assessed on the basis of the signed contract.
- (7) Orders are to be monitored continuously to ensure proper supply and delivery in accordance with the terms and conditions of the contract.
- (8) The Municipality must ensure that all parties to the contract observe acceptable ethical standards.
- (9) Necessary approval from the accounting officer and the bid adjudication committee, for non-contractual price adjustments, must be obtained, provided that such adjustments are lawful and not in contravention of the principles contained in this policy.
- (10) Contractual price adjustments may be considered, provided that these are in line with the terms and conditions of the contract and the supplier provides documentary proof or an audited certificate of price adjustments claimed to warrant such an adjustment.
- (11) Subject to the terms and conditions of the contract, the supplier or successful bidder must, within 30 days of the formation of the contract, provide security in the amount specified. Similarly, the supplier or successful bidder must provide a warranty for the goods and services to be provided.
- (12) If it was a condition of the bid invitation that the bidder or contractor must allow the Municipality to carry out inspections, tests and analysis, then the bidder must be open, at all reasonable hours, for such inspection, tests or analysis by the Municipality. The inspection, testing and analysis of any contract for supplies is recommended and may be rejected for non-compliance.
- (13) The Municipality must ensure that payment to a service provider is made in accordance with contract terms and conditions, and only after proper delivery of the goods or services and upon receipt of an invoice.
- (14) Goods and services should be provided by a service provider in accordance with the time schedule and quality specifications stipulated in the contract. A delay should be explained by the service provider in writing and may result in the imposition of penalties by the institution. The implementation of penalties for non-delivery must be adhered to.
- (14) Once a contract has been concluded, a close out report must be compiled.
- (16) The Municipality must ensure that the service provider does not assign or sub-contract a portion or the whole contract to another party without the approval of the Municipality.
- (17) Subject to the terms and conditions of the contract, the Municipal Manager and Bid Adjudication Committee may terminate the contract for non-performance.
- (18) Any breach of contract must be clearly documented and reported to SCM and the Municipal Manager.

#### 4.11.5 **Application**

The contract management provisions above are applicable only to contracts for the provision of goods and services.

## **4.12 Chapter 12: Support to Bidders**

### **4.12.1 Introduction**

- (1) The RAYMOND MHLABA MUNICIPALITY will provide all necessary support, within its powers, to ensure that bidders, especially HDIs and/or emerging firms, are provided with an opportunity to provide goods and services to the Municipality where possible, provided that such support does not contravene the principles of public procurement.

### **4.12.2 Strategy**

- (1) Bid information must be simplified to enable wider participation and advice must be available to ensure that bidders stand a fair chance of success upon the submission of their bids.
- (2) Easy access to information must be ensured with regard to the provision of goods and services for purposes of encouraging wider participation.

### **4.12.3 Process**

- (1) Pre-bid meetings may be a standard requirement of the bid process in order to obtain details for the bid requirements and answer questions from prospective bidders.
- (2) A dedicated telephone number is available to bidders who require assistance when completing bid documentation or require information with regard to bids. The telephone number is contained within the bid document.
- (3) Bid information, support and registration as a service provider or supplier will be available from the RAYMOND MHLABA MUNICIPALITY's Bid Advisory Centre.
- (4) The Municipality must hold regular workshops with service providers and suppliers to provide advice which will assist them to build capacity in their organizations and provide information on how suppliers and service providers can engage the Municipality.

## **4.13 Chapter 13: Occupational Health**

### **4.13.1 Introduction**

- (1) In terms of the Construction Regulations, 2003 (GNR 1010, Government Gazette No. 25207, 18 July 2003) promulgated under section 43 of the Occupational Health and Safety Act 85 of 1993, any person for whom construction work is performed is defined as the “client”. The client’s duties, as laid down under Construction Regulation 4, are applicable to the Municipality.
- (2) The Municipality shall comply with all occupational health and safety standards and establish best practice on construction projects commissioned by the Municipality.
- (3) Contractors shall comply with all applicable standards and contract specifications when undertaking any construction project, regardless of the size or nature of the works.

### **4.13.2 Legal Requirements**

All contractors entering into a contract with the Municipality shall, as a set of minimum requirements, comply with the following:

- (1) Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) (as amended) and applicable regulations;
- (2) Compensation for Occupational Injuries & Diseases Act, 1993 (Act No. 130 of 1993) (as amended); and
- (3) Mine Health and Safety Act, 1996 (Act No. 29 of 1996), where work is carried out on a mine.

### **4.13.3 Implementation**

Bidders are required to familiarize themselves with the provisions of the Municipality's Construction Health and Safety Specifications when compiling bids for construction work.

### **4.13.4 Specific Requirements**

Bidders shall furnish the following:

- (1) an original copy of a letter of good standing from the compensation fund established in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993; and
- (2) a pre-bid occupational health and safety plan as contemplated in terms of the Construction Regulations, 2003.

## 4.14 Chapter 14: Public Private Partnership (PPP)

### 4.14.1 Conditions and process for public-private partnerships

- (1) The Municipality may enter into a public-private partnership agreement, but only if the Municipality can demonstrate that the agreement will:
  - (a) provide value for money to the Municipality;
  - (b) be affordable for the Municipality; and
  - (c) transfer appropriate technical, operational and financial risk to the private party.
- (2) A public-private partnership agreement must comply with any prescribed regulatory framework for public-private partnerships.
- (3) If the public-private partnership involves the provision of a municipal service, Chapter 8 of the Municipal Systems Act must also be complied with.
- (4) Before a public-private partnership is concluded, the Municipality must conduct a feasibility study that:
  - (a) explains the strategic and operational benefits of the public-private partnership for the Municipality in terms of its objectives;
  - (b) describes in specific terms:
    - (i) the nature of the private party's role in the public-private partnership;
    - (ii) the extent to which this role, both legally and by nature, can be performed by a private party; and
    - (iii) how the proposed agreement will:
      - (aa) provide value for money to the Municipality;
      - (bb) be affordable for the Municipality;
      - (cc) transfer appropriate technical, operational and financial risks to the private party; and
      - (dd) impact on the Municipality's revenue flows and its current and future budgets;
  - (c) takes into account all relevant information; and
  - (d) explains the capacity of the Municipality to effectively monitor, manage and enforce the agreement.
- (5) The national government may assist the Municipality in carrying out and assessing feasibility studies referred to in subsection (4).
- (6) When a feasibility study has been completed, the accounting officer of the Municipality must:
  - (a) submit the report on the feasibility study together with all other relevant documents to the Council for a decision, in principle, on whether the Municipality should continue with the proposed public-private partnership;
  - (b) at least 60 days prior to the meeting of the Council at which the matter is to be considered, in accordance with section 21A of the Municipal Systems Act:

- (i) make public particulars of the proposed public-private partnership, including the report on the feasibility study; and
  - (ii) invite the local community and other interested persons to submit to the Municipality comments or representations in respect of the proposed public-private partnership; and
  - (c) solicit the views and recommendations of:
    - (i) the National Treasury;
    - (ii) the national department responsible for local government;
    - (iii) if the public-private partnership involves the provision of water, sanitation, electricity or any other service as may be prescribed, the responsible national department; and
    - (iv) any other national or provincial organ of state as may be prescribed.
- (7) Chapter 5 of this policy applies to the procurement of public-private partnership agreements. Section 33 of the MFMA also applies if the agreement will have multi-year budgetary implications for the Municipality within the meaning of that section.

## 4.15 Chapter 15: Expanded Public Works Programme (EPWP)

### 4.15.1 General

- (1) The Expanded Public Works Programme (EPWP) is founded on the principle that the Implementing Agent (National or Provincial Department, state owned enterprise, Municipality or municipal entity) is responsible for identifying and implementing suitable projects in accordance with the published EPWP Guidelines.
- (2) The EPWP is a programme that cuts across all departments and spheres of government. Work opportunities will be provided in the following ways:

- (a) Infrastructure sector

Increasing the labour intensity of government-funded infrastructure projects. The infrastructure sector incorporates a large-scale initiative to use labour-intensive methods to upgrade rural and municipal roads, municipal pipelines, and storm-water drains. People living in the vicinity of these infrastructure projects are employed by contractors to carry out the work. In addition, emerging contractors will participate in Construction Education and Training Authority (CETA)-registered learnerships to gain the necessary skills to build this infrastructure labour-intensively. The Municipality shall arrange for access to finance for learner contractors.

Labour-intensive construction methods involve the use of an appropriate mix of labour and machines, with a preference for labour where technically and economically feasible, without compromising the quality of the product. International and local experience has shown that, with well-trained supervisory staff and an appropriate employment framework, labour-intensive methods can be used successfully for certain types of infrastructure projects. Labour-intensive infrastructure projects under the EPWP involve:

- (i) using labour intensive construction methods to provide employment opportunities to local unemployed people;
- (ii) providing training or skills development to those locally employed workers; and
- (iii) building cost-effective and quality assets.

- (b) Environmental sector

Creating work opportunities in public environmental programmes (e.g. Working for Water).

The environmental sector's contribution to the EPWP involves employing people to work on projects to improve their local environments, under programmes such as the Department of Agriculture's Land Care programme; the Department of Environmental Affairs and Tourism's People and Parks, Coastal Care, Sustainable Land-based Livelihoods, Cleaning up SA, and Growing a Tourism Economy programmes; and the Department of Water Affairs and Forestry's Working for Water, Working for Wetlands, and Working on Fire programmes.

- (c) Social sector

Creating work opportunities in public social programmes (e.g. community-based health and social welfare care and early childhood development).

The social sector contributes to the EPWP by employing people, through NGOs and CBOs, to work on home-based care and early childhood development programmes. These programmes will be coordinated by the Departments of Social Development, Health and Education.

(d) Economic sector:

Developing small businesses and cooperatives, including utilising general government expenditure on goods and services to provide the work experience component of small enterprise learnership / incubation programmes.

#### 4.15.2 The EPWP process

- (1) The RAYMOND MHLABA MUNICIPALITY will develop an EPWP Strategy Document.
- (2) The RAYMOND MHLABA MUNICIPALITY will identify specific infrastructure projects to ensure that it implements the EPWP within the organization. The projects targeted for this programme will be in line with the EPWP programme.
- (3) The Municipality will provide guidance on the:
  - (a) identification of suitable projects;
  - (b) appropriate design for labour-intensive construction;
  - (c) the specification of labour-intensive works; and
  - (d) the compilation of contract documentation for labour-intensive projects.
- (4) The monitoring and reporting of the RAYMOND MHLABA MUNICIPALITY's EPWP by the EPWP Unit on a quarterly basis will be supported by an efficient and effective information management system. The type of information that will be monitored on an ongoing basis will include the following six key indicators:
  - (a) job opportunity;
  - (b) person years of employment, with segregated data for youth, women, disabled (YWD) in format of benchmark, actual to date and projections;
  - (c) project budgets, actual expenditure, expenditure projections (cash-flows);
  - (d) demographic data;
  - (e) project wage rate; and
  - (f) cluster budgets, actual expenditure, project across all sectors.
- (5) The employment of locally employed temporary workers on all EPWP labour-intensive infrastructure projects must be in accordance with the Code of Good Practice for Employment and Conditions of Work for Special Public Works Programmes issued in terms of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) and promulgated in Government Gazette Notice No. P64 of 25 January 2002.

#### 4.15.3 Contractor Development Programme

Allocation of projects to:

- (1) Incubator Programme

- (2) Cooperatives Programme
- (3) Emerging Contractor Development Programme
- (4) EPWP
- (5) Designated Groups Allocation (Youth, Women, Disables, etc.)

## **4.16 Chapter 16: Variation Orders**

### **4.16.1 Introduction**

Variation orders (VO's), also called Contract Instructions, are regularly issued to contractors or service providers. Examples of circumstances that can lead to a variation are listed below:

- (1) An extension of time needs to be given to a contractor for the completion of a project as a result of circumstances outside his or her control, such as excessive rainfall. Such an extension of time will have a cost implication because the contractor's overhead costs will increase. The contract amount must therefore be increased to compensate the contractor for the additional unforeseen costs.
- (2) During the excavation of the foundations for a community hall it was found that more rock needed to be excavated than allowed for when the quantities for the different work items were calculated and included in the project tender. This sort of situation is not uncommon because it is impossible to determine the exact quantities for all excavation due to uncertainty on ground conditions. In this instance the contractor will have to be compensated for his increased costs, and a variation to the contract must be issued.
- (3) During the construction of a clinic it was found that the type of ceiling described in the project specifications, and on which the contractor has based his prices, is unavailable due to a fire at the plant of the manufacturer. To resolve the situation and avoid delays to the construction of the clinic, the architect has recommended an alternative type of ceiling which costs more and the contractor has to be compensated for these additional costs in the form of a variation to his contract.

