

## ETHEKWINI MUNICIPALITY: SUPPLY CHAIN MANAGEMENT POLICY, 2016



Adopted by Council on: **31 May 2016**

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POLICY REVIEW MANAGEMENT INFORMATION	
Contact Person	Head SCM: Andre Petersen
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## **PREAMBLE**

Section 111 of the Municipal Finance Management Act requires each Municipality and Municipal entity to adopt and implement a supply chain management policy, which gives effect to the requirements of the Act. In addition, the Preferential Procurement Policy Framework Act requires an Organ of State to determine its Preferential Procurement Policy and to implement it within the framework prescribed. The eThekweni Municipality is further committed to combating fraud, corruption, favouritism and irregular practices in Supply Chain Management by blacklisting persons who have been found to have engaged in such practices. This is the Supply Chain Management Policy of eThekweni Municipality

## **PURPOSE**

The purpose of this Policy is :

- (a) to implement a Supply Chain Management system in accordance with Section 217 of the Constitution which is fair, equitable, transparent, competitive and cost effective ;
- (b) to provide for procedures and processes for the procuring of goods, services or works ;
- (c) to provide for procedures and processes for the disposal of goods no longer needed ;
- (d) to provide for procedures and processes for the selection of contractors to provide assistance in the provision of municipal services other than where Chapter 8 of the Municipal Systems Act applies ;
- (e) to provide for provision of municipal services through a service delivery agreement with a natural or juristic person which is not an organ of state ;
- (f) to ensure consistency with other applicable legislation and regulations thereto ;
- (g) to give effect to the Preferential Procurement Policy objectives of the Municipality;
- (h) to ensure optimal service delivery by facilitating effective and efficient procurement;
- (i) to combat fraud, corruption favouritism and irregular practices in Supply Chain Management by blacklisting persons who have been found to have engaged in such practices;
- (j) to create a Blacklisting Committee to implement the provisions of this policy;

- (k) to specify guidelines to prevent the municipality from doing business with persons who abuse the Supply Chain Management system by engaging in unlawful and/or irregular practice(s);
- (l) to specify guidelines that will prevent the municipality from doing business with persons who default on performance willfully or negligently;
- (m) to develop uniform criteria and a fair process for blacklisting such persons;
- (n) to discourage persons who are blacklisted from re-entering the procurement arena by setting up new business entities and by using existing business entities to tender for public sphere work, during the period in which they are blacklisted;
- (o) to give the municipality power to deregister blacklisted persons from its suppliers database;
- (p) to create a database of persons who are blacklisted and to publish the list on the municipality's website so as to expose and publicise the identity of the blacklisted person; and
- (q) to deal with the conduct of officials who are found to have engaged in unlawful and/or irregular practices together with such persons, to be dealt with in terms of internal disciplinary procedure.

### **PROBLEM STATEMENT**

The Municipality is committed in terms of the Constitution and its procurement policies to have a supply chain policy that is fair, equitable, transparent, competitive and to combat irregular practices in the tendering process in order to acquire the best goods and services for the City.

- (1) Section 217 (1) of the Constitution provides that when an organ of state in the national, provincial or local sphere of government contracts for goods and services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective;
- (2) Section 111 of the Municipal Finance Management Act requires every municipality to develop and implement a supply chain management policy in order to give effect to the provisions of the Act;
- (3) The Preferential Procurement Policy Framework Act, 2000 (No. 5 of 2000) provides for the framework for a procurement policy which allows for categories of preference in the



allocation of contracts, together with consideration of the provisions of the Broad-Based Black Economic Empowerment Act, 2003 (No. 53 of 2003);

- (4) The Governments Preferential Procurement Policy objectives include increased usage of local resources; redressing the skewed employment and ownership through the BBBEE Act; the creation of job opportunities and poverty alleviation; stimulation of skills development and transferring of skills and fast-tracking the growth of and ensuring the sustainability of SMME's;
- (5) In establishing the Supply Chain Management Unit Blacklisting Committee and applying its policy and guidelines, the Municipality will be in compliance with the requirements of the Municipal Finance Management Act and the Supply Chain Management Regulations; and
- (6) In terms of the Supply Chain Management Regulation 11 (1) and (2), where a municipality procures goods and services otherwise than through its supply chain management system, it must make that fact public. The name of the supplier and the kind of goods or services procured must be made public.

## **1. Definitions**

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

**“Accounting Officer”** must mean the City Manager, or Acting City Manager, of the eThekweni Municipality as per section 60 of the MFMA. In the case of Municipal Entities-Must mean the Chief Executive Officer or Acting Chief Executive Officer as per section 93 of the MFMA.

**“Amendment”** must mean a change made to the value of the contract beyond the contract authority and/or the duration of the contract beyond the contract authority and/or scope changes in the contract and/or contracting arrangements beyond the contracting allowances. An amendment may be a minor amendment or a major amendment;

**“Appeal Authority”** must mean an independent and impartial person appointed by the Accounting Officer in terms of Regulation 50 of the Local Government Municipal Supply Chain Regulations;

**“Applicant”** must mean a Department of eThekweni Municipality;

**“Award”** must mean the acceptance of a bid or proposal;

**“B-BBEE”** must mean broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

**“B-BBEE Status Level of Contributor”** must mean the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

**“Blacklisting Authority”** must mean the Blacklisting Committee;

**“Blacklisting Period”** must mean the period for which the blacklisted person is barred from participation in the procuring processes of the Municipality;

**“Blacklisting”** must mean the act of disqualifying a person or an entity from participating in or continuing to participate in the procurement process of the eThekweni Municipality;

**“Capital Assets”** are all assets with a life cycle of greater than one year and above

the capitalization threshold (where applicable). For example, this would include

property, plant and equipment (infrastructure network, furniture, motor vehicles,

computer equipment, etc.), intangible assets, and investment property.

**“Chief Financial Officer”** must mean the Deputy City Manager: Treasury, or Acting Deputy City Manager: Treasury, of the eThekweni Municipality;

**“Competitive bid”** must mean a bid in terms of a competitive bidding process;

**“Competitive bidding process”** must mean a competitive bidding process referred to in paragraph 12 (1) (d) of this policy;

**“Contingency”** must mean an amount included in the contract authority to cover the cost of unforeseen circumstances. This percentage must be appropriately motivated and approved at contract approval stage via the Bid Specification Committee, or Bid Adjudication Committee(where appropriate);

**“Contract”** must means a legally binding agreement between the Municipality and the Contractor for the latter to provide goods, services, engineering and construction works, or professional services in return payment by the former;

**“Contract Authority”** must mean the total contract award value as approved, or supported, by the Bid Adjudication Committee. This is inclusive of escalations and the normal contingency allowance for variations under the general conditions of contract, and shall be taken from the amount approved at the Bid Specification Committee, or Bid Adjudication Committee;

**“Contract Manager”** must mean the delegated official to manage and oversee a contract;

**“Contract Participation Goal (CPG)”** must mean the value of work to be subcontracted to enterprises or businesses factored according to their level of HDI/PPG Equity ownership as set and approved in the bidding documents;

**“Contract Period”** must mean the duration of the contract as set out in the contract;

**“Contractor”** must mean any person, body, or legal entity that is under contract to the Municipality for the performance of the contract. A Tenderer whose tender has been accepted becomes a Contractor;

**“Control”** must mean 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 exercise of appropriate managerial authority and power in determining the policies and directing the operations of the business;

**“Days”** must mean, unless otherwise specified, calendar days. Days must be calculated by excluding the first day and including the last day;

**“Delisting”** must mean the removal of a person from the eThekweni Municipality database of blacklisted persons after the period of blacklisting has expired;

**“Disabled”** must mean in respect of a natural person, a permanent impairment of a physical, intellectual, or sensory function which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being;

**“Eligibility Documents”** must mean:

- (a) A valid Tax Clearance certificate issued by the South African Revenue Service and Municipal Fee Declarations and certificates certifying that the bidder has no undisputed commitments for municipal fees due to any municipality or overdue for a prescribed period;
- (b) declarations by tenderers certifying the correctness of information and certifying validity of authority to act (Regulation 14 of the Preferential Policy Framework Act 5 of 2000);
- (c) certificates declaring details of Private or business interests in terms of Regulation 46(e) of the Supply Chain Management Regulations;
- (d) proof of registration with the CIDB (Construction Industry and Development Board), where applicable;
- (e) proof of Registration of a Company, close Corporation, Co-operative or any other document requiring formal registration;
- (f) any partnership agreement, or agreement of Joint Venture, Memorandum of Articles of A Company, Association Agreement or any other agreement establishing a business entity;
- (g) a statement setting out details of work undertaken in the Government/public sector/ organs of state in the past five years, including particulars of persons who assessed the work and who can be contacted to verify completion/ non completion of the contract;
- (h) audited financial statements where applicable, or books of account; and/ or
- (i) any other document prescribed by law or specifically requested by the eThekweni Municipality.

**“Executive Director”** must mean a partner in a partnership, a director of a company established in terms of the Companies Act, 1973 (Act 61 of 1973) and the new Companies Act. 2008 (No. 66 of 2008) or a member of a close corporation registered in terms of the Close Corporation Act, 1984 (No. 69 of 1984) who, jointly and severally with their other partners, co-directors or co-members, as the case may be, bears the risk of business and takes responsibility for the management and liabilities of the partnership, company, or close corporation;

**“Exempted Micro Enterprise”** must mean a bidder with an annual total revenue of R5 million or less (in terms of the Broad-Based Black Economic Empowerment Act;

**“Final award”** must mean in relation to bids or quotations submitted for a contract, means the final decision on which bid or quote to accept;

**“Formal written price quotation”** must mean quotations referred to in paragraph 12 (1) (c) of this policy and shall include any offer to purchase immovable property;

**“Fronting”** must mean claiming preference points, status or goals of any of the target groups listed in the eThekweni Municipality’s Targeted Procurement Policy and/or tendering documents where such claim is false;

**“Goods”** must mean both movable and immovable property and real rights therein;

**“Improper Practice”** must include, but not be limited to:

- (a) fronting;
- (b) misrepresentation on eligibility documents or Application forms or any other returnable document which contains information which will have a material bearing on the award;
- (c) attempting to bribe or bribing an official by monetary or non-monetary inducement or attempt to influence an official directly or indirectly involved with the procurement process, in order obtain a tender or retain a tender or withdraw from a tender;
- (d) deliberately omitting information, or misrepresenting information which could have a bearing on the award of a tender;
- (e) committing of fraud or extortion in relation to the bidding process;
- (f) obtaining information on the contents of other bids in the same tender which one

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~~would not ordinarily be entitled to in terms of the Promotion of Access to Information~~

Act (PAIA) No. 2 of 2000, which information is in the possession and under the control of the Municipality;

- (g) collusive tendering;
- (h) Restrictive horizontal and vertical Practices as defined by the Competition Act, 1998 (No. 89 of 1998);
- (i) committing an exclusionary act as defined by the Competition Act, 1998 (No. 89 of 1998); and
- (j) any other activity which is not specifically set out in this definition, but constitutes an unlawful or unfair/ improper business practice;

**“In the service of the state”** must mean:

- (a) a member of any municipal council, any provincial legislature or the National Assembly of the National Council of Provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any Municipality or Municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act;
- (e) a member of the accounting authority of any national or provincial public entity; and
- (f) an employee of Parliament or a provincial legislature.

The Minister of Finance has specifically exempted non-executive board members of a Municipal entity from the prohibition for being in the service of the state but only in relation to supply chain awards by a municipal entity that they do not serve on.

An official or employee means a full time employee, and excludes any person employed on a part time basis or a person earning a stipend, provided that such person be verified and cleared in terms of conflicts of interest by the COI Task Team;

**“Long term contract”** must mean a contract with a duration period exceeding one year;

**“List of accredited prospective providers”** must mean the list of accredited prospective providers which a municipality or municipal entity must keep in terms of paragraph 14 of this policy;

**“Local Content/Resources”** must mean where preference points shall be allocated in terms of the location of the enterprise where applicable in the following order of preference: eThekweni Municipality Area (EMA); KwaZulu-Natal (KZN); South Africa (SA);

**“Major Amendment”** must mean an amendment to a contract which is not a minor amendment;

**“Manufacturer”** must mean a firm that operates or maintains a factory or establishment that produces on its premises materials or supplies required by the Prime Contractor for the performance of the Contract;

**“Military Veteran”**: must mean any South African Citizen who-

(a) rendered military service to any military organisations, statutory and non statutory, which were involved on sides of South Africa’s Liberation war from 1960 to 1994;

(b) served in the Union Defence Force before 1960;

(c) became a member of the new South African National Defense Force after 1994.

**“Minor Amendment”** must mean a change made to the value of the contract beyond the contract authority and where the change is up to 20% of the original contract authority for construction related goods, services and/or infrastructure projects. A change of only up to 15% of the original contract authority relating to goods and/or services is allowed to be considered a minor amendment”;

**“Municipality”** must mean the eThekweni Municipality or any municipal entity, whichever is applicable;

**“Non Performance”** must mean default on a contract in the public sector by willfully or negligently:

(a) Failing to perform at all;

- (b) Failing to complete work timeously without good reason;
- (c) Delivering defective performance, i.e. poor workmanship or substandard materials;
- (d) Being in breach of a material term of the contract;
- (e) Failing to achieve a specified contract participation goal or performance target as set out in the tender document/s, and
- (f) despite being given written notice to remedy non-performance.

**“Other applicable legislation” must** mean any other legislation applicable to municipal supply chain management, including, but not limited to:

- (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);

**“Owned”** must means having all the customary incidents of ownership, including the right of disposition, and sharing all the risks and profits commensurate with the degree of ownership interests, as demonstrated by an examination of the substance, rather than the form of ownership arrangements;

**“Preferred bidder”** must mean the most responsive and recommended bidder but whose tender and award has not been confirmed”

**“Person”** must mean a person including a juristic person and tenderer, supplier, service provider, contractor and business entity must have a corresponding meaning;

**“Prime Contractor”** must mean a contractor who contracts with the Municipality as the principal or main contractor or as a joint venture partner to such contractors, to provide goods, services and works;

**“Priority population group”** must mean black individuals who fall into population groups that were not offered a franchise in the national elections before or after the introduction of the 1984 tri-cameral parliamentary system and only received a franchise during 1994”.



**“Project Authority”** must mean the authority to incur expenditure on the project as budgeted for and approved by Council;

**“Regulation”** must mean the Local Government: Municipal Supply Chain Management Regulations promulgated under General Notice 868 of 2005 dated 31 May 2005, as amended from time to time;

**“Reporting Officer”** must mean a delegated official who monitors the performance of a contractor;

**“Restrictive Horizontal Practice”** must have the same meaning as set out in the Competitions Act 89 of 1998;

**“Restrictive vertical Practice”** must have the same meaning as set out in the Competitions Act 89 of 1998;

**“Senior manager”** must mean any official of the eThekweni Municipality with the title Senior Manager, Deputy Head, Head, Deputy City Manager, City Manager, or who in either of these positions in an official acting capacity or the designated office which may supersede the title of “senior manager”;

**“Service Provider”** must mean a contractor;

**“Sole Supplier”** must mean that there exist one service provider or supplier manufacturer in the market, with sole distribution rights and/or patent rights.

**“SMMEs”** must mean Small, Medium and Micro Enterprises as defined in the National Small Business Act 102 of 1996;

**“Supplier”** must mean a firm that:

- (a) owns, operates or maintains a store, warehouse or other establishment in which materials or supplies are bought, kept in stock and regularly sold to the public in the usual course of business and

- (b) engages as its principal business, and in its own name, in the purchase and sale of the products;

**“The Act”** must mean the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

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

**“Unsolicited Bid”** must mean any proposal/concept received by an institution outside its normal procurement process that has not been a solicited bid (a submission that must be innovative, unique and provided by a sole supplier).

**“Variation”** must mean a change to a provision/s in a contract, excluding the changes referred to in amendments in the definition of this policy;

**“Works”** must mean engineering and construction works;

**“Written or verbal quotations”** must mean quotations referred to in paragraph 12(1)(b) of this policy; and

**“Youth”** must mean South African citizens between the ages of 18 and 35;

## **2. Supply chain management policy**

- (1) The eThekweni Municipality resolves in terms of section 111 of the Act 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 Act.
  - (d) is consistent with other applicable legislation;
  - (e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
  - (f) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.
- (2) The Municipality may not act otherwise than in accordance with this supply chain management policy when:
  - (a) procuring goods, services or works;
  - (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) in the case of a Municipality, 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.
- (3) Subparagraphs (1) and (2) of this policy do not apply in the circumstances described in section 110 (2) of the Act except where specifically provided otherwise in this policy.

