

# MSUNDUZI MUNICIPALITY



<b>Policy Name:</b>	Supply Chain Management Policy (Incorporating PART 2: Infrastructure )
<b>Policy Number:</b>	
<b>Status:</b>	Final Draft
<b>Date:</b>	
<b>Approved By:</b>	Council
<b>Date Approved:</b>	
<b>Date Last Amended:</b>	
<b>Date for Next Review:</b>	
<b>Date Published on Intranet:</b>	01 July 2016

**Preamble**

Msunduzi Municipality Supply Chain Management Policy is divided into two policies, one focuses on Goods and Services and the other on Infrastructure Procurement and Delivery Management

The SCM Policy for Goods and Services which is **PART 1** of this document is issued in terms of Section 111 of the Municipal Finance Management Act of 2003 and Municipal Supply Chain Management Regulations. The approach to procurement documentation is significantly different between general goods and services and infrastructure delivery. Documents for general goods and services, are based on the National Treasury General Conditions of Contract (GCC) which focuses on the rights and obligations of the parties in a generic manner and also deals with aspects of the bidding processes.

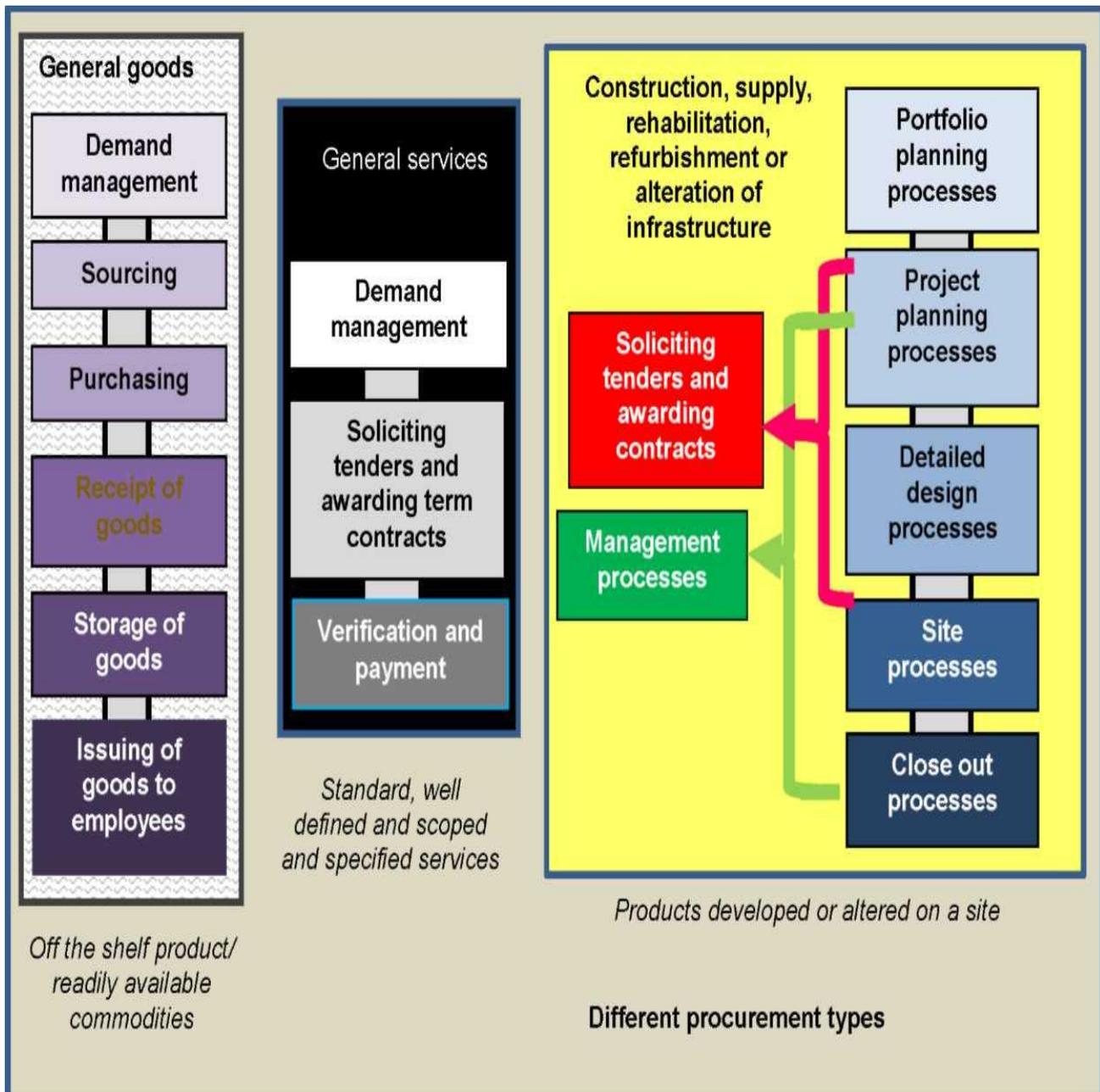
The SCM Policy for Infrastructure Procurement and Delivery Management which is **PART 2** is issued in terms of Section 168 of the Municipal Finance Management Act of 2003 in support of Regulation 3(2) of the MFMA Supply Chain Management Regulations as a Treasury guideline determining a standard for municipal supply chain management policies. MFMA Circular No 77: Model SCM Policy for Infrastructure Procurement and Delivery Management provides guidance to municipalities on the establishment of a suitable supply chain management system for infrastructure delivery which is better able to deliver value for money, while minimizing the scope for corruption.