### **4.16.2 Process to get variation orders (VO) approved**

- (1) Project managers must prepare a report reflecting comprehensive detail for the VO.
- (2) Project managers must sign off the VO and send it in both hard copy and email to the relevant head of department.
- (3) VOs must be approved by the Accounting Officer or delegated official.

### **4.16.3 Documentation and record keeping**

- (1) The project manager (either a person at the principal agent or an RAYMOND MHLABA MUNICIPALITY project manager) responsible for the implementation of a project must keep complete records of all VO's issued on a project. Each individual VO to be approved must be accompanied with a summary of all other VO's issued on a project.
- (2) At project close out, all records pertaining to VO's must be filed with all the other project documentation.

## **4.17 Chapter 17: Contractor Development Programme**

### **4.17.1 Introduction**

- (1) This Chapter focuses on regulatory issues impacting on the allocation of construction work contracts for developmental objectives, and specifically on allocating work opportunities to contractors enrolled within contractor development programmes.
- (2) In addressing the allocation of construction works contracts for developmental objectives, this Chapter highlights key elements of the Framework of the National Contractor Development Programme (NCDP), within which the allocation of work opportunities to CDPs is a key element to support contractor development.
- (3) This Chapter also highlights elements of the NCDP Guidelines for CDPs, which includes fair, equitable and transparent practices for the enrolment of contractors into CDPs, and for the development of contractors. This Chapter then reviews the legislative framework for allocating construction works contracts for developmental objectives. The Chapter then highlights that allocation of construction works contracts for developmental objectives is provided for within the legislative framework, provided that sustainable, fair, equitable and transparent practices are provided for – such as that provided for within the NCDP Framework and Guidelines.

### **4.17.2 Thirty percent (30%) of procurement within the municipality will go to local SMME's.**

- (1) 30% of which will be prioritised to vulnerable groups e.g women, youth, disabled, military veterans.

### **4.17.3 National Contractor Development Programme**

- (1) The National Contractor Development Programme (NCDP) is a government framework comprising of a partnership between the CIDB, national and provincial public works and other willing clients and stakeholders, in which the participating stakeholders:
  - (a) commit their resources to develop previously disadvantaged contractors; and
  - (b) align their individual contractor development programmes or initiatives with the principles set out in the NCDP framework (and guidelines), towards meeting the objectives of the NCDP through their own pre-set development and service delivery targets.

### **4.17.4 Objective Of The National Contractor Development Programme**

- (1) The objective of the NCDP is to increase the capacity, equity ownership, sustainability, quality and performance of CIDB registered contractors, as well as improving skills and performance in the delivery and maintenance of capital works across the public sector.

- (2) In addition to specific contractor development instruments (including both direct and indirect targeting), the NCDP also addresses an enabling environment required for contractor development.

#### **4.17.5 Key principles for establishing and operating Contractor Development Programmes**

- (1) Key principles for establishing and operating CDPs are given in the CIDB Guidelines for Implementing Contractor Development Programmes, which provide for sustainable, fair, equitable and transparent practices, including:
  - (a) work opportunities are typically provided through direct contracts with the developing contractors within the CDP; and
  - (b) contractors will enter the programme based on predefined criteria and will receive support to enable contractors to exit the programme on the basis of achieving predefined criteria relating to skills, qualifications, certification, sustainability, quality, etc.

#### **4.17.6 Allocation of financial resources**

- (1) In understanding the regulatory issues impacting on the allocation of financial resources through construction works contracts to contractors enrolled within Contractor Development Programmes (CDPs), it is necessary to separate:
  - (a) the allocation of projects or work opportunities to CDPs for developmental objectives; and
  - (b) the procurement regime for awarding such work opportunities which have been allocated to a CDP.

#### **4.17.7 Awarding individual projects to contractors enrolled in the Contractor Development Programme**

- (1) Section 217 of the Constitution requires that a procurement system must be fair, equitable, transparent, cost-effective and competitive – which governs the procurement regime for awarding such work opportunities. Section 217 allows for the deviation from these principles with the aim to develop previously disadvantaged individuals. This deviation is implemented through the Preferential Procurement Policy Framework Act (PPPFA), Act No. 5 of 2000.
- (2) In addition, Section 195 of the Constitution requires that public Raymond Mhlaba Municipality Administration must be development-oriented. A Legal opinion obtained by the CIDB confirms that organs of state can:
  - (a) identify projects which by their nature have the ability to assist in the development of a contractor;
  - (b) allocate a portion of their budget for these developmental projects for the exclusive expenditure only to contractors within their predetermined development programmes – this portion of the budget must be reasonable in relation to the delivery standard required from government; and
  - (c) award individual projects to contractors enrolled in the CDP's through a competitive tendering process within the CDP.

- (3) In line with the above legal opinion obtained by the CIDB, it is the CIDB's view that the allocation of such projects for developmental purposes should be to development programmes with clearly defined developmental criteria and objectives – such as that provided for in the National Contractor Development Programme (NCDP).
- (4) The following criteria within the NCDP Framework and the CIDB Guidelines for Implementing Contractor Development Programmes are aligned to the requirements of fair and transparent development of contractors within the CIDB Register of Contractors, namely:
  - (a) The process for contractors to enter the programme must be through open competition. Contractors that wish to enter the programme must be registered with the CIDB on the Register of Contractors, and are evaluated based on a demonstration of a minimum level of contracting and financial capacity.
  - (b) Contractors that have qualified for entry into the programme (CDP) are subjected to a developmental programme which must be attained within a prescribed period e.g. three (3) years. All contractors must exit within the prescribed period. Graduation criteria apply to those that have attained the necessary qualification within the period. The protection and advancement of those that have qualified into the individual CDP's that comply with the CIDB Guidelines for Implementing Contractor Development Programmes is therefore provided for in terms of the legislative framework. This therefore allows for the selection and allocation of projects to the individual CDP's, provided that competitive tendering amongst contractors enrolled in the CDP's, takes place for the award of the individual projects.
- (5) The CIDB Regulations stipulates that within the framework of the targeted development programme promoted by the RAYMOND MHLABA MUNICIPALITY may accept for evaluation tender offers or expressions of interest by a contractor who is registered as a potentially emerging enterprise in terms of the Regulations at a contractor grading designation, one level higher than the contractor's registered grading designation, if that client or employer-
  - (a) is satisfied that such a contractor has the potential to develop and qualify to be registered in that higher grade; and
  - (b) ensures that financial, management or other support is provided to that contractor to enable the contractor to successfully execute that contract.

## **4.18 Chapter 18: Treatment of Unauthorised Expenditure, Irregular Expenditure, and Fruitless and Wasteful Expenditure**

### **4.18.1 Expenditure in Contravention of the Act**

- (1) The Act identifies expenditure types that contravene the Act, namely, Unauthorized Expenditure, Irregular Expenditure, and Fruitless and Wasteful Expenditure. Set out below under each subsection of each expenditure type, is the:
  - (a) The legal definition of the expenditure;
  - (b) An interpretation of the legal definition with examples;
  - (c) The scope of liability for such expenditure;
  - (d) The treatment of expenditure in respect of:
    - (i) The reporting of such expenditure and the internal procedures to comply with reporting requirements;
    - (ii) The financial treatment of such expenditure, including where need be, the writing off of such expenditure, and internal procedures to comply.

### **4.18.2 Unauthorised Expenditure**

- (1) **Legal definition**

**Means**

- (a) Overspending of the total amount appropriated in the approved budget.
- (b) Overspending of the total amount appropriated for a vote in the approved budget.
- (c) Expenditure from a vote unrelated to the Department or functional area covered by the vote.
- (d) Expenditure of money appropriated for a specific purpose otherwise than for that specific purpose.
- (e) Spending of an allocation received in terms of the definition of an allocation contrary to the conditions of such allocations. This simply means that allocations received in terms of Section 214(1)(c) of the Constitution or from the Provincial Government or any other organ of state or Municipality may only be used for the purpose allocated. The equitable share allocation in terms of Section 214(1)(a) of the Constitution is excluded.
- (f) Spending of a Grant by the Municipality otherwise than in accordance with the Act.

- (2) **Exclusions**

The following expenditure is excluded which means that it will be regarded as authorized expenditure notwithstanding the fact that no provision has been made on the budget:

- (a) Expenditure to defray costs in the event where the Municipality has not approved a Budget at the commencement of a new Financial Year provided that it is done strictly in accordance with Section 26 of the Act.
- (b) Unforeseen / unavoidable expenditure strictly in accordance with Section 29 of the Act (emergency or exceptional circumstances). However, if the

unforeseen/unavoidable expenditure is not provided for within an adjustment budget that is approved within 60 days of the expenditure arising, it will be considered as unauthorized expenditure.

- (c) Expenditure incurred from a special bank account for relief, charitable or trust purposes provided of course that it is done strictly in accordance with Section 12 of the Act.
- (d) The payment of money received on behalf of a person or organ of state to such a person as provided for in Section 11(1)(e) of the Act.
- (e) Refunding of money incorrectly paid into the Municipal Bank account.
- (f) Refunding of guarantees, securities and securities deposits investments in terms of Section 13 of the Act.
- (g) Defrayment of increased expenditure in respect of a multi-year Capital Programme in terms of Section 31 of the Act.

(3) **Interpretation of legal definition**

Unauthorized expenditure can thus be broadly classified as those expenditures not budgeted for or expenditures exceeding budgeted amounts or simply *“misdirected spending”*.

(4) **Accountability and Liability**

In terms of Section 32(1)(a) of the Act, accountability and liability for unauthorized expenditure is as follows:

- (a) A political office-bearer of a municipality is liable for unauthorised expenditure if that officer-bearer knowingly or after having been advised by the accounting officer that the expenditure is likely to result in unauthorized expenditure, instructed an official of the municipality to incur the expenditure.
- (b) The accounting officer is liable for unauthorised expenditure deliberately or negligently incurred by the accounting officer.

(5) **Recovery of unauthorized expenditure**

A municipality must recover unauthorized expenditure from the person liable for that expenditure, unless:

- (a) the expenditure is authorised in an adjustment budget; or
- (b) is certified by council, after investigation by a council committee, as irrecoverable and written off by the council.

(6) **Reporting of unauthorized expenditure**

In terms of Section 32(4) of the Act, the accounting officer must promptly inform the Mayor, the MEC for local government in the province and the Auditor in writing of:

- (a) the unauthorized expenditure;

- (b) whether any person is responsible for the expenditure, or is under investigation for such unauthorized expenditure; and

- (c) The steps that have been taken:
  - (i) to recover or rectify the expenditure;
  - (ii) to prevent a recurrence of such expenditure.

(7) **Internal Procedures to be followed in reporting unauthorized expenditure:**

- (a) Immediately on discovery that unauthorized expenditure has been incurred, the HOD of the Department concerned shall inform the Municipal Manager in writing of the following:
  - (i) the circumstances that gave rise to the unauthorized expenditure;
  - (ii) whether any person is responsible for the unauthorized expenditure, or whether further investigation should be undertaken to identify persons liable;
  - (iii) for the purposes of compliance with paragraphs 3 and 4 below, whether criminal activity of financial misconduct is suspected;
  - (iv) the steps taken to recover or rectify the expenditure; and
  - (v) the steps taken to prevent a recurrence of such expenditure.
- (b) The Municipal Manager, in consultation with the CFO and the Legal Service Manager, will determine:
  - (i) Whether the expenditure in question can be rectified by way of it being approved by the Mayor as unforeseen and unavoidable expenditure in terms of Section 29 of the Act, and/ or by its inclusion in an adjustment budget for approval by Council.  
If so, then the Municipal Manager must immediately set in motion the procedures as set out in the Act and regulations for the approval by the Mayor of the expenditure as unforeseen and unavoidable expenditure and/or for its inclusion in an adjustment budget to be approved by Council.
  - (ii) Whether the written report from the HOD concerned has sufficient particularity to enable the Municipal Manager to report the expenditure to Mayor, the MEC for local government and the Auditor General in terms of the requirements of Section 32 (4) (a) to (c). If so, then the Municipal Manager shall promptly report in writing to the Mayor, the MEC for local Government and the Auditor General as required in terms of Section 32 (4), and file proof for audit purposes that such a report was made and communicated to the Mayor, MEC for local government and the Auditor General.
- (c) The Municipal Manager shall provide a copy of the report sent to the Mayor, MEC and Auditor General to the Budget and Treasury Office, who shall keep a register of all unauthorized expenditure reported by the Municipal Manager's Office. Such register must also record whether the expenditure:
  - (i) has been, or is to be, rectified;
  - (ii) has been, or is to be, written off by Council;
  - (iii) has been, or is to be, recovered from the person(s) liable.