### **3. Adoption and amendment of the supply chain management policy**

- (1) The Accounting Officer must:
  - (a) at least annually review the implementation of this policy, by way of a revised policy document and/or annual report on the implementation of the policy; and
  - (b) when the Accounting Officer considers it necessary, submit proposals for the amendment of this policy to the council.
- (2) If the Accounting Officer submits a draft policy to the Council that differs from the model policy, the Accounting Officer must ensure that such draft policy complies with the Regulations. The Accounting Officer must report any deviation from the model policy to the National Treasury and the relevant provincial treasury.
- (3) When amending this supply chain management policy the need for uniformity in supply chain practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.
- (4) The Accounting Officer of a municipality must in terms of section 62(1)(f)(iv) of the Act take all reasonable steps to ensure that the municipality has and implements this supply chain management policy.
- (5) All MFMA Circulars issued by National Treasury from time-to-time are applicable within this policy where practical.

#### **4. Delegation of supply chain management powers and duties**

- (1) The council 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 Act; and
    - (ii) the supply chain management policy;
  - (b) to maximise 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 the supply chain management policy; and
  - (d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- (2) Sections 79 and 106 of the Act apply to the subdelegation of powers and duties delegated to an Accounting Officer in terms of subparagraph (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 municipality or to a committee which is not exclusively composed of officials of the municipality; and
- (4) This section (delegation of supply chain powers and duties) may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this policy.

## **5. Subdelegations**

- (1) The Accounting Officer may in terms of section 79 or 106 of the Act sub-delegate any supply chain management powers and duties, including those delegated to the Accounting Officer in terms of this policy, but any such sub-delegation must be consistent with subparagraph (2) and section 4 of this policy.
- (2) The power to make a final award:
  - (a) above R10 million (VAT included) may not be sub-delegated by the Accounting Officer;
  - (b) not exceeding R10 million (VAT included), is sub-delegated only to the Bid Adjudication Committee
  - (c) not exceeding R200 000 (VAT included), may be sub-delegated in terms of the supply chain management code of delegations approved by the Accounting Officer
- (3) An official or bid adjudication committee to which the power to make final awards has been sub-delegated in accordance with subparagraph (2) of this section must ensure that within five days of the end of each month a written report containing particulars of each final award made by such official or committee during that month is submitted to the official referred to in subparagraph (4) of this policy, including:
  - (a) the amount of the award;
  - (b) the name of the person to whom the award was made;
  - (c) the BEE status of the company; and
  - (d) the reason why the award was made to that person.
- (4) A written report referred to in subparagraph (3) of this policy must be submitted to the Accounting Officer, and all contract awards with a value exceeding R100 000 (VAT included) must be captured on National Treasury's Contracts Database via the SCM Unit.
- (5) Subparagraphs (3) and (4) of this policy do not apply to procurements out of petty cash.

- (6) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub-delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this policy.
- (7) No supply chain management decision-making powers may be delegated to an advisor or consultant.
- (8) All other delegations in terms of the supply chain management code of delegations as amended from time-to-time.

## **6. Oversight role of council**

- (1) The council must maintain oversight over the implementation of this supply chain management policy.
- (2) For the purposes of such oversight the Accounting Officer must:
  - (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, to the council of the municipality, and
  - (ii) Whenever there are serious and material problems in the implementation of the supply chain management policy, immediately submit a report to the council.
- (3) The Accounting Officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the mayor.
- (4) The reports must be made public in accordance with section 21A of the Municipal Systems Act.



## **7. Supply chain management unit**

- (1) The Accounting Officer must establish a supply chain management unit to implement this supply chain management policy.
- (2) The supply chain management unit must, where possible, 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 Act.
- (3) Wherever possible, all supply chain management functions and activities are to be performed by the supply chain management unit under the Supply Chain Management Unit Head.

## **8. Training of supply chain management officials**

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

## **9. Format of supply chain management**

(1) This supply chain management policy prescribes that the following systems that must be in place:

- (a) demand management;
- (b) acquisition management;
- (c) logistics management;
- (d) disposal management;
- (e) risk management; and
- (f) performance management.

## **10. System of demand management**

The aim of demand management is to ensure that the resources required to support the strategic and operational commitments are delivered at the right time, at the right price and at the right location, and that the quantity and quality satisfy the need of the Municipality.

- (1) All Unit Heads must submit as part of the Budget Approval process a procurement plan containing all planned procurement. This procurement plan must be approved by the Unit Head or his/her delegate prior to its submission.

Furthermore, a central contracts register is to be maintained for all contracts within the municipality. Items will only be permitted onto the register if contained within an approved procurement plan. Emergencies are excluded, but must be added to the approved procurement plan within 30 days.

- (2) Municipal Entities must submit the procurement plans referred to above within the same timeline.
- (3) The relevant information must be furnished in the format contained a standardized Procurement Plan Template to be issued by the Head: Supply Chain Management.

- (4) The appropriate method of procurement of goods, services and engineering & construction works for all contracts greater than the quotation threshold shall be approved by the Bid Specification Committee.

Further, all contracts exceeding R10 million (VAT inclusive) must be accompanied by project-specific procurement and BEE strategies when presented to the Bid Specification Committee. These should be discussed and agreed between multi-disciplinary teams beforehand.

## **11. System of acquisition management**

- (1) An official or bid adjudication committee to which the power to make final awards has been sub-delegated must ensure that:
  - (a) goods and services are procured by the Municipality in accordance with authorised processes only;
  - (b) expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
  - (c) the threshold values for the different procurement processes are complied with;
  - (d) bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
  - (e) any Treasury guidelines on acquisition management are properly taken into account.

- (2) When procuring goods or services in terms of Section 110(2) of the Act, the accounting officer must make public the fact that such goods or services are procured otherwise than through the Municipalities supply chain management system, including:
- (a) the kind of goods or services; and
  - (b) the name of the supplier.

## **12. Range of procurement processes**

- (1) The procurement of goods and services through this policy can only be undertaken by way of:
  - (a) petty cash purchases, up to a transaction value of R500 (VAT included);
  - (b) written or verbal quotations for procurements of a transaction value up to R5 000 (VAT included), provided all verbal quotes are followed by a written confirmation for the successful bidder;
  - (c) formal written price quotations for procurements of a transaction value over R5 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) An electronic quotes management system is deemed to meet the SCM regulatory requirements.
- (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.

## **13. General preconditions for consideration of written quotations or bids**

- (1) A written quotation or bid may not be considered unless the provider who submitted the quotation or bid –
  - (a) has furnished that provider's:
    - (i) full name;
    - (ii) identification number or company or other registration number; and

- (iii) tax reference number and VAT registration number, if any;
  - (iv) tax clearance from the South African Revenue Service that the provider's tax matters are in order and
- (b) has made the following declarations, where necessary:
  - (i) declaration of Interest (MBD4);
  - (ii) declaration for procurement above R10 million (all applicable taxes included) (MBD5);
  - (iii) preference points claim (MBD6.1);
  - (iv) declaration for local production and content (MBD6.2);
  - (v) declaration of bidder's past supply chain management practices (MBD8);
  - (vi) certificate of independent bid determination (MBD9);
  - (vii) declaration of municipal fees;
  - (viii) tax certificate requirements (MBD2)

#### **14. Lists of accredited prospective providers**

(1) The Accounting Officer must:

- (a) keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements of the municipality through written or verbal quotations and formal written price quotations; and
- (b) at least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
- (c) specify the listing criteria for accredited prospective providers; and
- (d) disallow the listing of any prospective provider whose name appears on the National Treasury databases as a person/company prohibited from doing business with the public sector, or who is prohibited in terms of section 44 of this policy, or is blacklisted/restricted in terms of this policy.

- (2) The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.
- (3) The list must be compiled per commodity and per type of service.
- (4) No quotations may be solicited from any supplier/service provider/contractor who is not registered and verified by the appropriate branch on the SCM Unit's Central Supplier Database, or is in a position to be so before the award.
- (5) The function of implementation and management of the list of accredited prospective providers is delegated to the Head: Supply Chain Management or delegate.

#### **15. Petty cash purchases**

The conditions for the procurement of goods by means of petty cash purchases referred to in paragraph 12 (1) (a) of this policy are as per eThekweni Municipality's Financial Regulations.

#### **16. Written or verbal quotations**

The conditions for the procurement of goods or services through written or verbal quotations are:

- (a) quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the municipality or municipal entity, provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria in the supply chain management policy required by 14(1)(b) and (c) of this policy;
- (b) to the extent feasible, providers must be requested to submit their quotations in writing;

- (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the Accounting Officer or another official designated by the Accounting Officer;
- (d) the Accounting Officer must record the names of the potential providers requested to provide such quotations with their quoted prices; and
- (e) that if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.
- (f) an electronic quotes management system is deemed to meet the SCM regulatory requirements.
- (g) Verbal quotations may not be sourced for procurement in excess R5 000 (VAT included).

## **17. Formal written price quotations**

- (1) The conditions for the procurement of goods or services through formal written price quotations are:
  - (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 or municipal entity;
  - (b) quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria in the supply chain management policy required by paragraph 14(1)(b) and (c);
  - (c) that if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the Chief Financial Officer or an official designated by the Chief Financial Officer, and
  - (d) that the Accounting Officer must record the names of the potential providers and their written quotations.



- (2) A designated official referred to in subparagraph (1)(c) must within three days of the end of each month report to the Chief Financial Officer on any approvals given during that month by that official in terms of that subparagraph.
- (3) An electronic quotes management system is deemed to meet the SCM regulatory requirements. If it is not possible to obtain at least three quotations, the quotations must be re-advertised for a further period, after which the reasons must be recorded and approved by the Chief Financial Officer or an official designated by the Chief Financial Officer.

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

- (1) The operational procedure for the procurement of goods or services through written or verbal quotations or formal written price quotations are:
  - (a) All requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, be advertised for at least seven days on the website and an official notice board of the municipality or municipal entity;
  - (b) When using the list of accredited prospective providers the Accounting Officer must promote ongoing competition amongst providers, including by inviting providers to submit quotations on a rotation basis;
  - (c) Offers received must be evaluated on a competitive basis taking into account unconditional discounts;
  - (d) 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 or services and the lowest price;
  - (e) Acceptable offers above R30 000 (VAT included) are subjected the preference points system and must be awarded to the most responsive offer;

- (f) 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;
- (g) 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, and;
- (h) Municipal requirements of proper record keeping must always be maintained.

## **19. 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 paragraph 11(2) of this policy.
- (2) For contracts in excess of three years, the requirements of section 33 of the Act must be complied with in full.
- (3) As a general requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may not 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.

However, the unbundling of large projects, where appropriate, into smaller contracts to ensure that a spread of opportunities are made available to suppliers, service providers and construction contractors of various sizes is permitted, but only with the approval of the Bid Specification Committee.

## **20. Process for competitive bidding**

- (1) The procedure for the competitive bidding process is:
  - (a) the compilation of bidding documentation as detailed in paragraph 21;
  - (b) the public invitation of bids as detailed in paragraph 22;

- (c) site meetings or briefing sessions, if applicable, as detailed in paragraph 22;
- (d) the handling of bids submitted in response to public invitation as detailed in paragraph 23;
- (e) the evaluation of bids as detailed in paragraph 28;
- (f) the award of contracts as detailed in paragraph 29;
- (g) the administration of contracts, which should include a written agreement between the municipality and the bidder after approval of the bid; and
- (h) proper record keeping in that original and/or certified copies of documents are kept in a secure place for reference purposes.

## **21. Bid documentation for competitive bids**

(1) The Bid documentation for a competitive bidding process must comply with the following criteria and:

- (a) Take into account:
  - (i) the general conditions of contract;
  - (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, contract participation goals, evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish:
  - (i) If the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements:

- (aa) for the past three years; or
- (bb) since their establishment if established during the past three years;
- (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 3 months;
- (iii) particulars of any contracts awarded to the bidder by an organ of state during the past 5 years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
- (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), adjudication, arbitration, or, when unsuccessful, in a South African court of law.
- (f) Sureties or performance guarantees for the procurement of goods and services (including consultant services) will not generally be called for, but in exceptional circumstances, where required, will be in accordance with the limits set for construction works below. The performance guarantees required for construction works are as follows:

AMOUNT (Incl. VAT)	PERCENTAGE
Up to R1 000 000	Nil
R1 000 001 to R10 000 000	5%
Above R10 000 000	10%

In the event that a contractor is unable to raise the required surety, the Head: Supply Chain Management may allow such surety to be deducted in full or part from monies that are to become due to the contractor. This may take the form of deductions from the first three [3] payment certificates due to the contractor.

- (g) The eThekweni Municipality requires a percentage of the project costs for all construction projects to be set aside as retention. A 10% retention fee up to a maximum of 5% of the contract sum will be applied on all contracts. Half of the retention amount will be released on issue of the completion certificate for the contract. The balance of the retention will be released on the completion of the defects liability period of the contract. All contracts must include a penalty clause.
- (h) For consultant services in respect of construction contracts, 10% retention is to be applied until the provision and acceptance of the final 'as-built' drawings.

## **22. Public invitation for competitive bids**

(1) The procedure for the invitation of competitive bids is as follows:

- (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers circulating locally, the website of the municipality or municipal entity or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and
- (b) the information contained in a public advertisement, must include:
  - (i) the closure date, time and venue for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2) of this policy;
  - (ii) a statement that bids may only be submitted on the bid documentation provided by the municipality or municipal entity; and
  - (iii) the date, time and venue of any proposed site meetings or briefing sessions.
- (2) The Accounting Officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.
- (3) Bids submitted must be sealed and appropriately labeled.
- (4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

## **23. Procedure for handling, opening and recording of bids**

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

- (a) 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.
- (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; and
- (c) The Accounting Officer must :
  - (i) record in a register all bids received in time;
  - (ii) make the register available for public inspection; and
  - (iii) publish the entries in the register and the bid results a notice board or on the website.

## **24. Negotiations with preferred bidders**

- (1) The Accounting Officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation:
  - (a) does not allow any preferred bidder a second or unfair opportunity;
  - (b) is not to the detriment of any other bidder; and
  - (c) does not lead to a higher price than the bid as submitted.
- (2) Minutes of such negotiations must be kept for record purposes.
- (3) The multi-disciplinary team undertaking the negotiations must include a representative from SCM Policy and Support Services. The SCM practitioner must preside over the negotiations

- (4) Authority to negotiate price and any conditions of tender with preferred bidder(s) must be approved by the Bid Adjudication Committee and the outcome of the negotiations must be reported back to the Bid Adjudication Committee for final approval or support.
- (5) Authority to negotiate price and any conditions of written or verbal quotations and formal written price quotations must be approved by an official who is sub-delegated in terms of supply chain management code of delegations approved by the accounting officer. The outcome of the negotiations must be reported back to the duly delegated official for final approval.
- (6) The negotiations may include price and or final terms and conditions of tender, project plan and service level agreement.
- (7) Discount offers or alternate offers must be considered for negotiation after the Bid Adjudication Committee has granted authority to consider any alternate or discount offers. Outcome of the negotiation together with the minutes of the negotiation meeting must be reported back to the Bid Adjudication Committee for final approval or support.
- (8) Bid validity must be monitored and where applicable be extended by the Line Department at all times during the process of negotiations.
- (9) The framework or terms of reference for negotiations shall be determined by the Bid Adjudication Committee.

## **25. Two-stage bidding process**

- (1) A two-stage bidding process is allowed for:
  - (a) large complex projects;
  - (b) projects where it may be undesirable to prepare complete detailed technical specifications; or
  - (c) long term projects with a duration period exceeding three years.



- (2) In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.
- (3) In the second stage final technical proposals and priced bids should be invited.
- (4) At each of the stages, proposal/bidding documents above the quotation threshold must be approved by the Bid Specification Committee.

## **26. 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 Act; 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) Paragraph 27, 28 and 29 of this policy; and
  - (b) any other applicable legislation.
- (3) The Accounting Officer may apply the committee system to formal written price quotations.

## **27. Bid specification committee**

- (1) The bid specification committee must approve the compilation of the specifications for each public invitation for competitive bids, and where authority has been sought to invite bids, 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 labeling of conformity certification;
  - (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the words “equivalent”;
  - (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations; and
  - (g) must be in accordance with paragraph 22 of this policy.