# **INFRASTRUCTURE PROCUREMENT AND DELIVERY MANAGEMENT POLICY**

## **SCM Policy: Part 2**

**Preface**

Public procurement that is unrelated to infrastructure delivery typically relates to goods and services that are standard, well-defined and readily scoped and specified. Once purchased, goods invariably need to be taken into storage prior to being issued to employees. Services most often involve routine, repetitive services with well understood interim and final deliverables which do not require strategic inputs or require decisions to be made regarding the fitness for purpose of the service outputs.



In contrast, procurement relating to the provision of new infrastructure or the rehabilitation, refurbishment or alteration of existing infrastructure covers a wide and diverse range of goods and services, which are required to provide or alter the condition of immovable assets on a site. Accordingly, the procurement process for the delivery of infrastructure involves the initial and subsequent recurring updating of planning processes at a portfolio level flowing out of an assessment of

public sector service delivery requirements or business needs. Thereafter it involves planning at a project level and the procurement and management of a network of suppliers, including subcontractors, to produce a product on a site. There is no need to store and issue materials or equipment unless these are issued to employees responsible for the maintenance or operation of infrastructure, or are issued free of charge to contractors for incorporation into the works.

Procurement is the process which creates, manages and fulfils contracts. Procurement deals with activities surrounding contracts. Such processes focus on establishing what is to be procured, developing a procurement strategy, producing procurement documentation, soliciting and evaluating bid offers, awarding of contracts and administering contracts. On the other hand, supply chain management (SCM) is the design, planning, execution, control and monitoring of supply chain activities in the delivery of goods, services or any combination thereof. Supply chains comprise all those public and private entities that are involved in delivering the inputs, outputs and outcomes of projects. Accordingly, supply chain management is concerned with the oversight, co-ordination and monitoring of inputs, outputs and outcomes of projects from the various entities within a supply chain.

Infrastructure is defined as "immovable assets which are acquired, constructed or which results from construction operations or moveable assets which cannot function independently from purpose built immovable assets" *while infrastructure delivery is defined as "the combination of all planning, technical, administrative and managerial actions associated with the construction, supply, renovation, rehabilitation, alteration, maintenance, operation or disposal of infrastructure."* Accordingly, infrastructure delivery management contextualizes the supply chain management system for infrastructure.

Understandably, there are several overlaps between the supply chain management system for general goods and services and that for infrastructure delivery management. However, the inclusion of control frameworks in the Standard for Infrastructure Procurement and Delivery Management is aimed at expenditure control and a reduction in the gap between what is planned and budget for and what is delivered to ensure that value for money is achieved.