- (d) It is the responsibility of the Budget and Treasury Office to maintain and update the register on unauthorized expenditure referred to above.
- (e) If the Municipal Manager is of the view that the report of the HOD contains insufficient detail upon which to submit a report in terms of Section 32 (4), or that the matter should be investigated in more depth, he/she may direct that the expenditure in question:
  - (i) be further investigated by the HOD concerned;
  - (ii) be investigated by another senior official(s);
  - (iii) be investigated by an external party having the necessary expertise to conduct such an investigation.
- (f) Should the Municipal Manager decide to investigate the expenditure as set out above, he/she must determine the Terms of Reference and the time frame for such investigation and these must be communicated in writing to the person(s) appointed to carry out the investigation.
- (g) Once the investigation is completed, the Municipal Manager, in consultation with the Legal Services Manager, must:
  - (i) if not already done so, report the expenditure in writing to the Mayor, the MEC for local government and the Auditor General as outlined under paragraphs (b) and (c) above;
  - (ii) if the expenditure cannot be rectified in an approved adjustment budget, either:
    - (aa) decide on the steps to be taken to recover the expenditure from person responsible; or
    - (bb) decide that the expenditure be referred to Council to be written off as being irrecoverable [as provided for under 4.19.2(9)].

**(8) Treatment of unauthorized expenditure**

**(a) Recovery**

In the event that unauthorized expenditure cannot not be rectified in terms of the Act, the Municipality must recover the expenditure from the person liable for the expenditure (section 32(2)).

In such instances the expenditure shall be treated as a debt in the Municipality's books of account, to be liquidated against payments received by the debtor (person(s) liable for the expenditure).

**(b) Write-off**

In the event that expenditure cannot be recovered from persons responsible for whatever reason, including the fact that the steps to recover the expenditure may prove more costly than the expenditure to be recovered (as may be the case in legal

proceedings), the Municipal Manager must decide whether Council be requested to write the expenditure off.

In such instances the provisions of Section 32(2)(b) would apply, in that Council may only write off unauthorized expenditure, after the recoverability of the expenditure in question has been investigated by a council committee who conclude that the expenditure is irrecoverable. Thereafter Council may certify the expenditure as irrecoverable and write it off. The amount shall then be indicated as written-off in the Municipality's books of account.

Disclosure of both a quantitative nature is to be made in the annual financial statements of the unauthorized expenditure incurred.

**(9) Internal Procedures to be followed in recovering or requesting Council to write-off the expenditure**

**(a) Recovery**

If the investigation report submitted to the Municipal Manager in terms of 4.19.2(7)(a) and (e) identifies persons liable for the expenditure, the Municipal Manager shall instruct Budget and Treasury Department to set in motion steps to recover the expenditure as follows:

- (i) Informing the person(s) in writing that:
  - (aa) The Municipality intends to institute disciplinary action against him/her/them
  - (bb) Municipality considers them liable for the expenditure;
  - (cc) If he/ she/ they are found guilty of any losses incurred by the Municipality, should they fail to make suitable arrangements with Corporate Services for the repayment of the expenditure, the Municipality shall consider instituting legal action to recover the expenditure.
- (ii) In the event that agreement is reached on recovery, an acknowledgment of debt and consent to judgment must be obtained from the person(s) in question.
- (iii) Should no agreement be reached or there is a denial of liability, then the matter must be referred to Legal Services to provide an opinion on the probable cost that will be incurred in the event of legal action being instituted to recover the expenditure and the probabilities of success in recovering the expenditure by way of legal action.
- (iv) The Municipal Manager, shall in consideration of all the facts, and the opinion from Legal Services regarding probable legal costs and the probabilities of successfully recovering by way of legal action, decide whether to continue with the instituting of legal action.

- (v) Should the Municipal Manager decide the legal action be instituted, he shall instruct the Legal Services Manager to formulate a brief to the Municipality's legal service providers to institute action.
  - (vi) The Legal Services Manager shall report quarterly to the Municipal Manager on the legal action taken to recover unauthorized expenditure and provide an update on the legal costs incurred.
  - (vii) The Municipal Manager must consider the reports from the Legal Services Manager, and where appropriate, terminate the legal action if the costs of such actions are likely to exceed more than 60% of the amount of the expenditure; or if it appears that the expenditure will not be recoverable even if judgment is obtained in favour of the Municipality.
- (b) Write-off
- (i) In the event that the Municipal Manager is of the opinion that the expenditure cannot be recovered, then a report must be prepared and tabled before Council, requesting Council to appoint a committee to investigate the recoverability of the expenditure, with a view of writing such expenditure off. The report must:
    - (aa) Outline the factual circumstances that gave rise to the expenditure;
    - (bb) Identify persons responsible for the expenditure, and the grounds/evidence that supports their liability; or conversely, indicate that no persons are responsible, or that the evidence in this regard is inconclusive;
    - (cc) Indicate:
      - (aaa) the measures taken to recover the expenditure, if any;
      - (bbb) the cost of the measures taken to recover the expenditure;
      - (ccc) the estimate cost and the likely benefit of further measures that can be taken to recover the expenditure.
  - (ii) Council may consider the report from the Municipal Manager, as outlined under paragraph (a) above; and either:
    - (aa) Refer the matter back to the Municipal Manager with a request for further information; or
    - (bb) Appoint a committee of councillors to investigate the recoverability of such expenditure, or delegate such powers to an existing committee of council.

- (iii) In line with Regulation 74 of the Municipal Budget and Reporting Regulations of 17 April 2009, the issues that the committee of council appointed to investigate the recoverability of the expenditure must consider, are as follows:
  - (aa) the measures already taken to recover the expenditure, if any;
  - (bb) the cost of the measures already taken to recover the expenditure;
  - (cc) the estimate cost and the likely benefit of further measures that can be taken to recover the expenditure.
- (iv) If required, the committee of council shall request the Municipal Manager for further information or any other assistance that the committee deems necessary for it to diligently investigate the issues set in paragraph (c) above;
- (v) On concluding its investigation the committee of council must submit a written motivation to Council explaining its recommendation regarding the recoverability of the expenditure, for Council's final decision.
- (vi) On the strength of the motivation of the committee, Council may either:
  - (aa) direct the Municipal Manager to recover the expenditure; or
  - (bb) certify the expenditure as irrecoverable and write it off.

#### 4.18.3 Irregular Expenditure

(1) Legal definition

Means

- (a) expenditure incurred in contravention of, or that is not in accordance with a requirement of the Act, and which has not been condoned in terms of Section 170.
- (b) expenditure incurred in contravention of, or that is not in accordance with a requirement of the Municipal Systems Act, 2000 and which has not been condoned in terms of that Act.
- (c) expenditure incurred in contravention of, or that is not in accordance with, a requirement of the Remuneration of Public Office-Bearers Act, 1998 (Act No. 20 of 1998).
- (d) expenditure incurred in contravention of, or that is not in accordance with, a requirement of the Supply Chain Management Policy of the Municipality or any of the Municipality's By-Laws giving effect to such Policy and which has not been condoned in terms of such Policy or By-law.

**But** excludes expenditure which falls within the definition of "Unauthorized Expenditure".

(2) **Interpretation of legal definition**

Irregular expenditure can thus be classified as expenditure incurred in contravention of or not in accordance with statutory requirements. Often irregular expenditure does not involve monetary loss and therefore may not be fruitless and wasteful. A common example of irregular expenditure is the extension of a contract without first obtaining the necessary approval for such extension. In such instances value may have been given in that goods and services were supplied, but as there was no requisite approval, the expenditure is nonetheless irregular. An investigation should determine if the Municipality suffered any monetary loss, then the expenditure would be both irregular and fruitless and wasteful.

(3) **Accountability and Liability**

In terms of Section 32(1)(b) of the Act, any political office-bearer or official of a municipality who deliberately or negligently committed, made or authorised an irregular expenditure, is liable for that expenditure.<sup>1</sup>

(4) **Regularizing of expenditure**

The Municipality's Supply Chain Management Policy, [which is based on the Supply Chain Management Regulations of 30 May 2005] allows the accounting officer to ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated power or duties which are purely of a technical nature.

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<sup>1</sup> If the accounting officer becomes aware that the council, the mayor or the executive committee of the municipality, as the case may be, has taken a decision which, if implemented, is likely to result in irregular the accounting officer is not liable for any ensuing irregular expenditure, provided that the accounting officer has informed the Council, the Mayor or the Executive Committee, in writing, that the expenditure is likely to be irregular.

Hence should irregular expenditure have arisen as a consequence of a minor breach being incurred in the supply chain management process - for example, no approval for a procurement being sought but where such approval would have been given had the correct process being followed - then the Municipal Manager may, if he/she is of the view that such breach is minor and of a technical nature, ratify the breach.

As a result of such ratification, all irregular expenditure would then be regularized, and as such the reporting and treatment provisions of this policy would no longer apply.

It is for this reason that the issue of possible ratification of a minor breach giving rise to irregular expenditure, must be explored when dealing with irregular expenditure.

There is no stipulated time limit within which ratification must be done. Hence even where irregular expenditure has already been reported to the Mayor, MEC for local government in the Province, and the Auditor General, as required in terms of paragraph 1.2.7, it is still possible for the expenditure to be regularized, if the underlying breach of procedures is able to be ratified by the Municipal Manager in accordance with the Supply Chain Management Policy.

**(5) Internal Procedure to be followed for the regularizing of expenditure**

(a) Upon discovery of irregular expenditure, the HOD or his/her delegated official must, prior to reporting the irregular expenditure to the Municipal Manager in terms of paragraph 1.2.7 below, consult with the Supply Chain Management General Manager to determine:

- (i) whether the irregular expenditure in question has resulted from a breach of supply chain management procedures and processes; and if so
- (ii) whether grounds exist for an application to be made to the Municipal Manager to have such breach, ratified.

(b) An application to the Municipal Manager to approve the ratification of the breach, must be made in writing and include:

- (i) the circumstances giving rise to the breach;
- (ii) details of the irregular expenditure that has resulted; and
- (iii) the facts that are being relied upon that render the breach minor and of a technical nature.

(c) Should the Municipal Manager ratify the breach, then he/she must:

- (i) record the reasons for deviations and report them to the next meeting of the council;
- (ii) and include them as a note to the annual financial statements.

**(6) Recovery of irregular expenditure**

A municipality must recover irregular expenditure from the person liable for that expenditure, unless:

It is certified by council, after investigation by a council committee, as irrecoverable and written off by the council.

In instances where that irregular expenditure has not resulted in any loss being suffered by the Municipality, it is doubtful that such irregular expenditure can legally be recovered. Accordingly, legal opinion/advice should be sought as to whether the irregular expenditure is recoverable or not in any particular case.

(7) **Reporting of irregular expenditure**

In terms of Section 32(4) of the Act, the accounting officer must promptly inform the Mayor, the MEC for local government in the Province and the Auditor in writing of:

- (a) the irregular expenditure;
- (b) Whether any person is responsible for the expenditure, or is under investigation for such irregular expenditure; and
- (c) The steps that have been taken:
  - (i) to recover or rectify the expenditure;
  - (ii) to prevent a recurrence of such expenditure.