- (3) The bid specification committee must be composed of one or more officials of the municipality or municipal entity, 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.
- (5) No item may be considered at the Bid Specification Committee unless the appropriate SCM compliance check process has been undertaken and the item has been cleared for acceptance onto the agenda.
- (6) The appropriate method of procurement of goods, services and engineering & construction works for all contracts greater than the quotation threshold shall be approved by the Bid Specification Committee.

Further, all contracts exceeding R10 million (VAT inclusive) must be accompanied by project-specific procurement and BEE strategies when presented to the Bid Specification Committee. These should be discussed and agreed between multi-disciplinary teams beforehand, and where possible limit the number of awards to a singular company.

## **28. Bid Evaluation Committee**

- (1) The bid evaluation committee must:
  - (a) approve the evaluation of bids in accordance with:
    - (i) the specifications for a specific procurement; and
    - (i) the points system set out in terms of paragraph 27(2)(f).
  - (b) ensure that an appropriate assessment of eligible bidder's ability to execute the contract has been undertaken by the department presenting the item;
  - (c) Ensure that in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears;

- (d) To ensure in respect of the recommended bidder, that their tax clearance certificate or SARS electronic tax clearance certificate, CIDB certificate and BBBEE certificates are in order.
- (e) In bids where Consortia / Joint Ventures are involved, each party must submit a separate Tax Clearance Certificate.
- (f) In instances where a Tax Clearance certificate is valid at the time of tender, but expires during the evaluation period, the preferred bidder must furnish the municipality within a period of twenty one (21) days as stipulated by the Bid Committees with a valid tax clearance certificate.
- (g) A designated Line department shall communicate in writing with the preferred bidder about the applicability of the suspensive condition by latest the following day of the Bid Adjudications Committee meeting.
- (h) The CIDB status must be valid and active at the time of consideration by Bid Evaluation Committee and before final award.
- (i) When the BBBEE certificate is valid at the time of tender and then it expires during evaluation or the level contribution changes, then it is the level at the time of tender that shall be considered.

The MBD 6.1. document requires the bidder to fill in a claim for empowerment points. The BB-BEE certificate shall be taken as the substantiation of the claim and accordingly submission of a BB-BEE certificate is mandatory. If the bidder does not complete MBD 6.1 document in full but provides a valid BB-BEE certificate, the municipality must award preference points in line with the PPPFA.

- (j) If a municipality is in possession of a bidder's original valid tax clearance and BB-BEE certificate through the municipality's central database, it is not necessary to obtain a new tax clearance certificate or BB-BEE certificate each time a price quotation or bid is submitted from that specific bidder. This provision may be applied only if at the closing date of the price quotation or bid falls within the expiry

date of the tax clearance and BB-BEE certificate that is in the municipality's possession. Whenever this ruling is applied, cross-reference must be made to the original tax clearance and BB-BEE certificate for audit purposes.

- (k) Health and Safety Plans must be submitted at the time of tender where applicable.
  - (l) 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 at least one supply chain management practitioner of the municipality or municipal entity.
  - (3) No item may be considered at the Bid Evaluation Committee unless the appropriate SCM compliance check process has been undertaken and the item has been cleared for acceptance onto the agenda unless otherwise approved by the Chairperson.

## **29. Bid Adjudication Committee**

- (1) The bid adjudication committee must:
  - (a) Consider the report and recommendations of the bid evaluation committee; and
  - (b) either:
    - (i) depending on its delegations, make a final award or a recommendation to the Accounting Officer to make the final award; or
    - (ii) make another recommendation to the Accounting Officer how to proceed with the relevant procurement.

- (2) The bid adjudication committee must consist of at least four senior managers of the municipality that must include:
- (a) The Chief Financial Officer or, another senior manager in the budget and treasury office reporting directly to the Chief Financial Officer and designated by the Chief Financial Officer; and
  - (b) At least one senior supply chain management practitioner who is an official of the municipality; and
  - (c) A technical expert in the relevant field who is an official, if such an expert exists, and may when appropriate, appoint an external specialists advisor.
- (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 paragraph 5(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) The Accounting Officer must comply with section 114 of the Act within 10 working days if the decision is to award to a bid other than that recommended.
- (8) The bid adjudication committee must at all times adhere to the requirements of MFMA circular 34 from National Treasury.
- (9) No item may be considered at the Bid Adjudication Committee unless the appropriate SCM compliance check has been undertaken and the item has been cleared for acceptance onto the agenda except where otherwise approved by the Chairperson.
- (10) The municipality shall consider the holding period of the validity of BBBEE certificate and Tax clearance certificate to be at the close of tender.
  - i. The SCM practitioners of the municipality is expected to make all means possible to notify the bidder as soon as the award is made to furnish the municipality with required documents within the suspensive period of twenty one (21) days.
  - ii. If a bidder is in arrears with utilities and has an arrangement with the municipality to offset the arrears this arrangement is acceptable and the bidder may not be disqualified. The bidder must furnish the proof of agreement. This agreement must have been in place at the time of submission and cannot be *ex post facto*.

### **30. Procurement of banking services**

- (1) Banking services:
  - (a) must be procured through competitive bids;
  - (b) must be consistent with section 7 or 85 of the Act; and

- (c) may not be for a period of more than five years at a time.
- (2) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.
- (3) The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of paragraph 22(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

### **31. Procurement of IT related goods or services**

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



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

- (1) The Accounting Officer may procure goods or services under a contract secured by another organ of state, but only if:
  - (a) the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
  - (b) there is no reason to believe that such contract was not validly procured;
  - (c) there are demonstrable discounts or benefits to do so; and
  - (d) that other organ of state and the provider have consented to such procurement in writing.
- (2) Subparagraphs (1)(c) and (d) do not apply if –
  - (a) a municipal entity procures goods or services through a contract secured by its parent municipality; or
  - (b) a municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.
- (3) Any procurement of goods and services under contracts secured by other organs of state must be approved by the Bid Adjudication Committee.

**33. Procurement of goods necessitating special safety arrangements**

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

### **34. Proudly SA Campaign**

Wherever possible, the Proudly SA Campaign should be supported to the extent that, all things being equal, preference is given to procuring local goods and services from:

- (a) firstly –suppliers and businesses within the municipality;
- (b) secondly – suppliers and businesses within the relevant province; and
- (c) thirdly – suppliers and businesses within the Republic of South Africa

In giving consideration to this paragraph, the requirements of the designated sectors for Local Production and Content as issued by the Department of Trade and Industry must be taken into account.

### **35. Appointment of consultants**

- (1) The Accounting Officer may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.
- (2) Consultancy services must be procured through competitive bids if:
  - (a) the value of the contract exceeds R200 000 (VAT included); or
  - (b) the duration period of the contract exceeds one year.
- (3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of:
  - (a) all consultancy services provided to an organ of state in the last five years; and
  - (b) any similar consultancy services provided to an organ of state in the last five years.
- (4) The Accounting Officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the municipality.

(5) Conflict of Interest

- i. A firm, which has been engaged by the accounting officer or authority to provide goods or works for a project and any of its affiliates, should be disqualified from providing consulting services for the same project. Similarly, a firm engaged to provide consulting services for the preparation or implementation of a project and any of its affiliates, should be disqualified from subsequently providing goods or works or services related to the initial assignment (other than a continuation of the firm's earlier consulting services as described below) for the same project, unless the various firms (consultants, contractors, or suppliers) are performing the contractors obligation under a turnkey or design-and-build contract.
- ii. Consultants or any of its affiliates should not be hired for any assignment which, by its nature, may be in conflict with other assignment of the consultant. As an example, consultants engaged to prepare an engineering design for an infrastructure project should not be engaged to prepare an independent environmental assessment for the same project, and consultants assisting a client in the privatisation of public assets should not purchase, nor advise purchasers of such assets.

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

(1) The Accounting Officer may:

- (a) dispense with the official procurement processes established by this policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only:
  - (i) in an emergency;
  - (ii) if such goods or services are produced or available from a single provider only;

- (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
    - (iv) acquisition of animals for zoos and/or nature and game reserves; and
    - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes;
  - (b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.
- (2) The Accounting Officer must record the reasons for any deviations in terms of subparagraphs (1)(a) and (b) of this policy and report them to the next meeting of the council and include as a note to the annual financial statements.
  - (3) The Bid Adjudication Committee is delegated authority to make final recommendations on award in terms of deviations to the Accounting Officer.
  - (4) The Chief Financial Officer, Head: SCM or appropriate senior official is delegated authority to make a final award on deviations below R200 000, but these are to be included in the reports in subparagraph (2) above, but on a quarterly basis.
  - (5) The Executive Committee shall consider if the criteria for a deviation, other than an emergency, have been met.
  - (6) In the case of emergencies greater than R200 000 (VAT included), where practicable, prior authority must be sought via the Accounting Officer to deviate from the official processes and the Chairperson of the relevant Committee shall be notified of such emergency situation. All emergency procurement must be formalised in a report to the Accounting Officer within 1 working day, and to the next possible Executive Committee meeting.
  - (7) Emergency procurement should not be used to evade the use of standard procurement procedures:

- (a) as a consequence of insufficient stock-levels for items that are used on a daily basis;
  - (b) as a result of working programmes not adequately planned for; or
  - (c) as a result of no or insufficient communication between warehouses and buying offices.
- (8) The circumstances which may give rise to an emergency which may not have been foreseeable, or where it is impractical or impossible to follow official procurement processes or may have been the result of negligent conduct a motivation for the use of this section must show one or more of the following:
- (a) the imminent threat to health, injury or death to persons;
  - (b) the imminent threat of damage to property, or suffering and death of livestock and animals;
  - (c) The unforeseeable interruption of essential services whose provision is within the municipal competency, including transportation and communication facilities or support services critical to the effective functioning of the Municipality as a whole;
  - (d) the imminent and or unforeseeable of serious damage occurring to the natural environment;
  - (e) the imminent threat and or damage of the municipal assets.
- (9) The Municipality is still required to comply with Section 217(1) of the Constitution in the event of an emergency situation with specific reference to obtaining goods and services on the best possible terms.
- (10) In an emergency situation, and where possible, at least three quotations must be obtained.
- (11) The value of and duration of contracts which have been concluded as a result of the emergency situation must be in accordance with the goods and services required in order to address and/or remedy the immediate emergency. Any other goods and services which may be required subsequent to the emergency and relating to such emergency must wherever possible follow the normal tendering process and procedures.

(12) Procuring goods and services from sole supplier occur in instances where:-

- (a) only one supplier manufactures or renders goods and services due to unique nature of the requirements;
- (b) goods and services already in the municipality's value chain/employ are only supplied by an Original Equipment Manufacturer (OEM) or by a licensed agent thereof and there is a requirement for compatibility, continuity and alignment.
- (c) the process for approved list of sole supplier(s) will be as follows:
  - (i) department requiring the use of sole supplier must issue a circular calling for the of sole supplier(s) who wish to be on the list or database of sole suppliers.
  - (ii) response to the circular must contain appropriate motivation in terms of constitutional pillars of fair, equitable, transparent, cost effective and competitive.
  - (iii) the response to the circular and compilation of the list of sole suppliers must be categorized, screened and supported by a relevant appointed team. In instances where there is no consensus among the team members such be escalated to Head: SCM for decision and support.
  - (iv) the supported list of sole suppliers be advertised for public comments and or objections.
  - (v) in instances where there are objections, such objections be referred to the Head SCM for decision and support.
  - (vi) the list of sole suppliers must be reviewed and reported annually to Head :SCM.

- (vii) The report must outline how value for money will be achieved and managed.
- (13) Unit or Department invoking the use of section 36 (1) (a) (v) must in all reports to BAC demonstrate that the use of this provision:-
  - (a) is not as a result of poor planning for it being impractical or impossible to follow the official procurement processes. Where there is a risk of poor planning proof that remedies and actions including disciplinary processes have been taken to avoid recurrence.
  - (b) has taken into account that it does not prejudice other potential tenderers and meets the requirements of section 217 of the Constitution of the Republic of South Africa.
- (14) The respective Unit Head must sign off a report to BAC invoking section 36 (1) (a) (v) that is accepting full responsibility, accountability for the report and its contents.

### **37. Unsolicited bids**

- (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- (2) The Accounting Officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if:
  - (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
  - (b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
  - (c) the person who made the bid is the sole provider of the product or service; and
  - (d) the reasons for not going through the normal bidding processes are found to be sound by the Accounting Officer.

- (3) If the Accounting Officer decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with:
  - (a) reasons as to why the bid should not be open to other competitors;
  - (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
  - (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) All written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, must be submitted to the National Treasury and the relevant provincial treasury for comment.
- (5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the Accounting Officer, depending on its delegations.
- (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (7) When considering the matter, the adjudication committee must take into account:
  - (a) any comments submitted by the public; and
  - (b) any written comments and recommendations of the National Treasury or the relevant provincial treasury.
- (8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the Accounting Officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.
- (9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality to the bid may be entered into or signed within 30 days of the submission.



### **38. Combating of abuse of supply chain management system**

The Accounting Officer must establish measures for the combating of abuse of the supply chain management system as follows:

(1) The Accounting Officer must:

- (a) take all reasonable steps to prevent abuse of the supply chain management system;
- (b) investigate any allegations against an official or other role player of fraud, corruption, favoritism, unfair or irregular practices or failure to comply with this supply chain management 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) take all reasonable steps to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector and/or blacklisted by the Municipality;
- (d) reject any bid from a bidder if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality, or to any other municipality or municipal entity, are in arrears for more than three months; or
- (e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
- (f) cancel a contract awarded to a person if:
  - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or

- (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person.
  - (iii) Cancellation or termination of contract must be subject to the provisions of Promotion of Administrative Justice Act 3 of 2000.
- (g) Reject the bid of any bidder if that bidder or any of its directors –
  - (i) has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system, and has been blacklisted in terms of this policy;
  - (ii) has been convicted for fraud or corruption during the past five years;
  - (iii) has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years;
  - (iv) has been listed in the Register for Tender Defaulters In terms section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004); and
  - (vi) has been Blacklisted by the Municipality.
- (2) The Accounting Officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) of this policy.

### **39. Logistics management**

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

(1) **General Logistics**

(a) Purchase orders:

(i) will be created for bids and quotations ;

(ii) will be captured on the appropriate financial management system exclusive of VAT; and

(iii) approvals will be systems based and shall be authorized by the SCM Unit only.

(2) Goods received will be captured on the appropriate financial management system via a “Goods Received Note” with reference to the relevant purchase order.

(3) The Treasury Department’s Assets Section (for asset creation) and Insurance Section (for claims) will be informed of the purchase via the appropriate financial management system at the end of the procurement process and in terms of other applicable policies.

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

(5) The acknowledgment of the receipt of goods and/ or services and/or works by the Municipality means that the Municipality acknowledges those goods and/ or services and/or works have been received and are in accordance with the quality and standard required.

(a) The acknowledgement by the Municipality also serves to confirm that payment for received goods and/or services and/or works can be effected.

(6) A designated official is required to monitor and expedite outstanding purchase orders.

(7) Reminder letters may be sent to contractors based on the reminder levels (days before delivery due date) that are set out in the purchase order.

(8) The Municipality’s Fleet Management policy must be adhered to at all times.

(9) The performance monitoring of a contractor will be in accordance with the service provider performance management element of this policy.

(10) A contract manager:

- (a) will be an designated official of the Municipality who will attend to the administration of the contract from inception thereof;
- (b) will derive his/her duties and powers from the conditions of contract and any other applicable law;
- (c) must be fair to the parties to the contract when required to make decisions or form an opinion in respect of the contract, whilst always acting in the best interests of the Municipality;
- (d) ensure that all the necessary formalities in the signing up of the contract and/or issuing the purchase order(s) are adhered to;
- (e) ensure that contracts related to the procurement of goods and/or services and/or works are captured on the appropriate financial management system;
- (f) ensure that all original contract documentation is lodged with the Supply Chain Management Unit for record purposes;
- (g) must where appropriate, authorise payments due in terms of the contract by processing payment certificates (if applicable), and ensuring that the necessary Service Entry Sheets or Goods Received Notes are captured on the appropriate financial management system;
- (h) manage amendments, variations and procedures in terms of the contract;
- (i) administer disputes where necessary, in terms of this policy and the applicable Conditions of Contract;
- (j) conduct a post contract review;

- (k) maintain accurate and detailed records to create a audit trail;
  - (l) must act with care and diligence;
  - (m) must observe all accounting and legal requirements;
  - (n) must ensure that payments are processed within 30 calendar days, or 14 calendar days in the case of Exempted Micro Enterprises.
- (11) Departmental Heads shall be responsible for ensuring that contract managers:
- (a) are assigned to all contracts within the Department Head's area of responsibility; and
  - (b) are adequately trained so that they can exercise the necessary level of responsibility in the performance of their duties.
- (12) All Unit Heads must submit as part of the Budget Approval process a procurement plan containing all planned procurement. This procurement plan must be approved by the Unit Head or his/her delegate prior to its submission.
- (13) A central contracts register is to be maintained for all contracts within the municipality. Items will only be permitted onto the register if contained within an approved procurement plan.
- (14) Stock is valued on the weighted average/standard costing method per plant and is VAT exclusive. Input VAT is claimed upon purchase and output VAT is accounted for at the time of issue according to the accounting policy.
- (15) Stock items must be systematically replenished using the re-order point planning strategy and open reservations must be taken into account during the replenishment run.
- (16) Goods will be issued from stock with reference to reservations. Goods can be issued for consumption against internal orders, cost centres, projects and assets under construction.
- (17) Purchase orders will be created, where applicable, with reference to replenishment requisitions in respect of term supply contracts for goods and:
- (a) replenishment requisition approvals will be systems based.
  - (b) all replenishments will be effected via the Acquisition Management System.