The primary purpose of this document is to embed an infrastructure delivery management system for Msunduzi Municipality which is aligned with the regulatory framework for public sector procurement, supply chain management and expenditure control. It also enables the National Treasury Standard for Infrastructure Procurement and Delivery Management to be implemented.

## Table of Contents

1.	<b>SCOPE</b> .....	7
2.	<b>TERMS, DEFINITIONS AND ABBREVIATIONS</b> .....	7
2.1.	Terms and Definitions .....	7
2.2.	Abbreviations and Acronyms.....	9
3.	<b>GENERAL REQUIREMENTS</b> .....	10
3.1.	Delegations .....	10
3.2.	Implementation of the procedure manual for Infrastructure Procurement & Delivery Management	11
3.3.	Supervision of the Infrastructure Delivery Management Unit .....	12
3.4.	Objections and Complaints.....	12
4.	<b>CONTROL FRAMEWORK FOR INFRASTRUCTURE DELIVERY MANAGEMENT</b> .....	12
4.1.	Assignment of responsibilities for approving or accepting end of stage deliverables .....	12
4.2.	Gateway Reviews .....	13
5.	<b>CONTROL FRAMEWORK FOR INFRASTRUCTURE PROCUREMENT</b> .....	14
6.	<b>INFRASTRUCTURE DELIVERY MANAGEMENT REQUIREMENTS</b> .....	17
6.1.	Institutional Arrangements.....	17
6.1.1.	Committee System for Procurement .....	17
6.1.2.	Actions of an authorised person relating to the award of a contract or an order .....	21
6.1.3.	Conduct of those engaged in infrastructure delivery.....	22
6.1.4.	Measures to prevent abuse of the infrastructure delivery system .....	26
6.1.5.	Awards to persons in the service of the state .....	26
6.1.6.	Collusive Bidding .....	27
6.1.7.	Placing of Contractors under Restrictions.....	27
6.1.8.	Complaints .....	28
6.2.	Acquisition Management.....	28
6.2.1.	Unsolicited Proposal .....	28
6.2.2.	Tax and Rates Compliance.....	29
6.2.3.	Municipal Rates and Taxes.....	30
6.2.4.	Declarations of Interest.....	31
6.2.5.	Invitations to submit expressions of interest or bid offers.....	31
6.2.6.	Publication of submissions received and the award of contracts .....	31
6.2.7.	Disposal Committee.....	32
6.3.	Reporting of infrastructure delivery management information .....	32
7.	<b>INFRASTRUCTURE PROCUREMENT</b> .....	32

---

7.1.	Usage of Procurement Procedures.....	32
7.2.	Procurement Documents .....	34
7.3.	Developmental Procurement Policy .....	36
7.4.	Payment of Contractors .....	36
7.5.	Approval to utilise specific procurement procedures .....	37
7.6.	Receipt and Safeguarding of Submissions .....	37
7.7.	Opening of Submissions .....	37
7.8.	Use of another organ of state's framework agreement.....	38
7.9.	Insurances.....	38
7.10.	Sureties .....	40
7.11.	Written reasons for actions taken .....	40
7.12.	Request for access to information .....	41
8.	<b>RISK MANAGEMENT</b> .....	41

## 1. SCOPE

This policy establishes the Msunduzi Municipality's policy for infrastructure procurement and delivery management in accordance with the provisions of the regulatory frameworks for procurement and supply chain management. It includes the procurement of goods and services necessary for a new facility to be occupied and used as a functional entity but excludes:

- a) the storage of goods and equipment following their delivery to Msunduzi Municipality which are stored and issued to contractors or to employees;
- b) the disposal or letting of land;
- c) the conclusion of any form of land availability agreement;
- d) the leasing or rental of moveable assets; and
- e) public private partnerships.