(8) **Internal Procedures to be followed in reporting irregular expenditure:**

- (a) On discovery that irregular expenditure has been incurred, and if such irregular expenditure cannot be regularized by way of the ratifying of the breach of procurement procedures – the HOD of the Department concerned shall immediately inform the Municipal Manager in writing of the following:
  - (i) the circumstances that gave rise to the irregular expenditure;
  - (ii) whether any person is responsible for the irregular expenditure, or whether further investigation should be undertaken to identify persons liable;
  - (iii) for the purposes of compliance with paragraphs 3 and 4 below, whether criminal activity of financial misconduct is suspected.
  - (iv) whether any loss was suffered by the Municipality;
  - (v) the steps taken to recover or rectify the expenditure; and
  - (vi) the steps taken to prevent a recurrence of such expenditure.
- (b) The Municipal Manager, in consultation with the CFO, General Manager: Supply Chain Management & Assets and the Legal Service Manager, will determine whether the written report from the HOD concerned has sufficient particularity to enable the Municipal Manager to report the expenditure to Mayor, the MEC for local government and the Auditor General in terms of the requirements of Section 32 (4) (a) to (c).

If so, then the Municipal Manager shall promptly report in writing to the Mayor, the MEC for local Government and the Auditor General as required in terms of Section 32 (4), and file proof for audit purposes that such a report was made and communicated to the Mayor, MEC for local government and the Auditor General.

- (c) The Municipal Manager shall provide a copy of the report sent to the Mayor, MEC and Auditor General to the General Manager: Supply Chain Management & Assets, who shall keep a register of all irregular expenditure reported by the Municipal Manager's Office. Such register must also record whether the expenditure:
  - (i) has been, or is to be, rectified;
  - (ii) has been, or is to be, written off by Council;

- (iii) has been, or is to be, recovered from the person(s) liable.
- (d) It is the responsibility of the Supply Chain Management Office to maintain and update the register on irregular expenditure referred to above.
- (e) If the Municipal Manager is of the view that the report of the HOD contains insufficient detail upon which to submit a report in terms of Section 32 (4), or that the matter should be investigated in more depth, he/she may direct that the expenditure in question:
  - (i) be further investigated by the HOD concerned;
  - (ii) be investigated by another senior official(s);
  - (ii) be investigated by an external party having the necessary expertise to conduct such an investigation.
- (f) Should the Municipal Manager decide to investigate the expenditure as set out above, he/she must determine the Terms of Reference and the time frame for such investigation and these must be communicated in writing to the person(s) appointed to carry out the investigation.
- (g) Once the investigation is completed, the Municipal Manager, in consultation with the Legal Services Manager, must:
  - (i) if not already done so, report the expenditure in writing to the Mayor, the MEC for local government and the Auditor General as outlined under paragraphs (b) and (c) above;
  - (ii) determine whether the irregular expenditure in question has resulted in any financial loss, and if so
  - (iii) decide on the steps to be taken to recover the expenditure from person responsible; or
  - (iv) decide that the expenditure be referred to Council to be written off as being irrecoverable [as provided for under paragraph 1.2.9 below].
  - (v) If it is determined that the irregular expenditure in question, is legally irrecoverable (i.e. no loss has been suffered upon which to base a claim for restitution/recovery), then the Municipal Manager must refer the matter to Council to be 'written off' in terms of paragraph 4.19.3(9) below.

**(9) Treatment of irregular expenditure**

**(a) Recovery**

The Municipality must recover the expenditure from the person liable for the expenditure (section 32(2)). In such instances the expenditure shall be treated as a debt in the Municipality's books of account, to be liquidated against payments received by the debtor (person(s) liable for the expenditure).

(b) Write-off

In the event that expenditure cannot be recovered from persons responsible for the expenditure for whatever reason, including the fact that the steps to recover the expenditure may prove more costly than the expenditure to be recovered (as may be the case in legal proceedings), the Municipal Manager must decide whether Council be requested to write the expenditure off.

In such instances the provisions of Section 32(2)(b) apply, in that Council may only write off irregular expenditure, after the recoverability of the expenditure in question has been investigated by a council committee who conclude that the expenditure is irrecoverable. Thereafter Council may certify the expenditure as irrecoverable and write it off.

In such instances the amount shall be indicated as written-off in the Municipality's books of account.

Disclosure of both a quantitative nature is to be made in the annual financial statements of the irregular expenditure incurred.

**(10) Internal Procedures to be followed in recovering or requesting Council to write-off the expenditure**

(a) Recovery

(i) If the investigation report submitted to the Municipal Manager identifies persons liable for the expenditure, the Municipal Manager shall instruct Corporate Service to set in motion steps to recover the expenditure as follows:

(aa) Informing the person(s) in writing that:

- the Municipality intends to take disciplinary action against them for incurring irregular expenditure.
- Should he/ she/ them be found guilty of incurring irregular expenditure and the Municipality has suffered any losses, the Municipality considers them liable for the expenditure in question;
- should they fail to make suitable arrangements with Corporate Services for the repayment of the expenditure, the Municipality shall consider instituting legal action to recover the expenditure.

(bb) In the event that agreement is reached on recovery, an acknowledgment of debt and consent to judgment must be obtained from the person(s) in question.

(cc) Should no agreement be reached or there is a denial of liability, then the matter must be referred to Legal Services to provide an opinion on the probable cost that will be incurred in the event of legal action

being instituted to recover the expenditure and the probabilities of success in recovering the expenditure by way of legal action.

- (ii) The Municipal Manager shall, in consideration of all the facts, and the opinion from Legal Services regarding probable legal costs and the probabilities of successfully recovering by way of legal action, decide whether to continue with recovery by way of legal action.
- (iii) Should the Municipal Manager decide the legal action be instituted, he shall instruct the Legal Services Manager to formulate a brief to the Municipality's legal service providers to institute action.
- (iv) The Legal Services Manager shall report quarterly to the Municipal Manager on the legal action taken to recover unauthorized expenditure and provide an update on the legal costs incurred.
- (v) The Municipal Manager must consider the reports from the Legal Services Manager, and where appropriate, terminate the legal action if the costs of such actions are likely to exceed more than 60% of the amount of the expenditure; or if it appears that the expenditure will not be recoverable even if judgment is obtained in favour of the Municipality.

- (b) Write-off
- (a) In the event that the Municipal Manager is of the opinion that the expenditure cannot be recovered, then a report must be prepared and tabled before Council, requesting Council to appoint a committee to investigate the recoverability of the expenditure with a view of writing such expenditure off. The report must:
- (i) Outline the factual circumstances that gave rise to the expenditure in question;
- (ii) Identify persons responsible for the expenditure, and the grounds/evidence that supports their liability; or conversely, indicate that no persons are responsible, or that the evidence in this regard is inconclusive;
- (iii) Indicate:
- (aa) the measures taken to recover the expenditure, if any;
- (bb) the cost of the measures taken to recover the expenditure;
- (cc) the estimate cost and the likely benefit of further measures that can be taken to recover the expenditure.
- (b) Council may consider the report from the Municipal Manager, as outlined under paragraph (a) above; and either:
- (i) Refer the matter back to the Municipal Manager with a request for further information; or
- (ii) Appoint a committee of councillors to investigate the recoverability of such expenditure, or delegate such powers to an existing committee of council.
- (c) In line with Regulation 74 of the Municipal Budget and Reporting Regulations of 17 April 2009, the issues that the committee of council appointed to investigate the recoverability of the expenditure must consider, are as follows:
- (i) the measures already taken to recover the expenditure, if any;
- (ii) the cost of the measures already taken to recover the expenditure;
- (iii) the estimate cost and the likely benefit of further measures that can be taken to recover the expenditure.
- (d) If required, the committee of council may request the Municipal Manager for further information or any other assistance that the committee deems necessary for it to diligently investigate the issues set in paragraph (c) above;

- (e) On concluding its investigation the committee of council must submit a written motivating to Council explaining its recommendation regarding the recoverability of the expenditure, for Council's final decision.
- (f) On the strength of the motivation of the committee, Council may either:
  - (i) direct the Municipal Manager to recover the expenditure; or
  - (ii) certify the expenditure as irrecoverable and write it off.

#### 4.18.4 Fruitless and Wasteful Expenditure

(1) Legal definition

Means

Expenditure that was made in vain that would have been avoided had reasonable care been exercised.

(2) **Interpretation of legal definition**

Fruitless and wasteful expenditure in essence results in the Municipality incurring a loss or paying for goods and services that the Municipality did not receive or did not need. Fruitless and wasteful expenditure does not necessarily mean that the expenditure is irregular. An example would be where goods and services may be procured in terms of supply chain management policy however, the Municipality is then charged interest for late payment of an invoice. In such instances the interest would result in payment being made for no value given – hence it would be fruitless and wasteful expenditure. Recovery for losses should then be instituted against a person who caused the loss.

(3) **Accountability and Liability**

In terms of Section 32(1)(b) of the Act, any political office-bearer or official of a municipality who deliberately or negligently committed, made or authorised a fruitless and wasteful expenditure, is liable for that expenditure.<sup>2</sup>

(4) **Recovery of fruitless and wasteful expenditure**

A municipality must recover fruitless and wasteful expenditure from the person liable for that expenditure, unless:

It is certified by council, after investigation by a council committee, as irrecoverable and written off by the council.

(5) **Reporting of fruitless and wasteful expenditure**

In terms of Section 32(4) of the Act, the accounting officer must promptly inform the Mayor, the MEC for local government in the Province and the Auditor in writing of:

- (a) the irregular expenditure;
- (b) Whether any person is responsible for the expenditure, or is under investigation for such unauthorized expenditure; and
- (c) The steps that have been taken:
  - (i) to recover or rectify the expenditure;
  - (ii) to prevent a recurrence of such expenditure.

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<sup>2</sup> If the accounting officer becomes aware that the council, the mayor or the executive committee of the municipality, as the case may be, has taken a decision which, if implemented, is likely to result in fruitless and wasteful expenditure the accounting officer is not liable for any ensuing irregular expenditure, provided that the accounting officer has informed the Council, the Mayor or the Executive Committee, in writing, that the expenditure is likely to be irregular.

(6) **Internal Procedures to be followed in reporting fruitless and wasteful expenditure:**

(a) Immediately on discovery that fruitless and wasteful expenditure has been incurred, the HOD of the Department concerned shall inform the Municipal Manager in writing of the following:

- (i) The circumstances that gave rise to the fruitless and wasteful expenditure;
- (ii) Whether any person is responsible for the wasteful and fruitless expenditure, or whether further investigation should be undertaken to identify persons liable;
- (iii) For the purposes of compliance with paragraphs 4 and 5 below, whether criminal activity of financial misconduct is suspected;
- (iv) The steps taken to recover or rectify the expenditure; and
- (v) The steps taken to prevent a recurrence of such expenditure.

(b) The Municipal Manager, in consultation with the CFO, General Manager: Supply Chain Management and the Legal Service Manager, will determine whether the written report from the HOD concerned has sufficient particularity to enable the Municipal Manager to report the expenditure to Mayor, the MEC for local government and the Auditor General in terms of the requirements of Section 32 (4) (a) to (c).

If so, then the Municipal Manager shall promptly report in writing to the Mayor, the MEC for local Government and the Auditor General as required in terms of Section 32 (4), and file proof for audit purposes that such a report was made and communicated to the Mayor, MEC for local government and the Auditor General.

(c) The Municipal Manager shall provide a copy of the report sent to the Mayor, MEC and Auditor General to the Budget and Treasury Office, who shall keep a register of all fruitless and wasteful expenditure reported by the Municipal Manager's Office. Such register must also record whether the expenditure:

- (i) has been, or is to be, rectified;
- (ii) has been, or is to be, written off by Council;
- (iii) has been, or is to be, recovered from the person(s) liable.

(d) It is the responsibility of the Budget and Treasury Office to upkeep and maintain the register on fruitless and wasteful expenditure referred to above.

(e) If the Municipal Manager is of the view that the report of the HOD contains insufficient detail upon which to submit a report in terms of Section 32 (4), or that the matter should be investigated in more depth, he/she may direct that the expenditure in question:

- (i) be further investigated by the HOD concerned;
- (ii) be investigated by another senior official(s);
- (iii) be investigated by an external party having the necessary expertise to conduct such an investigation.

- (f) Should the Municipal Manager decide to investigate the expenditure as set out above, he/she must determine the Terms of Reference and the time frame for such investigation and these must be communicated in writing to the person(s) appointed to carry out the investigation.
- (g) Once the investigation is completed, the Municipal Manager, in consultation with the Legal Services Manager, must:
  - (i) if not already done so, report the expenditure in writing to the Mayor, the MEC for local government and the Auditor General as outlined under paragraphs (b) and (c) above;
  - (ii) Decide on the steps to be taken to recover the expenditure from person responsible; or
  - (iii) Decide that the expenditure be referred to Council to be written off as being irrecoverable [as provided for under paragraph 3.3.8 below].