(18) The registered stores function shall be decentralised but will operate under the jurisdiction of the Supply Chain Management Unit.

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

#### **40. Disposal management**

(1) The system of disposal management for the disposal or alienation of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act, is as follows:

(2) The disposal or alienation of assets must:

(a) Be by one of the following methods:

- (i) transferring the asset to another organ of state in terms of a provisions for the transfer of assets;
- (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
- (iii) the alienation of the asset; or
- (iv) destroying the asset, after taking into account re-cycling;

(b) Provided that:

- (i) immovable property may be sold only through a competitive bidding process except when the public interest or the plight of the poor demands otherwise;

- (ii) 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;
  - (iii) 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
  - (iv) in the case of the disposal of firearms, the National Conventional Arms Control Committee must have approved any sale or donation of firearms to any person or institution within or outside the Republic;
- (c) Furthermore ensure that immovable property is alienated at market related values, except when the public interest or plight of the poor demands otherwise; and or
  - (i) Immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise; and
  - (ii) All fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed.
- (d) Ensure that where assets are traded in for other assets, the highest possible trade-in price is negotiated.
- (e) In the event that a specialised plant item is disposed before it reaches the end of its projected life cycle and/or before the asset is fully depreciated which will normally occur when a higher capacity or specified product is available in the market and where demonstrated that such improvement will reduce the operating costs and improve productivity to the municipality, the following procedure shall apply in such an event:
  - (i) the Original Equipment Manufacturer (OEM) or the authorised agent shall provide the Municipality with official quotation to trade in the asset;
  - (ii) the Municipality shall obtain an additional quotation from an independent industry specialist that would provide a market value of the asset;

- (iii) in the event of the offer received from the OEM or agent being lower than that of the industry specialist, the relevant Departmental and a Supply Chain official shall make representation to the OEM or the authorised agent with a view to them reviewing their offer to that of the industry specialist; and
  - (iv) a report shall be submitted to the Bid Adjudication Committee recommending the acceptance of an offer from an OEM or authorised agent to trade in an item of specialised plant on an improved model. Ensure that where assets are traded in for other assets, the highest possible trade-in price is negotiated.
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- (f) Disposal of land must be carried out in accordance with the municipality Land Affairs Policy as duly authorized and approved by Municipal Council. Approved Land Affairs Policy is attached and referenced as annexure B in this policy document.
  - (g) Letting of assets must be carried out in accordance with a duly authorized and approved municipality Policy and Procedures of Letting of Central Beachfront Premises. The latter policy and procedures is attached and referenced as annexure C of this policy document.

#### **41. Risk management**

- (1) The Accounting Officer must ensure an effective system of risk management for the identification, consideration and avoidance of potential risks in the supply chain management system.
- (2) Risk management must include:
  - (a) the identification of risks on a case-by-case basis;
  - (b) the allocation of risks to the party best suited to manage such risks;



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

#### **42. Performance management**

- (1) The Accounting Officer must ensure an effective internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes were followed and whether the desired objectives were achieved.
- (2) Performance management shall accordingly be characterised by a monitoring process and retrospective analysis to determine whether:
  - (a) value for money has been attained;
  - (b) proper processes have been followed;
  - (c) desired objectives have been achieved;
  - (d) there is an opportunity to improve the process;
  - (e) suppliers have been assessed and what that assessment is; and
  - (f) if there has been deviation from procedures and, if so, what the reasons for that deviation are.
- (3) The performance management system shall accordingly focus on, amongst others:
  - (a) achievement of goals;
  - (b) compliance to norms and standards;
  - (c) savings generated;
  - (d) cost variances per item;
  - (e) non-compliance with contractual conditions and requirements; and
  - (f) the cost efficiency of the procurement process itself.

- (4) For all contracts, a close-out report is required on completion of the contract, which includes the points raised in subparagraphs (2) and (3) above.
- (5) For all annual supply, period, or term contracts, the report to the Bid Specification Committee for the new or replacement contract, must include the points raised in subparagraphs (2) and (3) above as at a particular point in the contract it replaces.
- (6) For monitoring performance on individual contracts see also the service provider performance management section of this policy.

**43. 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 above R30 000 is given to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (2) If a municipality / municipal entity is in possession of a supplier's original valid tax clearance certificate, it is not necessary to obtain a new tax clearance certificate each time a price quotation or bid is submitted from that specific supplier. This provision may be applied only if the closing date of the price quotation or bid falls within the expiry date of the tax clearance certificate that is in the municipality's / municipal entity's possession. Cross-reference must be made to the original tax clearance certificate for audit purposes.

**44. 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 in terms of this Policy:
  - (a) who is in the service of the state; or
  - (b) if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
  - (c) a person who is an advisor or consultant contracted with the municipality or municipal entity.

The municipality further reserves its rights to immediately cancel any contract if such conflicts are discovered after the award of a contract.

**45. 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 R2000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including:
  - (a) the name of that person;
  - (b) the capacity in which that person is in the service of the state; and
  - (c) the amount of the award.

**46. Ethical standards**

- (1) A code of ethical standards is hereby established, in accordance with subparagraph (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.
- (2) An official or other role player involved in the implementation of the supply chain management policy:
  - (a) must treat all providers and potential providers equitably;
  - (b) may not use his or her position for private gain or to improperly benefit another person;

- (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
- (d) notwithstanding subparagraph (2)(c), must declare to the Accounting Officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
- (e) must declare to the Accounting Officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the municipality;
- (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
- (g) must be scrupulous in his or her use of property belonging to the municipality or municipal entity;
- (h) must assist the Accounting Officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
- (i) must report to the Accounting Officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including:
  - (i) any alleged fraud, corruption, favouritism or unfair conduct;
  - (ii) any alleged contravention of paragraph 47(1) of this policy; or
  - (iii) any alleged breach of this code of ethical standards.

- (3) Declarations in terms of subparagraphs (2)(d) and (e):
- (a) must be recorded in a register which the Accounting Officer must keep for this purpose;
  - (b) by the Accounting Officer must be made to the mayor of the municipality who must ensure that such declarations are recorded in the register.
- (4) The National Treasury's code of conduct must also be taken into account by supply chain management practitioners and other role players involved in supply chain management.
- (5) The municipality adopts the National Treasury's code of conduct for supply chain management practitioners and other role players involved in supply chain management. When adopted, such code of conduct becomes binding on all officials and other role players involved in the implementation of the supply chain management policy of the municipality or municipal entity. A copy of the National Treasury code of conduct is available on the website [www.treasury.gov.za/mfma](http://www.treasury.gov.za/mfma) located under "legislation".
- (6) A breach of the code of conduct adopted by the municipality must be dealt with in accordance with Schedule 2 of the Systems Act.

**47. Inducements, rewards, gifts and favors to municipalities or municipal entities, officials and other role players**

- (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
- (a) any inducement or reward to the municipality for or in connection with the award of a contract; or
  - (b) any reward, gift, favor 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 subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
- (3) Subparagraph (1) does not apply to gifts less than R350 in value.

#### **48. Sponsorships**

- (1) The Accounting Officer must promptly disclose to the National Treasury and the relevant provincial treasury any sponsorship promised, offered or granted, whether directly or through a representative or intermediary, by any person who is:
  - (a) a provider or prospective provider of goods or services; or
  - (b) a recipient or prospective recipient of goods disposed or to be disposed.

#### **49. Objections and complaints**

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

#### **50. Resolution of disputes, objections, complaints and queries**

- (1) The Accounting Officer must appoint an independent and impartial person, not directly involved in the supply chain management processes:
  - (a) to assist in the resolution of disputes between the 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 relevant provincial treasury if:
  - (a) the dispute, objection, complaint or query is not resolved within 60 days; or
  - (b) no response is forthcoming within 60 days.
- (5) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.
- (6) This paragraph must not be read as affecting a person's rights to approach a court at any time.
- (7) Reports on appeals are to be included in the normal SCM monthly, quarterly and annual reports.

**51. 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.
- (2) The specifications for all such contracts must also be approved by the Bid Specification Committee.



## 52. Preferential Procurement

All procurement of goods, services and works are to be in compliance with this policy.

The unit responsible for the management of this policy is the Supply Chain Management Unit.

(3) All DCM's and Unit Heads responsible for the procurement of goods, services and/or works are, however, responsible for compliance with this policy within their areas of control, and will be held accountable where transgressions to policy are encountered.

(4) The formulae for the 80/20 and 90/10 preference point system are as follows:

(a) the price in respect of bids (including quotations) with an estimated Rand value of greater than R30 000 and up to a Rand value of R1 000 000 (all applicable taxes included):

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

(b) the price in respect of bids (including price quotations) with an estimated Rand value of greater than R1 000 000 (all applicable taxes included):

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

Where :

$P_s$  = Points scored for comparative price of the bid under consideration;

$P_t$  = Comparative price the bid under consideration; and

$P_{min}$  = Comparative price of the lowest responsive bid.

(5) Cancellation and re-invitation of tenders

(1)(a) In the event that, in the application of 80/20 preference point system as stipulated in the tender documents, all tenders received exceed the estimated Rand value of R1 000 000, the tender invitation must be cancelled.

(b) If one or more of the acceptable tenders received are within the prescribed threshold of R1 000 000, all tenders received must be evaluated on the 80/20 preference point system.

(2) (a) In the event that, in the application of the 90/10 preference point system as stipulated in the tender documents, all tenders received are equal to, or below R1 000 000, the tender must be cancelled.

(b) If one or more of the acceptable tenders received are above the prescribed threshold of R1 000 000, all tenders received must be evaluated on the 90/10 preference point system.

(3) An organ of state which has cancelled a tender invitation as contemplated in sub-regulation (1)(a) and (2)(a) must re-invite tenders and must in the tender documents, stipulate the correct preference points system to be applied.

(4) An organ of state may, prior to the award of tender, cancel a tender if –

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

(b) funds are no longer available to cover the total envisaged expenditure;  
or

(c) no acceptance of tenders received.

- (5) The decision to cancel a tender in terms of sub-regulation (4) must be published in the Government Tender Bulletin or the media in which the original tender invitation was advertised.
- (6) If the tender estimate is close to the Rand value of a prescribed threshold than both 80/20 and 90/10 preference point system be stipulated in the tender document.

- (6) Bidders will score up to 20 or 10 preference points for their B-BBEE status level of contribution as per the table below:

<b>B-BBEE Status of Contributor</b>	<b>Number of points (90/10 system)</b>	<b>Number of points (80/20 system)</b>
1	10	20
2	9	18
3	8	16
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

- (7) All bidders will have to submit BEE rating certificates, issued by either verification agencies accredited by the South African Accreditation System (SANAS) or by registered auditors approved by the Independent Regulatory Board for Auditors (IRBA).
- (8) Any enterprise with an annual Total Revenue of R 5million or less qualifies as an Exempted Micro-Enterprise.

- (9) Exempted Micro-Enterprises are deemed to have B-BBEE Status of "Level Four Contributor" having a B-BBEE procurement recognition of 100%.
- (10) In an instance where the Exempted Micro Enterprise (EME) is more than 50% owned by black people, the enterprise qualifies for a promotion to a B-BBEE Status of "Level Three Contributor" having a B-BBEE procurement recognition of 110%
- (10) An auditors certificate and/or certificate issued by an Accounting Officer and/or a certificate issued by a Verification Agency must be submitted to prove that an enterprise qualifies as a Exempted Micro-enterprise for purposes of this policy.
- (11) A Trust, consortium or joint venture:
  - (a) must submit a B-BBEE status level certificate in order to qualify for points;
  - (b) will qualify for points as an unincorporated entity provided, that they submit their consolidated scorecard is prepared for separate tender; and
  - (c) where no consolidated scorecard exists, the weighted average (in accordance with participation percentages) will be used and rounded off to the nearest status level.
- (12) If a service is provided by only tertiary institutions, such services must be procured from the tertiary institutions identified by means of bidding process. Tertiary institutions must submit their B-BBEE status in terms of the B-BBEE Codes of Good Practice Specialized Scorecard.
- (13) Gazetted Sector Codes supersede Generic Codes and they are legally binding and enforceable. The current list is as follows:
  - (1) Gazetted in terms of section 9 (1):
    - (a) Tourism;
    - (b) Construction;
    - (c) Forest;
    - (d) Integrated Transport;
    - (e) Chartered Accountancy

- (2) Gazetted in terms of Section 9 (5):
  - (a) Property
  - (b) Financial Services Charter
  - (c) ICT
- (3) The following is submitted for consideration for gazette in terms of section 9 (5):
  - (a) AgriBEE Charter
- (4) The following is Gazetted in terms of Section 12:
  - (a) MAC
    - And Where:*
      - i) a gazette under Section 12 means that the Charter is merely a statement of intent by stakeholders;
      - ii) a gazette under Section 9 (5) means the Charter is gazetted for 60 days to give members of the public an opportunity to make comments and inputs;
      - iii) a gazette under Section 9 (1) means the Charter is legally binding and enforceable within the sector, and it supersedes the Generic Codes.
- (5) Sub-Contracting:
  - a) B-BBEE points must not be awarded to a tenderer who intends sub-contracting more than 25% of the value of the contract to an enterprise that does not qualify for at least the points that such contractor qualifies for, unless the intended sub-contractor is an EME who has the ability and capability to execute the contract.
  - b) A person awarded a contract may not sub-contract more than 25% of the value of the contract to an enterprise that does not have an equal or higher B-BBEE status level, unless the intended sub-contractor is an EME who has the ability and capability to execute the contract.

- c) 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 prescribed minimum threshold.
- (6) In addition, the revised Regulations address the objectives of Industrial Policy Action Plan, especially those aimed at promoting the procurement of domestically produced goods and services.
- (7) The Regulations empower the Department of Trade and Industry to designate specific industries of critical and / or strategic importance where such tenders should prescribe that only locally manufactured products will be considered or that only locally manufactured products with a prescribed minimum threshold for local content will be considered. The current list regarding designated sectors is as follows:
  - (a) Textile, clothing, leather and footwear;
  - (b) Buses (bus body);
  - (c) Steel power pylons;
  - (d) Canned / processed vegetables;
  - (e) Rail rolling stock;
  - (f) Set top boxes;
  - (g) Furniture; and
  - (h) Electrical and telecom cable products.
- (8) The Bid Specification Committee shall set appropriate Local Economic Development targets in the form of Contract Participation Goals, set as performance criteria within contracts, where appropriate, for the following target groups:
  - (a) Priority population groups
  - (b) Women
  - (c) Youth
  - (d) Disabled
  - (e) Co-operatives
  - (f) Military Veterans

- (9) The preference points system is still to be used on the sale or letting of assets and in accordance with the disposals management section of this policy.

### **53. Performance Monitoring of Service Providers**

A municipal service can be provided by the Municipality by entering into a Service Delivery Agreement in terms of Section 76(b) of the Municipal Systems Act 32 of 2000 with an external service provider. The Municipality is responsible for monitoring and assessing the implementation of the agreement, including the performance of the service provider in accordance with section 41 of the Municipal Systems Act 32 of 2000.

The performance of service providers that have been selected to provide assistance in the provision of a municipal service, otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies, is required, by Section 116 of the Municipal Finance Management Act, to be monitored and reported on.

While departments have mechanisms in place to monitor the work done by service providers, the following is the minimum standard set.

- (1) All service providers or prospective service providers must be made aware of:
  - (a) the requirement for the assessment and reporting of a service provider's performance;
  - (b) the use of the service provider performance reports when evaluating service providers for registration, pre-qualification, selective tender list, expressions of interest or awarding of a contract; and
  - (c) the exchange of information on service provider performance reports between government units and/or departments.
- (2) The appointed service provider must be given the opportunity to discuss the performance criteria with the Implementing Department before commencement of the contract.

- (3) Any changes to the performance criteria must be agreed to by the Municipality and the service provider.
- (4) The decision to change a performance criteria after commencement of a contract is the responsibility of the Reporting Officer.
- (5) These amendments must be signed by the service provider and the client and implementing department and attached to the contract or service delivery agreement.
- (6) A service provider's performance must be assessed in the context of the project as a whole. The respective roles and obligations of the Municipality and service provider under the contract must be taken into account.
- (7) The delegated official preparing or reviewing the performance of a service provider must consider whether satisfactory progress or completion of a project has been affected by any matters which are:
  - (a) outside the service provider's control, or
  - (b) the result of some action by the Municipality; and
  - (c) measure the service providers performance after taking into account subparagraphs (a) and (b).
- (8) If there is evidence that the underperformance or non-performance of the service provider is due to factors caused by the Municipality then:
  - (a) there will be no penalization of the service provider
  - (b) the Accounting Officer, or delegated official, must take corrective action where necessary.
- (9) The performance assessment reports will be made available to inter-departmental, inter-governmental departments and the CIDB (where applicable) only:
  - (a) on completion of a contract; and
  - (b) if there are no pending disputes.
- (10) The Service Provider must be notified of the assessment.



- (11) The Service Provider may respond on the assessment, in writing, and this must be filed with the assessment.
- (12) The conditions of appointment set in the contract will determine what action will be taken against the service provider if underperformance or non-performance is detected.
- (13) Appropriate key performance indicators for the contract must be set by the Municipality as a yardstick for measuring performance.
- (14) Measurable targets must be set for each key performance indicator.
- (15) The SMART principle as laid out in the Municipality's Organisational Performance Framework must be followed in developing key performance indicators. (Specific, Measurable, Achievable, Realistic, Time-framed)
- (16) The management of the contract and the performance of the service provider must be reported quarterly to the Council of the Municipality in the format set by the SCM Unit.
- (17) The performance information will be audited:
  - (a) as part of the Municipality's internal auditing process; and/or
  - (b) annually by the Auditor-General.
- (18) The Municipality will endeavor to facilitate support interventions to service providers in the identified areas of underperformance.
- (19) Service providers who have been identified as under-performing in identified areas must be informed of these support interventions.
- (20) The support interventions may be:
  - (a) sponsored by the Municipality,
  - (b) subsidized by the Municipality; or
  - (c) paid for by the attending service provider.
- (21) Records of support interventions and attendance registers must be signed by all parties and filed.

- (22) The impact of the support interventions provided by the Municipality to the service provider must be monitored.
- (23) The table below outlines the roles and responsibilities of municipal officials in the management of service provider performance.

ROLE	RESPONSIBILITY
Reporting Officer	<ul style="list-style-type: none"> <li>Line Departments</li> <li>Monitor and assess work done or service provided as per the service delivery agreement or contract</li> <li>Report on the performance of the service provider</li> </ul>
Reviewing Officer	<ul style="list-style-type: none"> <li>Review the assessment made by the reporting officer</li> </ul>
Supply Chain Management	<ul style="list-style-type: none"> <li>Manage the performance monitoring process</li> <li>Report on contract management and service provider performance to council quarterly</li> <li>Report to Council annually on the performance of service providers</li> <li>Investigate and report on the impact of the interventions on areas of underperformance as part of the quarterly and annually report.</li> <li>Review the policy and process annually.</li> <li>Liaise with Business Support Unit on interventions for underperforming areas.</li> </ul>
Accounting Officer: Delegated to Performance Management Unit	<ul style="list-style-type: none"> <li>Ensure that KPI's are included in the appropriate Individual Performance Plan of the Municipal Official</li> <li>Review the policy and process annually.</li> <li>Facilitate the quarterly and annual report to internal audit</li> </ul>
Internal Audit	<ul style="list-style-type: none"> <li>Audit the performance information</li> </ul>
Business Support Unit	<ul style="list-style-type: none"> <li>Facilitate support interventions to address the underperforming areas</li> </ul>

- (24) The requirements of this policy must be included in the contract of the service provider.
- (25) The performance of the contractor under the contract or must be assessed monthly by the Reporting Officer.
- (26) The assessment must be filed in the contract file or captured onto the database.

- (27) The Reporting Officer must complete the Service Provider Assessment Form on the database at the end of each quarter and on completion or termination of the contract in the prescribed format.
- (28) The Reviewing Officer must review the assessment on the database for each quarter.
- (29) The quarterly assessment must be completed within 15 working days after the end of each quarter.
- (30) The Reporting Officer must provide a copy of the assessment to the Service Provider at the end of each quarterly assessment period.
- (31) Supply Chain Management Unit will review the quarterly Service Provider Assessments within 20 days after the end of each quarter. This process will include verification and may require a site visit.

**54. Green procurement**

- (1) Ecoprocurement, or green procurement, is procurement that takes into account environmental criteria when goods and services are purchased, so that the related environmental impact is minimised.
- (2) Ecoprocurement aims to:
  - (a) encourage a decrease in energy and resource use;
  - (b) promote environmental best practice in terms of waste minimisation and management, water and energy efficiency and conservation, pollution reduction and socio-economic development; and
  - (c) encourage suppliers to change their behaviour and to provide for environmental issues in the design, manufacture and disposal of their products.

The development of ecoprocurement as part of the eThekweni Municipality SCM policy is supported.

- (3) In order to further develop an ecoprocurement policy, a steering committee will be constituted that will work with the relevant stakeholders to identify and prioritise products/services for which specific environmental selection criteria will be developed.
- (4) The environmental criteria for the different products/services will become integrated into Supply Chain Management processes as they become adopted.
- (5) Training and communication will be undertaken with the relevant stakeholders to ensure their understanding of the specifications and how these translate into the adjudication of tender submissions.
- (6) The questionnaire overleaf is an example of environmental criteria that may be considered for materials management suppliers. It is adapted from the KwaZulu Natal Department of Economic Development and Tourism's "Draft White Paper On Greening The Procurement Of Goods And Services In The Provincial Government Of KwaZulu Natal"

**Sample Green Procurement questionnaire:**

Manufacturing Phase		Allowed for in Specification
1. Can recycled materials been used in the product? If the proportion of content made up by recycled materials is known, capture this information.	Y/N (% content of product)	Y/N
2. Can the manufacturer take steps to avoid and minimise the generation of waste in the production of the goods?	List actions taken	Y/N
3. Can the manufacturer taken steps to minimise the use of energy in the production of the goods?	List actions taken	Y/N
4. Can the manufacturer taken steps to minimise the emissions of air pollutants in the production of the goods?	List actions taken	Y/N
5. Does the manufacturer use any hazardous substances in the product?	Y/N If Y, list hazardous substances used	Y/N
Use Phase		
6. Can the product be reused (e.g. able to accept refills of ink)?	Y/N Detail how it could be reused.	Y/N
7. Does the product have an Energy Star rating? Is the product energy efficient?	Y/N Supplier to compare energy efficiency with other similar products.	Y/N
8. Does the product come with a supplier guarantee of quality?	Y/N	Y/N
9. Does the product come with a maintenance plan?	Y/N	
Disposal Phase		
10. Can the product be recycled?	Y/N	Y/N
11. Has the supplier provided information on how he plans to dispose of the product?	Y/N	Y/N
12. Has he considered environmentally friendly options?	List disposal options	
13. Where hazardous substances are used, has the supplier detailed how he plans to dispose of the product?	Y/N List disposal options	Y/N

## **55. Amendments to contracts – MFMA Section 116(3)**

This section is applicable to all contracts and Circular 62 and Section 116(3) of the Act must be complied with in respect of amendments to contracts.

Section 116(3) of the Act states:

“A contract or agreement procured through the supply chain management policy of the municipality or municipal entity may be amended by the parties, but only after-

- (a) The reasons for the proposed amendment have been tabled in the council of the municipality or, in the case of a municipal entity, in the council of its parent municipality; and
- (b) The local community-
  - (i) has been given reasonable notice of the intention to amend the contract or agreement; and
  - (ii) has been invited to submit representations to the municipality or municipal entity”

### **The Policy and Process for Major Amendments to Contracts:**

- (2) Step 1 of the process is the submission of a Report to the Bid Specification Committee recommending approval of Major Amendments to a Contract
  - (a) The contents of the report must contain:
    - (i) proof that the contract or agreement procured was through the supply chain management policy;
    - (ii) proof that there a written contract in place;
    - (iii) proof that the contract been monitored on a monthly basis in terms of Section 116(2)(b) of the Act;
    - (iv) proof that the contract been reported on in terms of Section 116(2)(d) of the Act;
    - (v) proof and motivation that the reasons for the proposed amendments are valid;

- (vi) proof that draft report for EXCO has appropriate content;
  - (vii) draft advert for the proposed amendments in terms of Section 116(3)(b)(i)&(ii) of the MFMA.
- (3) There must be a consideration of Section 33 of the MFMA for contracts exceeding three years.
- (3) Step 2 of the process is the submission of a Report to Council via the Finance and Procurement Committee on the Major Amendments to contracts recommending approval to advertise the proposed amendments.
  - (a) The contents of the report must contain:
    - (i) proof that Step 1 for Major Amendments has been followed, together with associated documentation;
    - (ii) reasons for the proposed amendments; and
    - (iii) the report is to be signed off by Treasury and SCM delegates.
- (4) Step 3 of the process is the submission of a Report to Bid Adjudication Committee recommending approval of Major Amendments to a Contract
  - (a) The contents of the report must contain:
    - (i) proof that Steps 1 and 2 for Major Amendments have been followed, together with associated documentation; and
    - (ii) results of advertising in terms of Section 116(3)(b)(i)&(ii) of the MFMA, and the results thereof showing representations received and the materiality and impact of these representations.
  - (b) Consideration must be made of Section 33 of the MFMA for contracts exceeding three years.

- (c) Where the contract authority exceeds R10 million, or is a long-term contract, then final authority rests with the Accounting Officer.
- (5) Step 4 of the process is the submission of a Report to Council on the Major Amendments to contracts approved by the Bid Adjudication Committee.
  - (a) The Report is to be included as a separate annexure in the standard monthly reports on tender awards made, which are produced by the Head SCM.
  - (b) The Unit Heads overseeing the projects have the responsibility of ensuring that all applicable information is made available to SCM to adequately prepare these reports.

#### **The Policy and Process for Minor Amendments to Contracts**

- (1) Step 1 is the submission of a Report to the Bid Adjudication Committee recommending approval of Minor Amendments to a Contract
  - (a) The contents of the Report must contain:
    - (i) proof that the contract was procured through the supply chain management policy;
    - (ii) proof that there is a written contract in place;
    - (iii) proof that the contract been monitored on a monthly basis in terms of Section 116(2)(b) of the Act;
    - (iv) proof that the contract been reported on in terms of Section 116(2)(d) of the Act;
    - (v) proof and motivation that the reasons for the proposed amendments are valid and do not exceed the thresholds for minor amendments.
  - (b) Consideration must be made of Section 33 of the MFMA for contracts exceeding three years.



- (c) Minor amendments can only be considered if the total amended value does not exceed 20% of its original contract authority 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.
  - (d) Where the contract authority exceeds R10 million, or is a long-term contract, then final authority rests with the Accounting Officer.
- (2) Step 2 of the process is the submission of a Report to Council on the Minor Amendments to contracts, including reasons for the amendments.
- (a) The report to be included as a separate annexure in the standard monthly reports on tender awards made, which are produced by the Head: SCM.
  - (b) The Unit Heads overseeing the projects have the responsibility of ensuring that all applicable information is made available to SCM to adequately prepare these reports.

## **56. Blacklisting**

### Application of Policy to Blacklisted Persons

- (1) Any blacklisting imposed on any person by the Blacklisting Committee will, at the discretion of the Municipality, also be applicable to any partner, manager, director or any other person who wholly or partly exercised, exercises or may exercise control over the business entity.
- (2) If blacklisted persons attempt to re-organise themselves into new business entities, such new business entities will be precluded from tendering for work put out to tender by eThekweni Municipality.
- (3) The onus is on the blacklisted person to advise their business associates that they have been blacklisted.

- (4) The Blacklisting Committee, may at its discretion, blacklist such entity that may have a business relationship with the blacklisted person, depending on the level of complicity involved.

(5) Grounds for Blacklisting

The following are grounds for blacklisting, including but not limited to:-

- (a) committing an irregular practice/s as defined;
- (b) failing to achieve a specified goal as stipulated in the tender document in terms of Regulation 15(1) of the Preferential Procurement Regulations;
- (c) committing any offence as set out in Section 12 and 13 of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004;
- (d) persistent non-performance as defined, and as monitored in terms of the Performance Management Policy of the Municipality; and
- (e) a conviction in respect of criminal related activity, by a competent Court of Law, for which the sentence is a term of imprisonment of not less than 6 months.

(6) Procedures

- (a) a Department within eThekweni Municipality or a Municipal Entity of eThekweni Municipality must be regarded as the Applicant.
- (b) all external complaints must be lodged with the eThekweni Municipality Office of the Ombudsperson.

(7) The Application

- (a) the Applicant must apply on the prescribed forms which can be collected from the duly authorised department;
- (b) the application form must make provision for the reasons for the application, which if not stated must render the application null and void and such application must not be considered; and
- (c) the Applicant's application must be signed by the Head of that Department.

(8) Application Processes

- (1) in the case of Applications for Blacklisting pertaining to construction or works, and where non-performance (excluding failure to achieve specified goals) is claimed, the application is to be accompanied by proof that the contractor has been advised in writing of his non-performance and been given an opportunity to remedy his non-

- performance. A certificate issued by a registered Engineer or an internal report from a suitably qualified official confirming the non-performance must also be lodged;
- (2) a final demand must be issued by the Accounting Office or duly authorised official requesting the contractor to perform not later than 14 days from the Notice;
  - (3) in the case of applications in respect of contracts, other than contracts mentioned in (4)(a), and applications alleging failure to achieve specified goals, a copy of all Notices served on the Contractor to perform must be attached to the Application; and
  - (4) the completed application form must be lodged with the authorised department.
- (9) Notification
- (a) the authorised department must send out a notice to the person against whom the application is made.
  - (b) the notice must be sent by registered post or delivered by hand to the person concerned.
  - (c) the notice must set out the following:
    - (i) that an application for blacklisting of the respondent has been received by the Blacklisting Committee;
    - (ii) the basis of the blacklisting application, including any supporting documentation available at the time of writing;
    - (iii) that the respondent has a right to make written representations opposing the application for blacklisting against them furnishing reasons as to why he/she should not be blacklisted;
    - (iv) the time period within which the respondent is to respond in terms of subsection (c), must be at least 14 calendar days from the date of delivery of the notice; and
    - (v) the place for the delivery of the response.

(10) Response

(a) The Respondent must be expected in his response to indicate:

- (i) whether or not he admits or denies the allegations; and
- (ii) the reasons for denial, if applicable, and the reasons why he should not be blacklisted.

(b) The Respondent may attach supporting documentation to his or her response.

(11) Decision

(a) The Blacklisting Committee must make its determination based on the application and response received.

(12) Factors

(a) If the Blacklisting Committee is satisfied that there are grounds to blacklist a person, the blacklisting committee must decide on the blacklisting period based on the merits of each matter.

(b) The blacklisting committee may take into account the following:

- (i) the seriousness of the offence;
- (ii) previous similar conduct in bidding processes with eThekweni Municipality; other municipalities, other government departments or organs of state;
- (iii) the hardship and/or inconvenience that has been occasioned by the persons conduct; and

(iv) other remedies which the Municipality may invoke.

(13) Notification of Decision

(a) The authorized department must advise the parties of its decision in writing within 5 days of the decision being made, by enclosing together with such notice, a copy of the Decision and reasons.

(b) The notification must contain the following information:

- (i) the decision of the Blacklisting Committee;
- (ii) the effective date of the blacklisting and the date of expiration of the blacklisting;

(iii) the reasons for the decision; and

(iv) that the respondent has a right to request a review of the decision taken by the blacklisting authority to the appropriate Municipal committee.

#### (14) Register of Blacklisted Persons

(a) The Supply Chain Management Unit must keep a register of all blacklisted persons.

(b) The Register of Blacklisted Persons must be made available on the Municipality's website and updated on a monthly basis.