**(7) Treatment of fruitless and wasteful expenditure**

**(a) Recovery**

The Municipality must recover the expenditure from the person liable for the expenditure (section 32(2)). In such instances the expenditure shall be treated as a debt in the Municipality's books of account, to be liquidated against payments received by the debtor (person(s) liable for the expenditure).

**(b) Write-off**

In the event that expenditure cannot be recovered from persons responsible for the expenditure for whatever reason, including the fact that the steps to recover the expenditure may prove more costly than the expenditure to be recovered (as may be the case in legal proceedings), the Municipal Manager must decide whether Council be requested to write the expenditure off.

In such instances the provisions of Section 32(2)(b) apply, in that Council may only write off fruitless and wasteful expenditure, after the recoverability of the expenditure in question has been investigated by a council committee who conclude that the expenditure is irrecoverable. Thereafter Council may certify the expenditure as irrecoverable and write it off.

In such instances the amount shall be indicated as written-off in the Municipality's books of account.

Disclosure of both a quantitative nature is to be made in the annual financial statements of the fruitless and wasteful expenditure incurred.

**(8) Internal Procedures to be followed in recovering or requesting Council to write-off the expenditure**

- (a) Recovery
  - (i) If the investigation report submitted to the Municipal Manager identifies persons liable for the expenditure, the Municipal Manager shall instruct Corporate Service to set in motion steps to recover the expenditure as follows:
    - (aa) Informing the person(s) in writing that:
      - (aaa) the Municipality intends to institute Disciplinary steps against the person/s liable for the fruitless and wasteful expenditure;
      - (bbb) the Municipality considers them liable for the expenditure in question;
      - (ccc) should they be found guilty of such expenditure, failure to make suitable arrangements with Corporate Services for the repayment of the expenditure, the Municipality shall consider instituting legal action to recover the expenditure.
    - (bb) In the event that agreement is reached on recovery, an acknowledgment of debt and consent to judgment must be obtained from the person(s) in question.
    - (cc) Should no agreement be reached or there is a denial of liability, then the matter must be referred to Legal Services to provide an opinion on the probable cost that will be incurred in the event of legal action being instituted to recover the expenditure and the probabilities of success in recovering the expenditure by way of legal action.
  - (ii) The Municipal Manager shall, in consideration of all the facts, and the opinion from Legal Services regarding probable legal costs and the probabilities of successfully recovering by way of legal action, decide whether to continue with recovery by way of legal action.
  - (iii) Should the Municipal Manager decide the legal action be instituted, he shall instruct the Legal Services Manager to formulate a brief to the Municipality's legal service providers to institute action.
  - (iv) The Legal Services Manager shall report quarterly to the Municipal Manager on the legal action taken to recover fruitless and wasteful expenditure and provide an update on the legal costs incurred.
  - (v) The Municipal Manager must consider the reports from the Legal Services Manager, and where appropriate, terminate the legal action if the costs of such actions are likely to exceed more than 60% of the amount of the expenditure; or if it appears that the expenditure will not be recoverable even if judgment is obtained in favour of the Municipality.
- (b) Write-off

- (i) In the event that the Municipal Manager is of the opinion that the expenditure cannot be recovered, then a report must be prepared and tabled before Council, requesting Council to appoint a committee to investigate the recoverability of the expenditure with a view of writing such expenditure off. The report must:
  - (aa) Outline the factual circumstances that gave rise to the expenditure in question;
  - (bb) Identify persons responsible for the expenditure, and the grounds/evidence that supports their liability; or conversely, indicate that no persons are responsible, or that the evidence in this regard is inconclusive;
  - (cc) Indicate:
    - (aaa) the measures taken to recover the expenditure, if any;
    - (bbb) the cost of the measures taken to recover the expenditure;
    - (ccc) the estimate cost and the likely benefit of further measures that can be taken to recover the expenditure.
- (ii) Council may consider the report from the Municipal Manager, as outlined under paragraph (a) above; and either:
  - (aa) Refer the matter back to the Municipal Manager with a request for further information; or
  - (bb) Appoint a committee of councillors to investigate the recoverability of such expenditure, or delegate such powers to an existing committee of council.
- (iii) In line with Regulation 74 of the Municipal Budget and Reporting Regulations of 17 April 2009, the issues that the committee of council appointed to investigate the recoverability of the expenditure must consider, are as follows:
  - (aa) the measures already taken to recover the expenditure, if any;
  - (bb) the cost of the measures already taken to recover the expenditure;
  - (cc) the estimate cost and the likely benefit of further measures that can be taken to recover the expenditure.
- (iv) If required, the committee of council may request the Municipal Manager for further information or any other assistance that the committee deems necessary for it to diligently investigate the issues set in paragraph (c) above;
- (v) On concluding its investigation the committee of council must submit a written motivation to Council explaining its recommendation regarding the recoverability of the expenditure, for Council's final decision.
- (vi) On the strength of the motivation of the committee, Council may either:

- (aa) direct the Municipal Manager to recover the expenditure; or
- (bb) certify the expenditure as irrecoverable and write it off.

#### 4.18.5 Financial Misconduct

The writing off of any unauthorised, irregular or fruitless and wasteful expenditure by Council as irrecoverable, shall be no excuse in disciplinary proceedings against a person charged with commission of an offence or a breach of the Act relating to such unauthorised, irregular or fruitless and wasteful expenditure.

(1) The Accounting Officer

The accounting officer of a municipality commits an act of financial misconduct if, among other things, that accounting officer deliberately or negligently-

- (a) makes or permits , or instructs another official of the municipality to make, an unauthorised, irregular or fruitful and wasteful expenditure; or
- (b) provides incorrect or misleading information regarding unauthorized, irregular or fruitless and wasteful expenditure in any document which in terms of a requirement of the Act must be-
  - (i) submitted to the Mayor, the Council of the municipality, the Auditor-General, the National Treasury or any other organ of state; or
  - (ii) made public.<sup>3</sup>

(2) The Chief Financial Officer

The Chief Financial officer of a municipality shall commit an act of financial misconduct if, among other things, the Chief Financial Officer deliberately or negligently-

- (a) Makes or permits, or instructs another officials of the municipality to make, an unauthorised, irregular or fruitless and wasteful expenditure, or
- (b) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in paragraph 4.19.5(1)(b) above.<sup>4</sup>

(3) Senior Managers and other officials

Senior manager or other officials of a municipality exercising financial management responsibilities and to whom a power or duty was delegated in terms of the Act, shall commit an act of financial misconduct if, among other things, that senior manager or officials deliberately or negligently:

- (a) makes an unauthorised, irregular or fruitless and wasteful expenditure; or

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<sup>3</sup> In terms of Section 171 (1) of the Act

<sup>4</sup> In terms of Section 171(2) of the Act.

(b) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to paragraph 4.19.5(1)(b) above.<sup>5</sup>

(4) Investigation

In terms of Section 171(4) of the Act, allegations of misconduct against any official as outlined under 4.19.5(1) to (3) above, must be investigated, unless such allegations are frivolous, vexatious, speculative or obviously unfounded.

(5) Disciplinary Action

If the investigation under subsection 4.19.5(4) warrants such a step, disciplinary proceedings may be instituted against any official for financial misconduct as outlined under subsections 4.19.5(1) to (3) above.<sup>6</sup>

#### 4.18.6 Criminal Action

The writing off of any unauthorised, irregular or fruitless and wasteful expenditure by Council as irrecoverable, shall be no excuse in criminal proceedings instituted against a person

(1) Reporting to the SAPS

(a) The Municipal Manager shall report to the South African Police Service all cases of alleged unauthorised, irregular or fruitless and wasteful expenditure that constitute a criminal offence.

(b) Council shall take all reasonable steps to ensure that all cases referred to in subsection 4.19.5(1) are reported to the South African Police Services if –

(i) the charge is against the Municipal Manager ; or

(ii) if the Municipal Manager fails to report cases to the South African Police Services, as required under subsection 4.19.6(1).

#### 4.18.7 Responsibility of the Committee of Council Established to Deal with the Recoverability of Unauthorised, Irregular, Fruitless and Wasteful Expenditure

(1) In terms of Section 32 of the Municipal Finance Management Act, the Council may establish a Committee of Council to deal with the recoverability of any losses incurred by the Municipality due to unauthorised, irregular, fruitless and wasteful expenditure.

(2) In the case of any unauthorised, irregular expenditure or any fruitless and wasteful expenditure incurred by the Municipality the Committee of Council will require the Municipal Manager to appear before it to provide:

(a) information or clarity on such expenditure;

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<sup>5</sup> In terms of Section 171(3) of the Act.

<sup>6</sup> In terms of Section 171(4)(b) of the Act.

- (b) information in respect of any disciplinary action taken in regard to unauthorized, irregular and fruitless and wasteful expenditure where it relates to an item on such expenditure that is currently serving or has served before the said Committee.
  - (c) steps taken to recover any losses incurred by the Municipality.
- (3) The Committee will report to Council if any losses have been recovered
- (4) The Committee of Council will recommend if any of these losses are deemed to be irrecoverable.

## 5. ROLES AND RESPONSIBILITIES

Role	Authority
Develop and approve the policy	Council
Implementation of the policy	All staff
Monitoring the implementation of the policy	Supply Chain Manager : Supply Chain Management Chief Financial Officer Municipal Manager
Oversight in terms of the implementation of the policy	Council
Annual reviewal of the policy	Supply Chain Manager :Supply Chain Management Chief Financial Officer Municipal Manager Council

## 6. MONITORING, EVALUATION AND REVIEW

- The Municipal Supply Chain Management Regulation 3(1)(b) and (c), states that the Accounting Officer of a municipality or municipal entity must –
  - “(b) at least annually review the implementation of the policy; and*
  - (c) when the accounting officer considers it necessary, submit proposals for the amendment of the policy to the council or the board of directors.”*
  
- The monitoring, evaluation and review of the SCM Policy will be undertaken by means of:
  - Analysing the current Raymond Mhlaba Municipality SCM Policy;
  - Measuring the current performance of the SCM Policy;
  - Identifying gaps in the SCM Policy;
  - Making recommendations for review/changes where applicable.
  
- The monitoring, evaluation and review of the SCM Policy will be undertaken by the Supply Chain Manager : Supply Chain

- The following reporting requirements must be complied with:

<b>NO.</b>	<b>DESCRIPTION</b>	<b>ACT/REGULATION</b>
1.	Monthly Report to Municipal Manager re Declaration of Gifts	SCM Regulation 46(2)(d) and 48
2.	Annual Report to Council re Declaration of Gifts	SCM Regulation 46(2)(d) and 48
3.	Publish entries of the register of all procurements above R100 000 and bid resolutions on Website.	SCM Regulation 23(c)(iii)
4.	Oversight: Annual report to Council on the implementation of the SCM Policy (awards) within 30 days of the end of each financial year.	SCM Regulation 6(2)(a)(i)
5.	Quarterly Report to EM on the implementation of the SCM Policy (awards) within 10 days of the end of each quarter.	SCM Regulation 6(3)
6.	Annual Reviewal of the implementation of the SCM Policy. When the accounting officer considers it necessary, submit proposals for the amendment of the policy to the Council.	SCM Regulation 3(1)(b) and (c)
7.	Annual Notice to prospective suppliers to be placed in the newspaper or website listing criteria of services required.	SCM Regulation 14(1)(a)(ii)
8.	Updating of Database	SCM Regulation 14
9.	Register of Disputes / Objections / Complaints	SCM Regulation 49 and 50
10.	Awards to close family members of persons in the service of the state. Notes to the annual financial statements must disclose particulars of any award more than R2000 to close family members of persons in the service of the state or has been in the service of the state in the previous twelve months.	SCM Regulation 45
11.	Irregular / Wasteful and Unauthorised expenditure	MFMA 32(4), 102(1)
12.	Rejecting comments by SITA	SCM Regulation 31
13.	Record/register of names of potential providers requested to provide quotations (Written/verbal quotations and Formal Written Price Quotations (RFQs)).	SCM Regulations 16(d) and 17(d)
14.	Monthly Deviations Report to be reported to the CFO 3 days after the end of the month.	SCM Regulations 17(2), 17 1 (c) and 16 (c)
15.	Register of Deviations, minor breaches of procurement processes	MFMA Section 113 and SCM Regulation 36
16.	Unsolicited Bids	SCM Regulation 37. None to date.
17.	Oversight role of council of municipality over the implementation of the supply chain management policy	SCM Regulation 6(2) and 6(4)
18.	Publication of awards in respect of advertised competitive bids (above the threshold value of R200 000)	MFMA Section 75(1)(g)
19.	Submitting to Treasury, upon request, Procurement Plans containing all planned procurement for the financial year, in respect of the procurement of goods, services and infrastructure projects which exceed R200 000 per case.	MFMA Circular No. 62

- The following committees have been established in terms of the committee system for competitive bids. The accounting officer has appointed members of each committee, taking into account section 117 of the MFMA.
  - Bid Specification Committee;
  - Bid Evaluation Committee;
  - Bid Adjudication Committee.