(c) The National Treasury must be sent updated copies of the Blacklisting Register of the municipality on a monthly basis.

#### (15) Uplifting of sanction

- (a) The Blacklisting Committee, may amend or uplift any blacklisting which is imposed on a person if it is shown that there has been a material change in the circumstances giving rise to the decision to blacklist or where the decision was based on a material error.
- (b) An application for the uplifting of the blacklisting must be made by the blacklisted person.
- (c) An application for uplifting may only be made after the blacklisted person has been blacklisted for at least two years from the effective date of the decision unless it can be shown that a material error occurred in the decision making process of the Blacklisting Committee.
- (d) If an application to uplift a blacklisting is refused, the applicant is precluded from bringing a further application for a period of two [years from the date of the refusal](#).

#### 16. Onus

The onus is on the blacklisted person to ensure they are removed from the eThekwini's Municipality Website once the blacklisting period has expired or where the sanction is uplifted.

#### 17. Evaluation and review

The Supply Chain Management Unit must together with the Accounting Officer undertake to evaluate and review this policy as least once a year, and recommend amendments to be made as they are deemed to be necessary. All amendments to this policy must be approved by the Council prior to the amendments being made.

## **57. Municipality contracting with another organ of state – MFMA Section 110**

(1) In terms of Section 110 (2) of the MFMA, Supply Chain Management Policies do not apply when services are provided by an Organ of State. A Municipal Entity will therefore qualify as an Organ of State and contracts with the ICC and Ushaka Marine World and any other entity so formed will therefore not require compliance with SCM processes.

(2) In so far as the Botanical Gardens Visitor's Complex is concerned, the Durban Botanical Garden Trust Constitution states that the objects of the Trust shall be to promote the achievements and growth of the Durban Botanical Gardens which provides botanical and horticultural material, research and expertise for protection of the National environment and for the conservation of the flora and fauna of KwaZulu-Natal in particular and of the biosphere at large.

It is clear from the above that all funding raised by the Botanical Gardens Trust will be invested in the Botanical Gardens which belongs to the eThekweni Municipality. In view of the above, it would therefore be deemed to fall within the same category as "the other Municipal Entities" and therefore SCM processes will not apply.

(3) In so far as the Moses Mabhida Stadium is concerned the rate for the hire of the venue is negotiated with the Management Company that operates the Stadium on behalf of the Municipality and as such is not subject to Sec 110 (2) of the MFMA.

(4) To ensure consistency in application and the appropriate controls are in place, however, it is required that all such approvals be made via the Bid Adjudication Committee, or authorised delegate. The Bid Adjudication Committee, or the authorised delegate, are to deal with approvals in order to ensure consistency in application of this paragraph and to ensure that the appropriate controls are in place.

(5) In addition to the ICC, Ushaka Marine World, Botanical Gardens Visitors Complex, the list of Public Institutions, listed in PFMA Schedule 1, 2, 3A, 3B, 3C and 3D, as at 30 September 2011 will be applicable to this policy, as detailed in Annexure A.

## **58. Special Deviations from SCM Policy**

Certain procurements are to be treated as special deviations from the SCM process. This covers areas previously treated as 'Finance Payments' and the approved list is included as per the table below.

It is still necessary, however, to ensure effective controls. Therefore, prior approval must be sought from the CFO, Head: SCM or designated official. Without evidence of such prior approval payments will not be authorized and be treated as irregular expenditure.

Quarterly reports are to be produced for the Accounting Officer on expenditure incurred, and/or to be incurred through a central register to be maintained by the SCM Unit.



No.	Special Deviations	Remarks	Authority
1	<b>Seminars and Conferences</b>	Staff members attending function relating to their field of expertise and continued professional development.	International to be approved by City Manager. Others by delegated official.
2	<b>IT Software Licences</b>	Licences for approved Software	Requires prior authority from both Head: SCM and CIO.
3	<b>Subscriptions - Newspapers, magazines etc</b>	Newspaper and magazine requirements for libraries and departments.	By delegated official.
4	<b>Advertising and Marketing</b>	<b>All Advertising and Marketing is done via the Communications Unit</b>	<b>DCM Governance &amp; International Relations or Head Communications or Delegated Official.</b> <b>***A report must be approved by EXCO</b>
5	<b>Special Events</b>	<b>Co-Ordinating normal and special events is done via the Communications Unit</b>	<b>City Manager, DCM Governance &amp; International Relations or Head Communications or Delegated Official.</b> <b>***A report must be approved by EXCO</b>
6	<b>Sponsorship and Partnering</b>	<b>Co-Ordinating all forms of Sponsorship and Partnering is done via the Communications Unit. This is in addition to Section 48 of this policy.</b>	<b>City Manager, DCM Governance &amp; International Relations or Head Communications or Delegated Official.</b> <b>***A report must be approved by EXCO</b>
7	<b>Hire of Venue</b>	<b>Staff members making use of specific venues relating to their field of Operations that involves the Communications Unit.</b>	<b>City Manager, DCM Governance &amp; International Relations or Head Communications or Delegated Official.</b> <b>***A report must be approved by EXCO</b>
<p><b>NB:</b>  Prior approval must be sought from the CFO, Head: SCM or designated official, <b>including Head Communications, were applicable</b>. Without evidence of such prior approval payments will not be authorized and be treated as irregular expenditure.</p> <p>Quarterly reports are to be produced for the Accounting Officer on expenditure incurred, and/or to be incurred through a central register to be maintained by the SCM Unit</p>			

## **59. Tender Validity**

- (1) The bid offer(s) received at the close of tender are to be accepted within the period of tender validity as stipulated in the bid document.
- (2) In an event, where, the evaluation of bids received are not concluded within the validity period, the municipality must arrange to extend period of validity to all bidders before expiry date.
- (3) Prior approval for the extension of bid validity period must be sought from Head: SCM or designated official.
- (4) In an event, where, validity period of the bids received have expired with no extension of the period of tender validity being arranged with all bidders before the expiry of the validity period, then the tender is null and void and of no force and effect.

## **Annexure A - list of Public Institutions**

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*PFMA Schedule 1, 2, 3A, 3B, 3C and 3D, as at 30 September 2011*

### **SCHEDULE 1**

#### **CONSTITUTIONAL INSTITUTIONS**

1. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
2. The Commission on Gender Equality
3. The Financial and Fiscal Commission
4. The Independent Communications Authority of South Africa
5. The Independent Electoral Commission
6. The Municipal Demarcation Board
7. The Pan South African Language Board
8. The Public Protector of South Africa
9. The South African Human Rights Commission

### **SCHEDULE 2**

#### **MAJOR PUBLIC ENTITIES**

1. Air Traffic and Navigation Services Company Limited
2. Airports Company of South Africa Limited
3. Alexkor Limited
4. Armaments Corporation of South Africa Limited
5. Broadband Infrastructure Company (Pty) Ltd
6. CEF (Pty) Ltd
7. DENEL (Pty) Ltd
8. Development Bank of Southern Africa
9. ESKOM
10. Independent Development Trust
11. Industrial Development Corporation of South Africa Limited
12. Land and Agricultural Development Bank of South Africa

13. South African Airways (Pty) Limited
14. South African Broadcasting Corporation Limited
15. South African Express (Pty) Limited
16. South African Forestry Company Limited
17. South African Nuclear Energy Corporation Limited
18. South African Post Office Limited
19. Telkom SA Limited
20. Trans-Caledon Tunnel Authority
21. Transnet Limited

All subsidiaries of the above major public entities

### **SCHEDULE 3**

#### **OTHER PUBLIC ENTITIES**

##### **Part A: National Public Entities**

1. Accounting Standards Board
2. Africa Institute of South Africa
3. African Renaissance and International Cooperation Fund
4. Agricultural Research Council
5. Agricultural Sector Education and Training Authority
6. Artscape
7. Banking Sector Education and Training Authority
8. Boxing South Africa
9. Brand SA
10. Breede River Catchment Management Agency
11. Castle Control Board
12. Chemical Industries Education and Training Authority
13. Commission for Conciliation Mediation & Arbitration
14. Community Schemes Ombud Service
15. Companies and Intellectual Property Commission
16. Companies Tribunal
17. Compensation Fund, including Reserve Fund

18. Competition Commission
19. Competition Tribunal
20. Construction Education and Training Authority
21. Construction Industry Development Board
22. Council for Geoscience
23. Council for Medical Schemes
24. Council for the Built Environment
25. Council on Higher Education
26. Cross-Border Road Transport Agency
27. Culture, Arts, Tourism, Hospitality and Sports Education and Training Authority
28. Die Afrikaanse Taal Museum
29. Ditsong: Museums of South Africa
30. EDI Holdings (Pty) Ltd
31. Education Labour Relations Council
32. Education, Training and Development Practices SETA
33. Energy and Water Sector Education and Training Authority
34. Estate Agency Affairs Board
35. Fibre Processing Manufacturing Sector Education and Training Authority
36. Film and Publication Board
37. Financial and Accounting Services SETA
38. Financial Intelligence Centre
39. Financial Services Board
40. Food and Beverages Manufacturing Industry
41. Freedom Park Trust
42. Health and Welfare Sector Education and Training Authority
43. Housing Development Agency
44. Human Sciences Research Council
45. Independent Regulatory Board for Auditors
46. Ingonyama Trust Board
47. Inkomati Catchment Management Agency
48. Insurance Sector Education and Training Authority
49. International Trade Administration Commission

50. iSimangaliso Wetland Park
51. Iziko Museums of Cape Town
52. KwaZulu-Natal Museum
53. Legal Aid South Africa
54. Local Government Education and Training Authority
55. Luthuli Museum
56. Manufacturing, Engineering and Related Services Education and Training Authority
57. Marine Living Resources Fund
58. Market Theatre Foundation
59. Media Development Diversity Agency
60. Media, Information and Communication Technologies Sector Education and Training Authority
61. Medical Research Council of South Africa
62. Mine Health and Safety Council
63. Mining Qualifications Authority
64. Municipal Infrastructure Investment Unit
65. National Agricultural Marketing Council
66. National Arts Council of South Africa
67. National Consumer Commission
68. National Consumer Tribunal
69. National Credit Regulator
70. National Development Agency
71. National Economic Development and Labour Council
72. National Electronic Media Institute of South Africa
73. National Empowerment Fund
74. National Energy Regulator of South Africa
75. National Film and Video Foundation of South Africa
76. National Gambling Board of South Africa
77. National Health Laboratory Service
78. National Heritage Council of South Africa
79. National Home Builders Registration Council

80. National Housing Finance Corporation Limited
81. National Library of South Africa
82. National Lotteries Board
83. National Metrology Institute of South Africa
84. National Museum, Bloemfontein
85. National Nuclear Regulator
86. National Regulator for Compulsory Specifications
87. National Research Foundation
88. National Student Financial Aid Scheme
89. National Urban Reconstruction and Housing Agency
90. National Youth Development Agency
91. Nelson Mandela National Museum
92. Office of the Ombud for Financial Service Providers
93. Office of the Pension Funds Adjudicator
94. Performing Arts Council of the Free State
95. Perishable Products Export Control Board
96. Ports Regulator of South Africa
97. Private Security Industry Regulatory Authority
98. Productivity SA
99. Public Service Sector Education and Training Authority
100. Quality Council for Trades and Occupations
101. Railway Safety Regulator
102. Road Accident Fund
103. Road Traffic Infringement Agency
104. Road Traffic Management Corporation
105. Robben Island Museum
106. Rural Housing Loan Fund
107. Safety and Security Education and Training Authority
108. Servcon Housing Solutions (Pty) Ltd
109. Services Sector Education and Training Authority
110. Small Enterprise Development Agency
111. Social Housing Foundation

112. South African Civil Aviation Authority
113. South African Council for Educators
114. South African Diamond and Precious Metals Regulator
115. South African Heritage Resources Agency
116. South African Library for the Blind
117. South African Local Government Association
118. South African Maritime Safety Authority
119. South African National Accreditation System
120. South African National Biodiversity Institute
121. South African National Energy Development Institute
122. South African National Parks
123. South African National Space Agency
124. South African Qualifications Authority
125. South African Revenue Service
126. South African Social Security Agency
127. South African Tourism
128. South African Weather Service
129. Special Investigation Unit
130. State Information Technology Agency
131. Technology Innovation Agency
132. The Co-operatives Banks Development Agency
133. The National English Literary Museum
134. The National Radioactive Waste Disposal Institute
135. The National Skills Fund
136. The Playhouse Company
137. The Social Housing Regulatory Authority
138. The South African Institute for Drug-free Sport
139. The South African National Roads Agency Limited
140. The South African State Theatre
141. Thubelisha Homes
142. Transport Education and Training Authority



- 143. uMalusi Council for Quality Assurance in General and Further Education and Training
  - 144. uMsunduzi Museum
  - 145. Unemployment Insurance Fund
  - 146. Universal Service and Access Agency of South Africa
  - 147. Universal Service and Access Fund
  - 148. Urban Transport Fund
  - 149. War Museum of the Boer Republics
  - 150. Water Research Commission
  - 151. Wholesale and Retail Sector Education and Training Authority
  - 152. William Humphreys Art Gallery
  - 153. Windybrow Theatre
- All subsidiaries of the above national public entities

#### **Part B: National Government Business Enterprises**

- 1. Amatola Water Board
- 2. Bloem Water
- 3. Botshelo Water
- 4. Bushbuckridge Water Board
- 5. Council for Mineral Technology
- 6. Council for Scientific and Industrial Research
- 7. Export Credit Insurance Corporation of South Africa Limited
- 8. Inala Farms (Pty) Ltd
- 9. Khula Enterprises Finance Limited
- 10. Lepelle Northern Water
- 11. Magalies Water
- 12. Mhlathuze Water
- 13. Namaqua Water Board
- 14. Ncera Farms (Pty) Ltd
- 15. Onderstepoort Biological Products Limited
- 16. Overberg Water
- 17. Passenger Rail Agency of South Africa

18. Pelladrift Water Board
  19. Public Investment Corporation Limited
  20. Rand Water
  21. SA Bureau of Standards
  22. Sasria Limited
  23. Sedibeng Water
  24. Sentech Limited
  25. State Diamond Trader
  26. Umgeni Water
- All subsidiaries of the above national government business enterprises

## **Part C: Provincial Public Entities**

### **EASTERN CAPE**

1. Eastern Cape Appropriate Technology Unit
2. Eastern Cape Arts Council
3. Eastern Cape Gambling and Betting Board
4. Eastern Cape Liquor Board
5. Eastern Cape Parks and Tourism Agency
6. Eastern Cape Rural Development Agency
7. Eastern Cape Socio-Economic Consultative Council
8. Eastern Cape Youth Commission

### **FREE STATE**

1. Free State Gambling and Liquor Authority
2. Free State Investment Promotion Agency
3. Free State Tourism Authority
4. Phakisa Major Sport and Development Corporation

### **GAUTENG**

1. Blue IQ Investment Holdings (Pty) Ltd
2. Gauteng Economic Development Agency

3. Gauteng Enterprise Propeller
4. Gauteng Gambling Board
5. Gauteng Partnership Fund
6. Gauteng Tourism Authority
7. Gautrain Management Agency
8. XHASA ATC Agency

## **KWA-ZULU NATAL**

1. Agri-Business Development Agency
2. Amafa AkwaZulu Natali
3. Dube TradePort Corporation
4. Ezemvelo KwaZulu-Natal Wildlife
5. KwaZulu-Natal Gambling Board
6. KwaZulu-Natal Gaming and Betting Board
7. KwaZulu-Natal House of Traditional Leaders
8. KwaZulu-Natal Liquor Authority
9. KwaZulu-Natal Provincial Planning and Development Commission
10. KwaZulu-Natal Tourism Authority
11. Natal Sharks Board
12. Royal Household Trust
13. Trade and Investment KwaZulu-Natal
14. uMsekeli Municipal Support Services

## **LIMPOPO**

1. Limpopo Appeal Tribunals
2. Limpopo Development Tribunals
3. Limpopo Economic Development Agency
4. Limpopo Gambling Board
5. Limpopo Housing Board
6. Limpopo Liquor Board
7. Limpopo Local Business Centres
8. Limpopo Panel of Mediators

9. Limpopo Planning Commission
10. Limpopo Roads Agency
11. Limpopo Tourism and Parks Board

## **MPUMALANGA**

1. Mpumalanga Gambling Board
2. Mpumalanga Regional Training Trust
3. Mpumalanga Tourism and Parks Board

## **NORTHERN CAPE**

1. Kalahari Kid Corporation
2. Northern Cape Economic Development, Trade and Investment Promotion Agency
3. Northern Cape Gambling Board
4. Northern Cape Liquor Board
5. Northern Cape Tourism Authority

## **NORTH WEST**

1. Invest North West
2. Mmabana Arts, Culture and Sport Foundation
3. North West Eastern Region Entrepreneurial Support Centre
4. North West Gambling Board
5. North West Housing Corporation
6. North West Parks and Tourism Board
7. North West Provincial Aids Council
8. North West Provincial Arts and Culture Council
9. North West Provincial Heritage Resources Authority
10. North West Youth Development Trust

## **WESTERN CAPE**

1. Destination Marketing Organisation
2. Western Cape Commissioner for the Environment

3. Western Cape Cultural Commission
  4. Western Cape Gambling and Racing Board
  5. Western Cape Investments and Trade Promotion Agency
  6. Western Cape Language Committee
  7. Western Cape Liquor Authority
  8. Western Cape Nature Conservation Board
  9. Western Cape Provincial Development Council
- All subsidiaries of any of the above provincial public entities

## **Part D: Provincial Government Business Enterprises**

### **EASTERN CAPE**

1. East London Industrial Development Zone Corporation
2. Eastern Cape Development Corporation
3. Mayibuye Transport Corporation

### **FREE STATE**

1. Free State Development Corporation

### **KWA-ZULU NATAL**

1. Cowslip Investments (Pty) Ltd
2. Ithala Development Finance Corporation
3. Mjindi Farming (Pty) Ltd
4. Mpendle-Ntambanana Agricultural Company (Pty) Ltd
5. Richards Bay Industrial Development Zone

### **LIMPOPO**

1. Gateway Airport Authority Limited
2. Limpopo Development Corporation

## **MPUMALANGA**

1. Mpumalanga Agricultural Development Corporation
2. Mpumalanga Economic Growth Agency
3. Mpumalanga Housing Finance Company

## **NORTH WEST**

1. Mafikeng Industrial Development Zone (Pty) Ltd
2. North West Development Corporation
3. Northwest Transport Investments (Pty) Ltd

## **WESTERN CAPE**

1. Casidra (Pty) Ltd

All subsidiaries of any of the above provincial government enterprises

## LAND ALIENATION POLICY

### a. RESIDENTIAL LAND

#### i. Land incapable of development on its own:-

- (1) Will be offered by private treaty to the respective adjoining owner.
- (2) Will be priced at market value.
- (3) Will be offered in freehold title.
- (4) Each transaction will be subject to a R5000 rebate, or such other amount as may be approved by Council from time to time.
- (5) It is recorded that the authority of the Premier will be necessary to give effect to (4) above.
- (6) The purchaser will be responsible for any and all costs associated with the possible relocation of services, rezoning, survey, registration and transfer.

The creation of free-standing lots will in each instance be the preference of the Council in order that new residential opportunities be created.

#### ii. Land capable of development in its own right (Public Improvement Fund Assets)

- (1) Will be offered by public competition (tender).
- (2) Will be subject to an upset price that is marketed related.
- (3) Will, within certain pricing cohorts (as determined by Council from time to time) be allocated to take account of persons who might have been previously disadvantaged. Tender procedures will be utilised in such instances.
- (4) Will be offered in freehold title.

#### iii. Land capable of development in its own right (Housing Fund Assets)

- (1) Will be offered in terms of pricing and an allocation process by the Director : Housing.

(NOTE:- Bulk land parcels will only be released if not identified by the Executive Director : Metro Housing for that Services Unit's programmes.)

#### iv. Land not surplus to Council requirements but not immediately required.

(These are typically properties that have been acquired for a capital project which has yet to commence)

- (1) The property will be offered on a short-term tenancy basis.
- (2) The rental will be at a market rate, unless determined otherwise by Council
- (3) The property will be offered by private treaty.

b. COMMERCIAL AND INDUSTRIAL LAND

i. Land incapable of development on its own:-

- (1) Will be offered by private treaty to the respective adjoining owner.
- (2) Will be priced at market value.
- (3) The purchaser will be responsible for any and all costs associated with the possible relocation of services, rezoning, survey, registration and transfer.
- (4) Will be offered in freehold title.



ii. Land capable of development in its own right:-

- (1) Will be offered by public competition (either by public auction or tender as might be the preference of the Council from time to time).
- (2) Will be subject to an upset price that is marketed related.
- (3) Might be subject to conditions in support of certain desires or programmes of the Council.
  - (a) Land might be located within an area of specific focus or be subject to a specific developmental or social programme.
  - (b) In such instances the maximisation of return will not necessarily be the determinant factor.
  - (c) In such instances, the desires of Council will be clearly articulated through a tender process.
  - (d) Will be subject to development clauses to ensure that Councils aims are achieved.
- (4) Will, within certain pricing cohorts (as determined by Council from time to time) be allocated to take account of persons who might have been previous disadvantaged. Tender procedures will be utilised in such instances.
- (5) Will be offered in freehold title.
- (6) Might be offered in leasehold title to achieve certain desires or to overcome specific constraints, as might be the situation from a site and/or time specific point of view.

iii. Land not surplus to Council requirements but not immediately required  
(These are typically properties that have been acquired for a capital project which has yet to commence)

- (1) The property will be offered on a short-term tenancy basis. The notice period will vary based on when the properties will be required.
- (2) The rental will be at a market rate, unless determined otherwise by Council.
- (3) The tenancy will be offered via public competition.
- (4) An agreement concluded by private treaty will occur in instances:-
  - (a) where there is no known demand for the site
  - (b) where it can only be utilised by the adjoining property owner

iv. Multi-tenanted premises

- (1) A fixed, 3 to 5 year period will be offered in keeping with normal business practice.
- (2) Leases of the fixed period will be offered by private treaty.

c. SOCIAL SITES (Worship, Creche and Institutional)

i. Public Improvement Fund Assets

- (1) Will be offered by public tender.
- (2) Tenderers will be subject to a screening process that will take account of inter alia needs of the community, nature of the organisation and ability to discharge intentions.
- (3) Will be subject to a predetermined price that is market related, or as may be determined by Council.
- (4) Will be offered in freehold title.

ii. Housing Fund Assets

- (1) Will be offered by public tender.
- (2) Tenderers will be subject to a screening process that will take account of, inter alia, the needs of the community, nature of the organisation and the ability to discharge intentions.
- (3) Will be subject to a predetermined price:-
  - (a) that is market related, or as may be determined by Council, in instances where Council has discharged its obligations, by having already provided a minimum number of sites to service the reasonable needs of the community.
  - (b) that is determined on a formula based on cost price of the land, in instances where the minimum number of sites have yet to be provided.
  - (c) will be subject to development clauses to ensure discharge intentions
- (4) Will be offered in freehold title.

d. SPORTING BODIES

i. Amateur Bodies providing sporting opportunities of a nature as may be approved by Council from time to time. In this regard not all sport activity, notwithstanding its possible amateur status, is recognised as a responsibility of the Council. Council does however recognise that sporting bodies do provide a valuable service to the community in terms of recreation and development and assist the Council in the discharge of its responsibilities. Accordingly:-

- (1) Land will be offered in an open process.
- (2) Will be offered on a leasehold title basis.
- (3) Will restrict the lessee to an amateur status.
- (4) Will be subject to development clauses to ensure the discharge of intentions.
- (5) Rental will be established on the basis of:-
  - (a) a nominal rental for the total land component of the lease as may be approved by Council from time to time, together with,
  - (b) 50% of the actual market value of the land occupied by any building development undertaken by the Body, such percentage being determined by Council from time to time
  - (c) will not be liable for rates,
  - (d) but will be responsible for the costs of services consumed.
- (6) Will be subject to conditions to allow the Council, through its relevant Department/s, to utilise the grounds, subject to further terms and conditions as agreed by the Lessee and the Council.
- (7) Will preclude discrimination.
- (8) Will recognise that Council has a limited responsibility in terms of providing for sporting and recreational opportunities.

- (9) Will ensure that Council retains a minimum base of sport and recreational venues, which might vary from community to community as well as be constrained by operating and capital budgets.
- (10) Where existing facilities are being taken over, will recognise the asset value of development already existing, whether this has been directly funded by Council or not.

- i. The professionalisation of sport.  
It is recognised that certain sporting bodies could move to full professional status over time, or might already be professional bodies when seeking a land development opportunity from the Council. In instances where there is financial benefit to be derived by an owner, owners or shareholders of a "club" a differentiation will be made from those agreements with amateur bodies in terms of the rentals that would be payable.
  - (1) Land rental will be at its full economic value or percentage thereof as may be specifically determined by Council, or alternatively a percentage of all financial turnover will be levied, such percentage being determined by Council from time to time.
    - (a) The contribution the organisation makes to the City and that sporting code will be taken into account in considering the appropriate percentage.
  - (2) The organisation will be responsible for rates.

b. ANY TRANSACTION WITH PROVINCIAL OR NATIONAL GOVERNMENT

- i. Will be undertaken on a private treaty basis.
- ii. Be at full market value.
- iii. Will be offered, in preference, in freehold title.

**Adopted by eThekweni Council on 19 November 2002.** Extract of minutes reads:-

**4.1 Land Affairs Policy (9/P)**

That the contents of the document entitled "Land Affairs Policy", annexed to the report of the Municipal Manager dated 2002-11-05, relative to Recommendations Emanating from a Refresher Strategic Planning Workshop for Housing, Land and Human Resources Committee, tabled at the Refresher Strategic Planning Workshop for the Housing, Land and Human Resources Committee by the Director : Real Estate, be approved as a policy framework within which various aspects could be considered further by a small Working Group.

**Amendment by Exco on 3 August 2004:-**

That the Land Affairs Policy, as approved by Council on 2002-11-19, be amended in respect of Social Sales to provide that pricing of land to be developed for child care facilities be on a nominal price basis, subject to the reasonable responsibilities of Council in providing such land.

**Amendment by Exco 8 February 2005:-**

That consideration be given to mechanisms being implemented to: –

- i) ensure that in future properties shall revert to the Municipality if the property is not developed within an agreed time frame, and

ii) prevent large tracts of land being purchased and only a portion thereof being sold for profit.

## **Annexure C**

<b>1.</b>	<b>INTRODUCTION</b>  Clause 40(1) of the Municipality's Supply Chain Management Policy, adopted by the Council on 22 September 2005, requires that the Accounting Officer establish an effective system of disposal management for the purpose of inter alia, the letting of assets, which must be in terms of the municipal financial regulations.  The Policies & Procedures set out below respond to this requirement.
<b>2.</b>	<b>LEGAL FRAMEWORK</b>  These Policies & Procedures are compiled within the legal framework established by the following Acts, Regulations and Policies: <ul style="list-style-type: none"><li>• Municipal Finance Management Act, No 56 of 2003</li><li>• Preferential Procurement Policy Framework Act, No 5 of 2000</li><li>• Municipal Asset Transfer Regulations</li><li>• Municipal Supply Chain Management Regulations</li><li>• eThekweni Municipality's Supply Chain Management Policy, September 2005</li></ul>
<b>3.</b>	<b>OBJECTIVES</b>  The primary objectives of the Policies & Procedures relating to the Central Beachfront Premises are: <ul style="list-style-type: none"><li>(i) To ensure that the portfolio under management is let for purposes which individually and collectively enhance the recreation amenity of the central Beachfront, within the overall theme of 'healthy living'.</li><li>(ii) To ensure that the use to which the individual assets are put adds variety to the Central Beachfront, integrates with the local environment and builds the local beach brand.</li><li>(iii) To ensure that the portfolio under management generates market related returns.</li><li>(iv) To develop vibrant, sustainable enterprises which within 3 to 5 years show real rental growth.</li></ul>

	<p>(v) To contribute where possible toward BBBEE.</p> <p>(vi) To minimize risk to Council and ensure vacancies are minimized.</p>
<b>4.</b>	<p><b>PURPOSE</b></p> <p>The letting of premises is one of the core functions found within the process of property management and forms the basis of sound property management. Successful completion of the letting function will result in a contract between a Tenant and the Municipality, as the Landlord.</p> <p>This document is intended to provide a framework for the letting of the Central Beachfront Premises reflected in the Schedule attached as <u>Annexure A</u>.</p> <p>It is envisaged that this Schedule (<u>Annexure A</u>) will be amended from time to time, with the consent of the Accounting Officer, to include all properties within the Central Beachfront area, east of Erskine Terrace, OR Tambo Parade, Snell Parade and the M4 (Ruth First Freeway), extending from uShaka Beach in the South through to Blue Lagoon Beach in the north.</p>
<b>5.</b>	<p><b>LEASE CATEGORIES</b></p> <p>The premises available to let within the Central Beachfront range from small, relatively simple 4m<sup>2</sup> kiosks, through to large, sophisticated premises in excess of 500m<sup>2</sup> and as such they have been classified as either A, B or C category premises, as reflected in <u>Annexure A</u>.</p> <p>Rental turnover provisions apply to Category A premises only, as detailed in <u>Annexure A</u>.</p> <p>Evaluation criteria in respect of category B and C Premises are also less stringent in respect of Experience and Finance submissions, as detailed in <u>Annexures C and D</u>.</p>
<b>6.</b>	<p><b>RENTAL</b></p> <p>In all instances, the Municipality requires that a minimum basic, market related rental be paid in respect of premises let, as set out in <u>Annexure A</u>.</p> <p>A turnover clause is applicable in respect of Category A premises, details of which are also contained in <u>Annexure A</u>.</p> <p>Head: Real Estate shall review and where necessary adjust the basic rental of vacant premises to ensure that market related rentals are achieved.</p>
<b>7.</b>	<p><b>RENEWALS</b></p>

	Category A Premises reflected in <u>Annexure A</u> includes tenant's, right of renewal provision.		
<b>8.</b>	<p><b>TENANT FIT-OUT</b></p> <p>Should a prospective tenant require the City to contribute toward any fit-out costs, such offer may be considered provided the Deputy City Manager: Sustainable Development has adequate Project Funding and subject to the capital cost of such fit-out being redeemed by the tenant, over the initial lease term, through increased monthly rental payments (in excess of the basic rental offer).</p> <p>Outstanding capital shall earn interest at the Standard Bank's Prime Lending rate.</p>		
<b>9.</b>	<p><b>SCOPE OF APPLICATION</b></p> <p>This document applies to the eThekweni Municipality, its employees, as well as its agents.</p> <p>Compliance with the policies and procedures outlined herein by all employees and agents is mandatory. Should employees (or agents) become aware of, or suspect, a contravention of any of the policies or procedures as stated in this document, they must promptly advise their immediate superior or, if needs be, one level above his/her superior of such contravention in order to allow for the situation to be remedied. The matter will be investigated and dealt with in the appropriate manner by the City's Management.</p> <p>All employees are urged to carefully study the Policies &amp; Procedures so that everyone understands the City's expectations, as well as everyone's own obligations. If employees are in doubt about the application of certain authorities and procedures, they should discuss the matter with the manager to whom they report or a person at management level responsible for implementing these policies and procedures.</p>		
<b>10.</b>	<p><b>PROPERTY LETTING PROCEDURES</b></p> <table border="1"> <tr> <td> <p><b>Step 1: Marketing</b></p> <ul style="list-style-type: none"> <li>Premises available to let (or which will become available to let within 6 months) to be advertised in the ezaseGagasini Metro (as a minimum), at least bi-monthly.</li> <li>Target approaches to potential tenants.</li> </ul> </td> <td>DCM: Sustainable Development</td> </tr> </table>	<p><b>Step 1: Marketing</b></p> <ul style="list-style-type: none"> <li>Premises available to let (or which will become available to let within 6 months) to be advertised in the ezaseGagasini Metro (as a minimum), at least bi-monthly.</li> <li>Target approaches to potential tenants.</li> </ul>	DCM: Sustainable Development
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	<p><b>Step 2: Engagement</b></p> <p>Initial engagement with prospective offerors, including issuing, completion and return of Form 1: The Registration Form. (Refer <u>Annexure F.</u>)</p> <p>Engagement with prospective tenants on the formation of proposals/offers and issuing of Policies &amp; Procedures Document, together with Form 2: Certificate of Authority &amp; Form 3: Compulsory Enterprise Questionnaire &amp; Declarations. (Refer <u>Annexure F.</u>)</p> <p><b>Step 3: Receipt of Proposals/Offers</b></p> <p>To be received in prescribed format and shall include as a minimum:</p> <ul style="list-style-type: none"> <li>• Form 1: The Registration Form</li> <li>• Form 2: Certificate of Authority</li> <li>• Proposal</li> <li>• Overview of offeror's experience</li> <li>• Financial details, including rental offer.</li> <li>• BBBEE Scorecard</li> </ul> <p><b>Step 4: Assessment of proposals/Offers</b></p> <p>(i) Documentation compliance and basic rental offer check (accept/refer/reject).</p> <p>(ii) Offers will thereafter be evaluated under the following categories:</p> <p style="padding-left: 40px;">A. The Proposal/Concept – Refer <u>Annexure B</u> (Max. 40 Points)</p>	<p>DCM: Sustainable Development</p> <p>DCM: Sustainable Development</p> <p>DCM: Sustainable Development in consultation with Head: RE &amp; Head: SCM</p>
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- B. The Offeror's Experience – Refer Annexure C (Max. 30 Points)
- C. Financial aspects – Refer Annexure D (Max. 30 Points)

Offers which achieve scores of 50% or above in each category (A, B and C) will be deemed responsive.