## 7. DEFINITIONS AND ABBREVIATIONS

TERM	MEANING
all applicable taxes	Includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.
Allocation	<p>In relation to a municipality means –</p> <p>[a] municipality's share of the local government's equitable share referred to in Section 214 (1) (a) of the Constitution;</p> <p>[b] an allocation of money to a municipality in terms of Section 214 (1) (c) of the Constitution;</p> <p>[c] an allocation of money to a municipality in terms of a provincial budget; or</p> <p>[d] any other allocation of money to a municipality by an organ of state, including by another municipality, otherwise than in compliance with a commercial or other business transaction.]</p>
amendment/variation order	Means unforeseen costs pertaining to uncertain circumstances that are part of infrastructure projects.
B-BBEE	Means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act.
B-BBEE status level of contributor	Means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.
Bid	Means a written offer or bid in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services or goods.
Bidder	Means any person/ company submitting a bid.
black designated groups	Has the meaning assigned to it in the codes of good practice issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.
black people	Has the meaning assigned to it in section 1 of the Broad-Based Black Economic Empowerment Act.
Broad-Based Black Economic Empowerment Act	Means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).
class of construction works	Means a class referred to in Schedule 6
client	Means a person, body or organ of state who enters into a contract to procure construction works.
closing time	Means the time and day specified in the bid documents for the receipt of bids.

competitive bidding process	Means a competitive bidding process referred to in section 31 of this policy;
competitive bid	Means a bid in terms of a competitive bidding process;
comparative price	Means the price after the factors of a non-firm price and all unconditional discounts that can be utilised have been taken into consideration.
consortium or joint venture	Means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity necessary for the execution of a contract.
constitution	Means the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996).
Construction Industry Development Board Act	Means the Construction Industry Development Board Act, 2000 (Act 38 of 2000) and includes the regulations thereto.
construction works	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 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>
contract	Means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
contract value	Means the value of the contract.
control	Means the possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous expertise of appropriate managerial authority and power in determining the policies and directing the operations of the business.
contractor	Means a person or body of persons who undertakes to execute and complete constructions works.
co-operative	Means a co-operative registered in terms of section 7 of the Co-Operatives Act, 2005 (Act 14 of 2005)
councillor	Means a member of a municipal council.
day(s)	Means calendar days unless the context indicates otherwise.
delegated authority	Means any person or committee delegated with authority by the municipality in terms of the provisions of the relevant legislation.
designated group	Means – <ul style="list-style-type: none"> <li>(a) black designated groups;</li> </ul>

	<p>(b) black people;</p> <p>(c) women;</p> <p>(d) people with disabilities; or</p> <p>(e) small enterprises, as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996).</p>
designated sector	Means a sector, sub-sector or industry that has been designated in terms of regulation 8(1)(a).
district municipality	Means a municipality that has municipal executive and legislative authority in an area that includes more than one municipality and which is described in section 155(1) of the Constitution as a category “C” municipality.
donation	Means the provision by contribution, gift or bequest without expectation of any benefit in return.
EME	Means an exempted micro enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.
employer	Means the Raymond Mhlaba Municipality.
end user	Means a person who initiates the process of acquisition management and also plays a very important role during the evaluation process.
executive mayor	Means an executive mayor elected in terms of section 55 of the Municipal Structures.
extension of contracts	Means contracts where the scope of works or duration must be extended. The possibility of adding to the scope of works exist.
final award	In relation to bids or quotations submitted for a tender, means the final decision taken by the municipality for the award of the tender.
firm price	Means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy or tax which in terms of 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.
formal written price quotation	Means quotations referred to in section 4.5.7 of this policy.
fruitless and wasteful expenditure	Means expenditure that was made in vain and would have been avoided had reasonable care been exercised.
functionality	Means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
imported content	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 other 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.
in the service of the state	<p>Means to be –</p> <p>(a) a member of –</p> <p>(i) any municipal council;</p> <p>(ii) any provincial legislature; or</p>

	<p>(iii) the National Assembly or the National Council of Provinces;</p> <p>(b) a member of the board of directors of any municipal entity;</p> <p>(c) an official of any municipality or municipal entity;</p> <p>(d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);</p> <p>(e) a member of the accounting authority of any national or provincial public entity; or</p> <p>(f) an employee of Parliament or a provincial legislature.</p>
irregular expenditure	<p>In relation to a municipality or municipal entity, means-</p> <p>(a) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the MFMA, and which has not been condoned in terms of section 170 thereof;</p> <p>(b) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act;</p> <p>(c) expenditure incurred by a municipality in contravention of, or that is not in accordance with a requirement of the Remuneration of Public Office-Bearers Act, 1998 (Act No. 20 of 1998); or</p> <p>(d) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or entity or any of the municipality's by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law.</p>
local content	Means that portion of the tender price which is not included in the imported content, provided that local manufacture does not take place.
local municipality	Means a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls and which is described in section 155(1) of the Constitution as a category "B" municipality.
long term contract	Means a contract with a duration period exceeding one year;
list of accredited prospective providers	Means the list of accredited prospective providers which a municipality or municipal entity must keep in terms of section 22 of this policy;
Management	In relation to an enterprise or business, means an activity inclusive of control and performed on a daily basis, by any person who is a principal executive officer of the company, by whatever name that person may be designated, and whether or not that person is a director.
military veteran	Has the meaning assigned to it in section 1 of the Military Veterans Act, 2011 (Act No. 18 of 2011).
municipal council	Means a municipal council referred to in section 157(1) of the Constitution, 1996, and "council" shall have a corresponding meaning.
municipal entity	Means an entity as defined in the Municipal Systems Act.
Municipal Finance	Means the Local Government: Municipal Finance Management, 56 of 2003 and includes the regulations thereto, and "MFMA" shall have a

Management Act	corresponding meaning.
Municipality	When referred to as an entity – [a] means a municipality as described in section 2 of the Municipal Systems Act, and [b] a geographic area, means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998)
municipal manager	Means a person appointed by the municipality in terms of section 82 of the Municipal Structures Act and who is the head of Raymond Mhlaba Municipality in administration and also the accounting officer for the Municipality.
Municipal Structures Act	Means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).
Municipal Systems Act	Means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).
non-firm prices	Means all prices other than “firm prices”.
organ of state	Means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996, as amended.
Original Equipment Manufacturer (OEM)	Means machinery or any equipment needing original parts for repairs and maintenance.
other applicable legislation	Means any other legislation applicable to municipal supply chain management, including – (a) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000); (b) the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and (c) the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000);
people with disabilities	Has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998).
Person	Refers to a juristic person.
Policy	Means this Supply Chain Management Policy as amended from time to time.
Preferential Procurement Policy Framework Act	Means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and includes the regulations thereto.
price	Includes all applicable taxes less all unconditional discounts.
privileged or confidential information	Means any information: (a) determined by the bid specification, evaluation or adjudication committee to be privileged or confidential; (b) discussed in close sessions by any of the bid committees; (c) disclosure of which would violate a person’s right to privacy; (d) declared to be privileged, confidential or secret in terms of any legislative framework.

proof of B-BBEE status level of contributor	Means: (a) the B-BBEE status level certificate issued by an authorised body or person; (b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or (c) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act.
QSE	Means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.
qualified person	Means a person who is recognized by virtue of his or her training and experience as having the necessary qualifications to undertake construction works in a specific category.
quotation or quote	Means a written or electronic offer made to the municipality in response to an invitation to submit a quotation.
rand value	Means the total estimated value of a contract in Rand, calculated at the time of tender invitation.
Regulations	Means any clause contained in the: <ul style="list-style-type: none"> <li>- Municipal Supply Chain Management Regulations published in terms of Section 168 of the MFMA.</li> <li>- Preferential Procurement Regulations, 2017</li> <li>- Construction Industry Development Board Regulations</li> </ul>
Republic	Means the Republic of South Africa, and "RSA" shall have a corresponding meaning.
rural area	Means: (a) a sparsely populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or (b) an area including a large settlement which depends on migratory labour and remittances and government social grants for survival, and may have a traditional land tenure system.
SARS	Means the South African Revenue Services.
service providers	Means: (a) "Service Provider": Any person or body corporate that is under contract to the Employer for the provision of intellectual properties. (b) "Supplier": Any person or body that is under contract to the Employer for the provision of tangible goods (c) "Contractor": means a person or body of persons who undertakes to execute and complete constructions works.
SMMEs	Means a separate and distinct business entity, including cooperative enterprises and non-governmental organizations, 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.
Sponsorship	Means a contribution of money or generally in support of government activities.

stipulated minimum threshold	Means the minimum threshold stipulated in terms of regulation 8(1)(b).
sub-contracting	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.
Systems Act	Means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).
Tender	Means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive tendering processes or proposals.
total revenue	Bears the same meaning assigned to this expression 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 and promulgated in the Government Gazette on 9 February 2007.
Township	Means an urban living area that any time from the late 19 <sup>th</sup> century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994.
treasury guidelines	Means any guidelines on supply chain management issued by the Minister in terms of section 168 of the Act.
Trust	Means the arrangement through which the property of one person is made over or bequeathed to a trustee to Raymond Mhlaba Municipality minister such property for the benefit of another person.
Trustee	Means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be Raymond Mhlaba Municipality ministered for the benefit of another person.
unauthorised expenditure	In relation to a municipality, means any expenditure incurred by a municipality otherwise than in accordance with Section 15 or 11(3) of the Act.  (a) overspending of the total amount appropriated in the municipality's approved budget; (b) overspending of the total amount appropriated for a vote in approved budget; (c) expenditure from a vote unrelated to the department of functional area covered by the vote; (d) expenditure of money appropriated for a specific purpose, otherwise than for that specific purpose; (e) spending of an allocation referred to in paragraph (b), (c) or (d) of the definition of "allocation" otherwise than in accordance with any condition of the allocation; or (f) a grant by the Municipality otherwise than in accordance with the MFMA.
unsolicited bid	Means an offer submitted by any person on his, her or its own initiative without having been invited by the municipality to do so.
Youth	Has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).
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.	

All amounts/limits stated in this document shall be deemed to be inclusive of Value Added Tax (VAT).

## 8. SUPPORTING DOCUMENTS

- Reference is made to the following municipal bid documents as these bidding documentation form part of National Treasury's standard for uniformity in bidding:
  - MBD 1 Invitation to bid
  - MBD 2 Tax clearance certificate requirements
  - MBD 3.1 Pricing schedule - Firm Prices (Purchases)
  - MBD 3.2 Pricing schedule - Non-Firm Prices (Purchases)
  - MBD 3.3 Pricing schedule (Professional Services)
  - MBD 4 Declaration of interest (In the Service of the State)
  - MBD 5 Declaration for procurement above R10 million
  - MBD 6.1 Preference points claim form in terms of the Preferential Procurement Regulations
  - MBD 6.2 Declaration certificate for local production and content for designated sectors
  - MBD 7.1 Contract Form – Purchase of Goods/Works
  - MBD 7.2 Contract Form – Rendering of Services
  - MBD 7.3 Contract Form – Sale of Goods/Works
  - MBD 8 Declaration of Bidder's Past Supply Chain Management Practices
  - MBD 9 Certificate of Independent Bid Determination

# Local Government Framework for Infrastructure Delivery and Procurement Management

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## Foreword

In 2012, the Infrastructure Delivery Management System (IDMS) was adopted as the chosen government wide system for infrastructure delivery in South Africa. In the same year (2012), the National Treasury, together with the eight metropolitan municipalities, initiated the customisations of the IDMS for implementation by municipalities. The product of that engagement became the Cities Infrastructure Delivery Management Toolkit (CIDMT), focusing mainly on cities or metros.

In order to establish a common approach to infrastructure delivery across all organs of state, the Standard for Infrastructure Procurement and Delivery Management (SIPDM) was issued for adaptation and adoption by municipalities in terms of Circular 77.

In the process of implementing and institutionalising the SIPDM, institutions expressed concerns regarding the operational challenges imposed by aspects of the SIPDM. This constraint was further compounded when the Preferential Procurement Regulations, 2017 were promulgated and effected, resulting in conflict between the SIPDM and the Regulations.

The National Treasury, in consultation with relevant stakeholders, initiated the SIPDM review process, which resulted in the development of the Local Government Framework for Infrastructure Delivery and Procurement Management (LGFIDPM). The LGFIDPM provides for minimum requirements for effective governance of infrastructure delivery and procurement management. It also recognises the different capacities in the various categories of municipalities and therefore requests municipalities to review their institutional and capacities before adapting and adopting this model.

## Introduction

- a) The Integrated Development Plan (IDP) is the principal strategic planning instrument for municipalities. The IDP process requires a robust process of gathering and synthesising information related to the medium to long-term management of the municipality's infrastructure needs.
- b) The preparation of Roads and Storm Water Services, Water and Sanitation Services, Waste Disposal Services, Electricity Services and Community Facilities and Municipal Buildings, Infrastructure Asset Management Plans (IAMPs) enables municipalities to rank projects and determine budgets, based on a holistic view of local needs and priorities; and serves as a source of valuable information in preparing the IDP.
- c) Through the Infrastructure Delivery Management System, Cities Infrastructure Delivery Management System was developed to provide a holistic system for the management of infrastructure based on the requirements of SANS 55001: Asset management tailored for application in South African metropolitan spaces and specifically in support of the country's spatial transformation agenda.
- d) There is need to develop an infrastructure delivery management system tailor-made for all municipalities (excluding cities) which should integrate asset management strategy, policy to guide infrastructure planning, delivery management and decision making. The LGFIDPM introduces the initial process focusing on the project processes of the infrastructure delivery management and infrastructure procurement.
- e) The Framework for Infrastructure Procurement Management should be implemented together with the project management processes, to ensure alignment, integration and efficient and effective service delivery.

### 1. Scope

- 1.1. The Local Government FIDPM applies to organs of state which are subject to the Municipal Finance Management Act (MFMA).
- 1.2. The Framework provides minimum requirements for the implementation of Infrastructure Delivery and Procurement Management through the:
  - a) Project processes for infrastructure delivery management, and
  - b) Infrastructure procurement gates.
- 1.3. The Framework specifies the allocation of responsibilities for performing activities and making decisions at project stages and procurement gates.

## 2. Terms and Definitions

**Approved:** Officially agreed and signed-off by an Accounting Officer or a delegated person / body.

**Construction:** Everything constructed or resulting from construction operations.

**Employer:** Organ of state intending to, or entering into, a contract with a contractor.

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

**Gateway review:** An independent review of the available information at a gate upon which a decision is made whether to proceed to the next process, or not.

**Infrastructure:**

- a) Immovable asset, which is acquired, constructed or results from construction operations; or
- b) Movable asset, which cannot function independently from purpose-built immovable asset(s).

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

**Infrastructure procurement:** The procurement of goods or services, including any combination thereof, associated with the acquisition, refurbishment, rehabilitation, alteration, maintenance, operation or disposal of infrastructure.

**Organ of State:** Any department of state or administration in the national, provincial and local sphere of government.

**Procurement strategy:** The selected packaging, contracting, pricing and targeting strategy and procurement procedure for a particular procurement.

**Project:** A unique set of processes consisting of coordinated and controlled activities with start and end dates, performed to achieve the project objective.

**Stage:** A collection of periodical and logically related activities in the Project Management Control Stages, that culminates in the completion of an end of stage deliverable.

### 3. ABBREVIATIONS

CIDB Construction Industry Development Board IDP

Integrated Development Plan

FIDPM Framework for Infrastructure Delivery and Procurement Management MFMA Municipal Finance Management Act

PSP Professional Service Provider

PPPFA Preferential Procurement Policy Framework Act SCM Supply

Chain Management

SDBIP Service Delivery Budget Implementation Plan

## 4. NORMATIVE REFERENCES

### 4.1 Acts of Parliament

The following referenced Acts of Parliament are indispensable in the application of this document:

- Architectural Profession Act, 2000 (Act No. 44 of 2000)
- Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)
- Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)
- Construction Industry Development Board Act, 2000 (Act No. 38 of 2000)
- Division of Revenue Act (Annual)
- Engineering Profession Act, 2000 (Act No. 46 of 2000)
- Landscape Architectural Profession Act, 2000 (Act No. 45 of 2000)
- Municipal Finance Management Act, (No. 56 of 2003)
- Local Government: Municipal Systems Act, 2000 (Act No. 32 Of 2000)
- National Archives and Record Services of South Africa Act, 1996 (Act No. 43 of 1996)
- Occupational Health and Safety Act, 1993 (Act No. 85 of 1993)
- Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)
- Project and Construction Management Professions Act, 2000 (Act No. 48 of 2000)
- Public Finance Management Act, 1999 (Act No. 1 of 1999)
- Quantity Surveying Profession Act of 2000 (Act No. 49 of 2000)
- Other Sector Specific Acts of Parliament.

### 4.2 Regulations issued in terms of the MFMA and MFMA Circulars

- Regulations issued in terms of the MFMA
- Preferential Procurement Policy Framework Act Regulations (PPPFA of 2017 or as amended from time to time) and circulars.

### 4.3 Standards

- Applicable Construction Industry Development Board Standard for Uniformity
- Construction Sector Code.

### 4.4 Management System

- Infrastructure Delivery Management System (IDMS)
- Cities Infrastructure Delivery Management Toolkit (CIDMT).

### 4.5 National Treasury Guidelines

- Local Government Capital Asset Management Guideline and Planning Guidelines
- Budget Facility for Infrastructure (BFI).

### 4.6 Department of Cooperative Governance and Traditional Affairs Guidelines

- Guidelines for Infrastructure Asset Management in Local Government.

## 5. FRAMEWORK FOR INFRASTRUCTURE DELIVERY

### 5.1 The Infrastructure Delivery Management Project Processes

- a) The project process of infrastructure delivery management contains control stage deliverables at the end of each stage. Table 1 outlines the stage deliverables that must be approved. The control stages are specific to project management processes; and outline and describe the stages in the life of a project from start to end. The specific stages are determined by the specific project’s governance and control needs. The stages follow a logical sequence with a specified start and end. The deliverable is considered to have passed through the relevant stage when it is approved and signed off. The project then moves on to the next sequential stage. It is expected that the municipality’s organisation reflects an engagement between the Budget Treasury Office, Engineers and Planners when developing and approving projects. It is also expected that there should be engagements with the National and Provincial Treasury where appropriate or where projects dictate so.

**Table 1: Project stage deliverables**

Stage		Project Stage Deliverables
No	Name	End of Stage Deliverables

1	Initiation	<p><b>Initiation Report or Pre-feasibility Report</b></p> <p>(i) The Initiation Report defines project objectives, needs, acceptance criteria, organisation’s priorities and aspirations, and procurement strategies, which set out the basis for the development of the Concept Report.</p> <p>Or</p> <p>(ii) A Pre-feasibility Report is required on Mega Capital Projects, to determine whether to proceed to the Feasibility Stage; where sufficient information is presented to enable a final project implementation decision to be made. Mega capital projects should be determined in the municipality’s policy approved by the Municipal Council.</p> <p><b>Stage 1 is complete when the Initiation Report or Pre-feasibility Report is approved.</b></p>
2	Concept	<p><b>Concept Report or Feasibility Report</b></p> <p>(i) The Concept Stage presents an opportunity for the development of different design concepts to satisfy the project requirements developed in Stage 1. This stage presents alternative approaches and an opportunity to select a particular conceptual approach. The objective of this stage is to determine whether it is viable to proceed with the project, premised on available budget, technical solutions, time frame and other information that may be required.</p> <p>(ii) The Concept Report should provide the following minimum information:</p>
<b>Stage</b>		<b>Project Stage Deliverables</b>
<b>No</b>	<b>Name</b>	<b>End of Stage Deliverables</b>

		<p>a) Document the initial design criteria, cost plan, design options and the selection of the preferred design option; or the methods and procedures required to maintain the condition of infrastructure, or the project.</p> <p>b) Establish the detailed brief, scope, scale, form and cost plan for the project, including, where necessary, the obtaining of site studies and construction and specialist advice.</p> <p>c) Provide an indicative schedule for documentation and construction, or maintenance services, associated with the project.</p> <p>d) Include a site development plan, or other suitable schematic layouts, of the works.</p> <p>e) Describe the statutory permissions, funding approvals and utility approvals required to proceed with the works associated with the project.</p> <p>f) Include a baseline risk assessment for the project and a health and safety plan, which is a requirement of the Construction Regulations issued in terms of the Occupational Health and Safety Act.</p> <p>g) Contain a risk report, need for further surveys, tests, investigations, consents and approvals, if any, during subsequent stages.</p> <p>(iii) A Feasibility Report must provide the following minimum information:</p> <p>a) Details regarding the preparatory work covering:</p> <ul style="list-style-type: none"> <li>• A needs and demand analysis with output specifications.</li> <li>• An options analysis.</li> </ul> <p>b) A viability evaluation covering:</p> <ul style="list-style-type: none"> <li>• A financial analysis.</li> <li>• An economic analysis, if necessary.</li> </ul> <p>c) A risk assessment and sensitivity analysis;</p> <p>d) A professional analysis covering:</p> <ul style="list-style-type: none"> <li>• A technology options assessment.</li> <li>• An environmental impact assessment.</li> <li>• A regulatory due diligence.</li> </ul> <p>e) An implementation readiness assessment covering:</p> <ul style="list-style-type: none"> <li>• Institutional capacity.</li> <li>• A procurement plan.</li> </ul> <p><b>Stage 2 is complete when the Concept Report or the Feasibility Report is approved.</b></p>
3	Design Development	<p><b>Design Development Report</b></p> <p>(i) The Design Development Report must, as necessary:</p> <p>a) Develop, in detail, the approved concept to finalise the design and definition criteria.</p>

Stage		Project Stage Deliverables
No	Name	End of Stage Deliverables
		<ul style="list-style-type: none"> <li>b) Establish the detailed form, character, function and costings.</li> <li>c) Define the overall size, typical detail, performance and outline specification for all components.</li> <li>d) Describe how infrastructure, or elements or components thereof, are to function; and how they are to be safely constructed, be commissioned and be maintained.</li> <li>e) Confirm that the project scope can be completed within the budget, or propose a revision to the budget.</li> </ul> <p><b>Stage 3 is complete when the Design Development Report is approved.</b></p>
4	<b>Design Documentation</b>	<p><b>Design Documentation</b></p> <ul style="list-style-type: none"> <li>(i) Design documentation provides: <ul style="list-style-type: none"> <li>a) the production information that details performance definition, specification, sizing and positioning of all systems and components that will enable construction;</li> <li>b) the manufacture, fabrication and construction information for specific components of the work, informed by the production information.</li> </ul> </li> </ul> <p><b>Stage 4 is complete when the Design Documentation Report is approved.</b></p>
5	<b>Works</b>	<p><b>Completed Works capable of being used or occupied</b></p> <ul style="list-style-type: none"> <li>(i) Completion of the Works Stage requires: <ul style="list-style-type: none"> <li>a) Certification of the completion of the works in accordance with the provisions of the contract; or</li> <li>b) Certification of the delivery of the goods and associated services in accordance with the provisions of the contract.</li> </ul> </li> </ul> <p><b>Stage 5 is complete when the Works Completion Report is approved.</b></p>

6	Handover	<p><b>Works which have been taken over by the user or owner; Completed Training; Record Information</b></p> <p>(i) The handover stage requires the following activities to be undertaken:</p> <ul style="list-style-type: none"> <li>a) Finalise and assemble record information which accurately reflects the infrastructure that is acquired, rehabilitated, refurbished or maintained;</li> <li>b) Hand over the works and record information to the user organisation and, if necessary, train end user staff in the operation of the works.</li> </ul> <p><b>Stage 6 is complete when the Handover/Record Information Report is approved.</b></p>
7	Close-Out	<p><b>Defects Certificate or Certificate of Final Completion; Final Account; Close-Out Report</b></p>

Stage		Project Stage Deliverables
No	Name	End of Stage Deliverables
		(i) The Close-Out Stage commences when the end user accepts liability for the works. It is complete when: <ul style="list-style-type: none"> <li>a) Record information is archived;</li> <li>b) Defects certificates and certificates of final completion are issued in terms of the contract;</li> <li>c) Final amount due to the contractor is certified in terms of the contract;</li> <li>d) Close-Out Report is prepared by the Implementer and approved by the Municipality.</li> </ul> <b>Stage 7 is complete when the Close-out Report is approved.</b>

- b) Procurement of PSPs and Contractors can occur at different points in the project stages.
- c) Additional stages may be added to the described stages above, if deemed necessary. For example, additional stages could include those necessary to ensure that project activities are appropriately carried out and stages linked. Contract activities would, in many instances, be contingent upon the requirements of the specific contract being used.
- d) For project progress using the project stages, reporting must be for the deliverable achieved in the stage immediately prior to the 'in progress' stage. For example, if a project is shown as being at Stage No. 3 (Design Development), it implies that the deliverable for Stage No. 2 (i.e. the Concept Report) has been achieved; and that the deliverable for Stage 3 (i.e. the Design Development Report) is in the process of being prepared.
- e) Where an organ of state engages another organ of state to provide agency services, a service delivery agreement must be developed that outlines the roles and responsibilities for each organ of state; and establishes a relationship between the client and the implementer. The development of all deliverables should be carried out in a cooperative and consultative manner between the Client and Implementer parties. All deliverables must be developed and signed off in compliance with the specific service delivery agreement.