- (iii) Where more than one offer in respect of any one of the premises is responsive, such offers will be evaluated based on the Basic Rental Offer and Preference, where in respect of category A Premises a maximum of 90 points is allocated to the Basic Rental Offer and 10 points to Preference, as set out below:

Basic Rental Offer: The highest Offer in respect of Category A Premises shall receive the full 90 Points and any other (responsive) offer a proportionate percentage thereof.

Preference: Shall be determined in terms of Annexure E.

The Offer which receives the highest aggregate score in terms of Basic Rental Offer and Preference will be deemed successful

In respect of Category B and C Premises, 80 points will be allocated to the Basic Rental Offer and 20 points to Preference.

#### **Step 5: Acceptance/Rejection**

In respect of Category A Premises, the evaluation and Unit Recommendations in respect thereof will be reported to the Municipality's Bid Adjudication Committee for consideration and adoption.

In respect of Category B and C Premises, offerors' will be advised of outcome of their proposals/offers.

(A decision to decline an offer may result in a re-negotiation of the offer.)

DCM: Sustainable Development

	<p>Completed Form 3: Compulsory Enterprise Questionnaire &amp; Declarations called for in respect of successful offers.</p> <p><b>Step 6: Signing of Lease Agreement</b></p> <p>Assessment of Form 3 to verify the City's ability to contract with the offeror. (Accept/refer/reject).</p> <p>Negotiation with successful offerors' with regard to final terms of lease (to be substantially in accordance with the City's commercial lease structure).</p> <p><b>Step 7: Lease Administration</b></p> <ul style="list-style-type: none"> <li>• Raise rental advice, lease diary and lease database entries</li> <li>• Inspection &amp; turnover monitoring to be undertaken at least quarterly</li> </ul>	<p>Head: RE</p> <p>Head: SCM</p> <p>Head: RE</p> <p>Head: RE</p> <p>DCM: Sustainable Development</p>
11.	<p><b>REPORTING</b></p> <p>DCM: Sustainable Development to provide the Accounting Officer with quarterly reports on the tenanting of the Beachfront Premises reflected in <u>Annexure A</u>, providing detail of vacancies, as well as movements over the previous quarter.</p>	
12.	<p><b>DEVIATIONS FROM THE POLICIES &amp; PROCEDURES</b></p> <p>Any deviation from the approved Policies &amp; Procedure shall require the prior consideration and endorsement of the City Council.</p> <p>Failure to comply with the Policies &amp; Procedures may result in the institution of disciplinary procedures.</p>	
13.	<p><b>APPROVAL OF POLICIES &amp; PROCEDURES</b></p> <p>The Policies &amp; Procedures shall become effective upon their adoption by the City Council and shall be reviewed from time to time, but at least every two years.</p>	

<b>S Sithole</b> <b>ACCOUNTING OFFICER</b>	<b>Date:</b>

## Annexure A

### CENTRAL BEACHFRONT PREMISES: MAIN LEASE TERMS

Plan Ref. No.	Location of Premises	Floor Area m <sup>2</sup>	Primary Purpose for which premises are let	Lease Category	Lease Term (Maximum)	Basic Monthly Rental (excl. VAT) as at 1 September 2012	Minimum Turnover
SPU2011/B01 REV C	17 Erskine Terrace Addington Beach	411	Restaurant	A	5 Years, plus right of renewal for a further 3 year period	R 41,305	10,5%
SPU2010/B02	2 O.R. Tambo Parade South Beach	31	Refreshment Kiosk	B	5 Years, no right of renewal	R 3,100	Not Applicable
SPU2011/B03 REV B	98 O.R. Tambo Parade New Beach	537	Restaurant	A	5 Years, plus right of renewal for a further 3 year period	R 67,188	10,5%
SPU2010/B04	O.R. Tambo Parade New Beach	4	Tour Booking Kiosks (No food/perishables)	C	3 Years, no right of renewal	R 1,000	Not Applicable
SPU2010/B05	O.R. Tambo Parade New Beach	4	Tour Booking Kiosk (No food/perishables)	C	3 Years, no right of renewal	R 1,000	Not Applicable
SPU2010/B06	O.R. Tambo Parade New Beach	4	Tour Booking Kiosk (No food/perishables)	C	3 Years, no right of renewal	R 1,000	Not Applicable
SPU2010/B07	O.R. Tambo Parade New Beach	4	Tour Booking Kiosk (No food/perishables)	C	3 Years, no right of renewal	R 1,400	Not Applicable
SPU2010/B08	110 O.R. Tambo Parade Wedge Beach	178	Restaurant/Food Court	A	5 Years, plus right of renewal for a further 3 year period	R 26,700	10,5%
SPU2011/B09 REV B	150 O.R. Tambo Parade Dairy Beach	238-Gr	Restaurant	A	5 Years, plus right of renewal for a further 3 year period	R 41,650	10,5%
		275-1st				R 41,250	
SPU2011/B10 REV B	146 O.R. Tambo Parade Dairy Beach	297	Retail/Coffee Shop	A	5 Years, plus right of renewal for a further 3 year period	R 31,125	10,5%
SPU2010/B13	290 Snell Parade Country Club I	62	Refreshment Kiosk	B	5 Years, no right of renewal	R 6,200	Not Applicable
SPU2012/B14	180 Snell Parade Battery Beach	49	Refreshment Kiosk	B	5 Years, no right of renewal	R 3,414	Not Applicable

## **Annexure B**

### **CENTRAL BEACHFRONT PREMISES:**

#### **PART A: GUIDELINES TO PROSPECTIVE TENANTS ON THE FORMATION OF PROPOSALS**

The Central Beachfront Upgrade has enabled the Municipality to rationalize the distribution of restaurant, service and retail opportunities available within the Central Beachfront within a combination of new and upgraded/converted premises.

The letting of these premises provides the opportunity to achieve an exciting, diverse range of food, service and retail offerings and experiences across the full length of the Beachfront which complement their respective Beach locale, contribute toward the development of a unique 'Durban Beach Experience' and contribute toward an overall theme of 'healthy living'.

##### **SPU2010/B01: Addington Restaurant Guidelines:**

Addington Beach is a popular swimming, body boarding, paddle ski and surfing Beach and with its relatively calm surf conditions it is one of the preferred Beaches for those learning to surf. Addington Beach is the home of Marine Surf Lifesaving Club which offers lifesaving, as well as paddle ski and surfing lessons amongst other functions. This is a site from which hundreds of surfski users operate and is an area in which many learn-to-surf operators ply their trade. Regularly surfski competitions are held, with over 150 competitors, particularly on Friday evenings.

Addington Beach is then the venue for a number of surf related events.

It is envisaged that the Addington Premises would serve primarily as a restaurant, however the opportunity does exist to introduce retail (such as beach wear and surf related goods). As a minimum, the facility must provide access to refreshment facilities for Beach users at the lower, promenade level.

Whilst other uses will be considered in term of their contribution toward the Beachfront, the large pool of parking in close proximity to the premises is for general public use and under no circumstances will any portion of this be dedicated for the sole use of the lessee/tenants and it is essential that prospective tenderers consider the implications of the City's position in this regard when contemplating possible uses. I.e. Lifestyle/health and fitness type uses which are membership or appointment based may well find it difficult to trade in season when parking is at a premium.

Proposals should contribute to developing the 'Addington Beach Brand'.

From a broader Beachfront perspective it is essential that proposal provide an 'active' edge to Promenade interface and this is provided for by the inclusion of the outdoor seating area within the lease area.

##### **SPU2010/B02: South Beach Kiosk Guidelines**

The South Beach Kiosk and outdoor seating area is situated immediately south of South Beach and on the Beach Promenade.

It must be ensured in respect of both the concept and food offering, that the Premises serve primarily Beach Promenade users (walkers, joggers and cyclists) as well as the casual Beach visitor and as such a limited food offering of pre-packed food, ice-cream would be appropriate, perhaps with a specific focus on health foods.

The sale or consumption of alcohol from/on these premises is specifically precluded.

### **SPU2010/B03: New Beach Restaurant Guidelines**

The New Beach Restaurant Premises is located on the Beach Promenade at the head of Dr Pixley KaSeme Street overlooking Durban's premier Events Beach. This Beach hosted the 2010 FIFA™ Fanfest and numerous other sports events, such as beach volley ball and beach soccer. It is also the venue for some of the larger Beach Parties associated with Conferences/Exhibitions/Events taking place in the City. It is an ideal beach to host concerts as well.

(Certain events, such as the Indaba Beach Party may require the temporary closure of the lower ground floor restaurant level. Such instances will be limited as far as possible but in any event shall not exceed 8 days in any one calendar year.)

Dr Pixley KaSeme Street is the main east-west pedestrian link to and from the CBD and at its junction with O.R. Tambo Parade is located the City's People Mover Terminal, serving the Central Beachfront and CBD.

Public ablutions, together with changeroom facilities and event management offices are accommodated within the building at the lower Beach Promenade level which does not form part of the premises on offer.

It is envisaged that the New Beach Premises would serve as a restaurant at the upper O.R. Tambo Parade level and as a self-service restaurant at the lower Beach Promenade level.

Whilst other uses will be considered in term of their contribution toward the Beachfront, the large pool of parking in close proximity to the premises is for general public use and under no circumstances will any portion of this be dedicated for the sole use of the lessee/tenants and it is essential that prospective tenderers consider the implications of the City's position in this regard when contemplating possible uses. I.e. Lifestyle/health and fitness type uses which are membership or appointment based may well find it difficult to trade in season when parking is at a premium.

Proposals should contribute to developing a 'New Beach Brand'.

From a broader Beachfront perspective it is essential that proposal provide an 'active' edge to the Promenade interface. This is provided for by the inclusion of the outdoor seating area within the lease area. In addition that portion of the outdoor seating (shown as beach seating) which straddles the sea wall on the opposite side of the Promenade will be available for use when not required by events taking place and as such its use will be by separate agreement.

### **SPU2010/B04 to B07: New Beach Kiosk Guidelines**

Four small (4m<sup>2</sup>) kiosks have been integrated within the new Beachfront Curio Traders Stalls on the eastern edge of O.R. Tambo Parade, on either side of Dr Pixley KaSeme Street to meet the perceived need for tour booking offices which previously existed (in various forms) within this area.

Preferably tenderers should represent a broad range of tour operators providing services to the tourism sector. Dependent upon demand, alternative (non-food) uses will be considered (excluding craft).

**SPU2010/B08: Wedge Beach Restaurant Guidelines**

The Wedge Beach Premises (formerly Noddy's) are located to the west of the Central Paddling Pools and between these Pools and the Amusement Park.

Whilst the Premises do not have direct frontage to the Promenade the Beachfront Upgrade has ensured improved visibility. There is also access from O.R. Tambo Parade to the north and south of the Premises which provides good access from the hotels immediately opposite.

Given its proximity to the Pools the focus here should be on families with young children and a food court type facility would be appropriate. During the school holidays huge numbers of children and families use the pools.

The sale or consumption of alcohol from/on these premises is specifically precluded.

**SPU2010/B09: Dairy Beach Restaurant Guidelines**

Dairy Beach is the primary surfing beach within the Central Beachfront and proposals must contribute to reaffirming and enhancing this status.

It is envisaged that the Dairy Beach Premises would serve primarily as a restaurant; however the ground and first floor levels are capable of being separately tenanted (and are offered as such) and the opportunity does exist to incorporate limited retail at ground floor level (surf shop/book store), together with a coffee shop/restaurant.

Whilst other uses will be considered in term of their contribution toward the Beachfront, the large pool of parking in close proximity to the premises is for general public use and under no circumstances will any portion of this be dedicated for the sole use of the lessee/tenants and it is essential that prospective tenderers consider the implications of the City's position in this regard when contemplating possible uses. I.e. Lifestyle/health and fitness type uses which are membership or appointment based may well find it difficult to trade in season when parking is at a premium.

The positioning of the building, between the event space (the Fountain Court) created through the demolition of the former Ocean Sports Centre and the remodelling of the Rachel Finlayson Pool provide opportunities for a direct relationship to be developed between the restaurant and these spaces.

The Rachel Finlayson Pool has been remodelled to create a salt-water aqua-aerobics and children's splash pool, in addition to a 50m training pool. Two large sliding gates have been installed along the southern boundary and tenderers seeking to take advantage of this interface will need to outline management and operational plans to address public access and safety issues bearing in mind that Rachel Finlayson Pool specifically is to remain as a pay public pool facility.

From a broader Beachfront perspective it is essential that proposal provide an 'active' edge to Promenade, Fountain Court and Rachel Finlayson interface and this is provided for by the inclusion of the outdoor seating area within the lease area.



### **SPU2010/B10: Dairy Beach Retail/Coffee Shop Guidelines**

Dairy Beach is the primary surfing beach within the Central Beachfront and proposals must contribute to reaffirming and enhancing this status.

(The building originally served as a deck chair and umbrella store, which was later converted to accommodate Rachel Finlayson Pool's chlorination plant, which has been relocated beneath the Rachel Finlayson Grandstand.)

The building is set well back of the Beach Promenade overlooking and partly framing the Fountain Court (the event space created in the demolition of the former Ocean Sports Centre). Whilst the Premises are also located on an important east-west pedestrian route from O.R. Tambo Parade and the CBD, the future use of these Premises should draw the public into the Fountain Court area. As such the use of these Premises is likely to influence the nature of activities/events which take place within the Fountain Court and tenderers must incorporate such suggestions within their submissions. (That is notwithstanding the fact that the Fountain Court does not form part of the Premises on offer.)

It is envisaged that the Dairy Beach Premises could serve as a Retail Outlet with perhaps a focus on high end arts crafts, culture or books, together with a coffee shop/restaurant.

From a broader Beachfront perspective it is essential that proposal 'engage' the Fountain Court.

### **SPU2010/B13: Country Club 1 Kiosk Guidelines**

This Beach/Kiosk is situated at the northern extreme of the recent Beach Upgrade and at the point where the Kings Park - Moses Mabhida Stadium pedestrian link meets the Beach Promenade.

Whilst current demand dictates that Country Club Beach is only opened on Sundays', Public Holidays' and peak holiday periods for swimming, this is expected to change with the Central Beachfront Upgrade and in particular the development of the Promenade, which is planned to be extended through to Blue Lagoon over the next few years. Swimming, surfing and surf-ski are the main surf activities in this zone.

The conversion of this (former ablution block) provides an opportunity for the establishment of a sandwich bar and possible bicycle hire service. Proposals should focus not only on existing Beach users, but also on the growing numbers of cyclists, joggers and walkers using the Promenade and aim at growing this market and the profile of Country Club Beach. During the summer season this area transforms as families often picnic and braai on the grassed areas in close proximity to the Kiosk.

From a broader Beachfront perspective it is essential that proposal provide an 'active' edge to Promenade interface.

### **SPU2010/B14: Battery Beach Kiosk Guidelines**

This Beach/Kiosk is situated at Battery Beach, opposite the former Natal Command and just south of the Suncoast Casino.

Battery Beach is a popular swimming, paddle ski and surfing Beach and is the home of Suncoast Pirates Surf Lifesaving Club.

The redesign of the Battery Beach Parking Node, together with the Promenade and adjoining grassed areas and World War II Gun Battery provides an opportunity for the establishment of a sandwich/juice bar serving both Beach and Promenade users (walkers, joggers and cyclists).

With the physical changes that have taken place in the immediate vicinity, the City will consider undertaking minor alterations to the building to improve its interface with its western Promenade edge.

The sale or consumption of alcohol from/on these premises is specifically precluded.

From a broader Beachfront perspective it is essential that proposal provide an 'active' edge to Promenade interface and in this regard consideration will also be given to the introduction of limited, portable tables, chairs and umbrellas immediately adjoining the premises.