## 5.2 Gateway Reviews

### 5.2.1 Gateway reviews for mega capital projects

- (i) The MFMA (Act 56 of 2003), section 19 (2) states: "Before approving a capital project in terms of subsection (1)(b), the council of a municipality must consider the projected cost covering all financial years from the start until the project is operational; and the future operational costs and revenue on the project, including municipal tax and tariff implications."
- (ii) The LGFIDPM prescribes the Gateway Review at the end of stage 2, as the minimum requirement to comply with section (i) above.
- (iii) The focus of such a review must be on the quality of the documentation in the first instance, and thereafter on:
  - a) Deliverability: the extent to which a project is deemed likely to deliver;
  - b) Expected benefits: within the declared cost, time and performance area;
  - c) Affordability: the extent to which the project's level of expenditure and financial risk can be accepted, given the organisation's overall financial position, both singly, and when considering

its other current and projected commitments; and

- d) Value for money: The optimum combination of whole life costs and quality (or fitness of purpose), to meet the user's requirements.
- (iv) A gateway review team must comprise of not less than three persons who are neither involved, nor associated with the project, but have a broad understanding of the subject matter.
- (v) A gateway review must be led by a person who has experience in the planning of infrastructure projects and is registered as a professional with a statutory council under the built environment professions. The members of the team must, as relevant, have expertise in the key technical areas, cost estimating, scheduling and implementation of similar projects.
- (vi) It is the duty of the institution's Accounting Officer or Authority to appoint a team responsible for the gateway review of his or her institution.
- (vii) The gateway review team must base its findings primarily on:
  - a) The information contained in the end-of-stage deliverable;
  - b) Supplementary documentation, if any, provided by key staff and obtained during an interview process; and
  - c) Interviews with key staff members and stakeholders.
- (viii) The gateway review team must issue a report at the conclusion of a gateway review, which reflects the team's assessment of the information at the end of a stage; and provides findings or recommendations on areas where further work should be undertaken to improve such information.
- (ix) The gateway review findings must be classified by the gateway review team as:
  - a) Critical: Findings that pose adverse effect to the project or package. Critical findings are findings related to the stage deliverable that are wholly unacceptable.
  - b) Major: Findings that pose a potentially adverse effect to the project or package. Major findings are serious findings and are in direct violation of key legislation, e.g. The Constitution of the Republic of South Africa, the MFMA or the PPPFA.
  - c) Minor: Findings that do not pose any adverse effect to the project or package. Minor findings indicate the need for improvement of practices and processes.
- (x) A Stage 2 deliverable must not be approved until such time that all findings have been resolved.

## 6. FRAMEWORK FOR INFRASTRUCTURE PROCUREMENT

### 6.1 INTRODUCTION

The framework for infrastructure procurement outlines the minimum infrastructure procurement policy requirements for municipal planning and implementation.

The strategic direction set in the Integrated Development Plan (IDP) informs the framework for infrastructure procurement. For example, procurement strategies must be aligned to the municipality's developmental and internal transformation needs, as specified in the IDP.

### 6.2 MINIMUM REQUIREMENT FOR INFRASTRUCTURE PROCUREMENT

- 6.2.1 Infrastructure procurement must be undertaken in accordance with all applicable Infrastructure Procurement related legislation and this Framework.
- 6.2.2 Infrastructure procurement must be implemented in accordance with the institutional Supply Chain Management System, which promotes differentiated procurement for infrastructure.
- 6.2.3 Infrastructure procurement must be implemented in accordance with the procurement gates prescribed in clause 6.3 below.
- 6.2.4 The Accounting Officer must ensure that a budget is available for the duration of the project, in line with MFMA provisions for capital and operating budgets.
- 6.2.5 The Accounting Officer must ensure that cash flow management processes are in place to meet payment obligations within the time periods specified in the contract.
- 6.2.6 Procurement gates provided in 6.3 below must be used, as appropriate, to:
  - a) Authorise commencement of activities that lead to the next control gate;
  - b) Confirm conformity with requirements; and/or
  - c) Provide information to eliminate any cause of non-conformity and to prevent reoccurrence.
- 6.2.7 The authorisation to proceed to the next procurement gate must be given by a delegated person or body. The delegated person or body must be able to apply relevant built environment knowledge and skill to achieve the intended results required at the relevant procurement gate. The level of detail contained in the documentation on which a decision to proceed to the next procurement gate is made, must be sufficient to enable an informed decision.
- 6.2.8 The Accounting Officer must develop and implement effective and efficient emergency procurement procedures, including relevant approval delegation, in compliance with relevant legislation.
- 6.2.9 The Accounting Officer must develop and implement an effective and efficient infrastructure disposal policy in line with the Municipal Asset Transfer Regulations. The institution may consider disposal strategies aligned to their internal disposal policy, prior to proceeding with the procurement strategy.
- 6.2.10 The Accounting Officer must keep records of Procurement Gate Approvals, in a manual or electronic format, with the following minimum requirements:
  - a) Procurement gate;
  - b) Delegated person/s or body;
  - c) Date on which the approval request was received;
  - d) Date on which the approval was actioned; and
  - e) Signature of the delegated person or body.

6.2.11 All assets must be recorded in the municipal asset register as required by the GRAP standards.

## 6.3 Infrastructure Procurement Gates

### 6.3.1 Procurement **Gate 1 (PG 1)**

- a) Initiate a procurement process;
- b) **Minimum Requirement for PG 1:**
  - 1) Establish and clarify the procurement need, aligned to the municipality's development and transformation priorities specified in the IDP.
  - 2) Determine a suitable title for the procurement, to be applied as the project description.
  - 3) Prepare the broad scope of work for the procurement.
  - 4) Perform market analysis.
  - 5) Estimate the financial value of proposed procurement and contract for budgetary purposes, based on the broad scope of work.
  - 6) Confirm the budget.
  - 7) Compliance with section 33 of the MFMA with respect to community and stakeholder consultation.
- c) **PG 1 is complete when a designated person or body makes the decision to proceed/not to proceed, with the procurement of the infrastructure.**

### 6.3.2 Procurement **Gate 2 (PG 2)**

- a) Approve procurement strategy to be adopted.
- b) **Minimum Requirement for PG 2:**
  - 1) Develop a procurement strategy aligned to the institutional procurement strategy:
    - a. Establish contracting and pricing strategy comprising of an appropriate allocation of responsibilities and risks; and the methodology for contractor payments.
    - b. Identify service required for works.
    - c. Decide on contracting strategy.
    - d. Decide on pricing strategy.
    - e. Decide on form of contract.
    - f. Establish opportunities for promoting preferential procurement in compliance with legislative provisions and the Construction Sector Code.
- c) **PG 2 is complete when a delegated person or body approves the procurement strategy that is to be adopted.**

### 6.3.3 Procurement **Gate 3 (PG 3)**

- a) Approve procurement documents.
- b) **Minimum requirements for PG 3:**
  - 1) Prepare procurement documents that are compatible with:
    - (i) approved procurement strategies.
    - (ii) project management design documentation.
- c) **PG 3 is complete when the Bid Specification Committee approves the procurement document. .**

#### 6.3.4 Procurement **Gate 4 (PG 4)**

- a) Confirm that cash flow processes are in place to meet projected contractual obligations.
- b) **Minimum requirement for PG 4**
  - 1) Confirm that cash flow processes are in place to meet contractual obligations.
  - 2) Establish control measures for settlement of payments within the time period specified in the contract.
- c) PG 4 is complete when a delegated person or body confirms in writing that cash flow processes are in place; and control measures are established for the procurement to take place.

#### 6.3.5 Procurement **Gate 5 (PG 5)**

- a) Solicit tender offers.
- b) **Minimum requirements for PG 5**
  - 1) Invite contractors to submit tender offers.
  - 2) Receive tender offers.
  - 3) Record tender offers.
  - 4) Safeguard tender offers.
- c) PG 5 is complete when tender offers received are recorded and safeguarded by a delegated person from the SCM unit.

#### 6.3.6 Procurement **Gate 6 (PG 6)**

- a) Evaluate tender offers premised on undertakings and parameters established in procurement documents.
- b) **Minimum Requirement for PG 6:**
  - 1) Determine whether tender offers are complete.
  - 2) Determine whether tender offers are responsive.
  - 3) Evaluate tender submissions.
  - 4) Review minimum compliance requirements for each tender.
  - 5) Perform a risk analysis.
  - 6) Prepare a report on tender offers received, and on their achievement of minimum compliance.
- c) PG 6 is complete when the chairperson of the Bid Evaluation Committee approves the BEC report.

#### 6.3.7 Procurement **Gate 7 (PG 7)**

- a) Award the contract.
- b) **Minimum Requirement for PG 7:**
  - 1) Bid adjudication committee review of the BEC evaluation report.
  - 2) Bid Adjudication Committee makes an award.
  - 3) Accounting Officer approval of the tender process.
  - 4) Notify successful tenderer and unsuccessful tenderers of the outcome.
  - 5) Sign contract document.
  - 6) Formally accept tender offer.

- c) PG 7 is complete when the Accounting Officer, or the Bid Adjudication Committee where delegated, confirms that the tenderer has provided evidence of complying with all requirements stated in the tender data and formally accepts the tender offer in writing, and issues the contractor with a signed copy of the contract.

### 6.3.8 Procurement **Gate 8 (PG 8)**

- a) Administer and monitor the contract.
- b) **Minimum Requirements for PG 8:**
  - 1) Finance department to:
    - (i) Capture contract award data.
    - (ii) Manage cash flow projection.
    - (ii) Administer contract in accordance with the terms and provisions of the contract.
  - 2) Delivery department to:
    - (i) Ensure compliance with contractual requirements.
- c) **PG 8 is complete when a delegated person captures the contract completion/termination data (close out reports and relevant documents), including payment certificates due.**

## 7. Conclusion

It is advised that municipalities and municipal entities review this document from a practical implementation perspective and amend its SCM policies accordingly by inserting those parts that is practically implementable into the SCM Policy to be approved by the municipal council. You are also encouraged to share this with the relevant officials within the institution to ensure organisational awareness of this reform.

Enquiries pertaining to the content of this framework may be directed to:

**Email:** [InfrastructureProcurement@treasury.gov.za](mailto:InfrastructureProcurement@treasury.gov.za)

### EFFECTIVE DATE

The policy shall be effective on date of approval by Council.

Signed by the Municipal Manager and Speaker

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MS U.T MALINZI  
MUNICIPAL MANAGER

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DATE APPROVED

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COUNCILLOR  
SPEAKER