## 2. TERMS, DEFINITIONS AND ABBREVIATIONS

### 2.1. Terms and Definitions

For the purposes of this document, the definitions and terms given in the standard and the following apply:

<u>Term</u>	<u>Definition</u>
<b>Agent</b>	person or organization that is not an employee of Msunduzi Municipality that acts on the Municipality's behalf in the application of this document
<b>Authorised person</b>	the Municipal Manager or chief executive or the appropriately delegated authority to award, cancel, amend, extend or transfer a contract or order
<b>Conflict of interest</b>	any situation in which: <ol style="list-style-type: none"> <li>a) someone in a position of trust has competing professional or personal interests which make it difficult for him to fulfil his duties impartially,</li> <li>b) an individual or organization is in a position to exploit a professional or official capacity in some way for his personal or for corporate benefit, or</li> <li>c) incompatibility or contradictory interests exist between an employee and the organization which employs that employee</li> </ol>
<b>Contract manager:</b>	person responsible for administering a package on behalf of the employer and performing duties relating to the overall management of such contract from the implementer's point of view

<u>Term</u>	<u>Definition</u>
<b>Family member:</b>	a person's spouse, whether in a marriage or in a customary union according to indigenous law, domestic partner in a civil union, or child, parent, brother, sister, whether such a relationship results from birth, marriage or adoption
<b>Framework agreement:</b>	an agreement between an organ of state and one or more contractors, the purpose of which is to establish the terms governing orders to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged
<b>Gate:</b>	a control point at the end of a process where a decision is required before proceeding to the next process or activity
<b>Gateway review:</b>	an independent review of the available information at a gate upon which a decision to proceed or not to the next process is based <b>gratification:</b> an inducement to perform an improper act
<b>Infrastructure delivery:</b>	the combination of all planning, technical, administrative and managerial actions associated with the construction, supply, renovation, rehabilitation, alteration, maintenance, operation or disposal of infrastructure
<b>Infrastructure procurement:</b>	the procurement of goods or services including any combination thereof associated with the acquisition, renovation, rehabilitation, alteration, maintenance, operation or disposal of infrastructure
<b>Maintenance:</b>	the combination of all technical and associated administrative actions during an item's service life to retain it in a state in which it can satisfactorily perform its required function
<b>Operation:</b>	combination of all technical, administrative and managerial actions, other than maintenance actions, that results in the item being in use
<b>Order:</b>	an instruction to provide goods, services or any combination thereof under a framework agreement
<b>Organ of state:</b>	an organ of state as defined in section 239 of the Constitution of the Republic of South Africa
<b>Procurement document:</b>	documentation used to initiate or conclude (or both) a contract or the issuing of an order

<u>Term</u>	<u>Definition</u>
<b>Principal:</b>	a natural person who is a partner in a partnership, a sole proprietor, a director a company established in terms of the Companies Act of 2008 (Act No. 71 of 2008) or a member of a close corporation registered in terms of the Close Corporation Act, 1984, (Act No. 69 of 1984)
<b>Standard:</b>	the latest edition of the Standard for Infrastructure Procurement and Delivery Management as published by National Treasury
<b>Working day:</b>	any day of a week on which is not a Sunday, Saturday or public holiday

## 2.2. Abbreviations and Acronyms

For the purposes of this document, the following abbreviations apply:

<u>Abbreviation</u>	<u>Acronym</u>
<b>BAC</b>	Bid Adjudication Committee
<b>B-BBEE</b>	Broad Based Black Economic Empowerment
<b>BEC</b>	Bid Evaluation Committee
<b>BSC</b>	Bid Specification Committee
<b>CIDB</b>	Construction Industry Development Board
<b>CFO</b>	Chief Financial Officer
<b>DMM</b>	Deputy Municipal Manager Infrastructure
<b>FG</b>	Framework Agreement Gate
<b>FSS</b>	Financial Service Support Manager
<b>KZN</b>	KwaZulu-Natal
<b>MFMA</b>	Municipal Finance Management Act
<b>MM</b>	Municipal Manager

<u>Abbreviation</u>	<u>Acronym</u>
PG	Procurement Gate
SARS	South African Revenue Services
SCM	Supply Chain Management
VAT	Value Added Tax

### 3. GENERAL REQUIREMENTS

#### 3.1. Delegations

- 3.1.1. The council of Msunduzi Municipality hereby delegates all powers and duties to the Municipal Manager which are necessary to enable the Municipal Manager to:
- discharge the supply chain management responsibilities conferred on accounting officers in terms of Chapter 8 or 10 of the Local Government Municipal Finance Management Act of 2003 and this document;
  - maximise administrative and operational efficiency in the implementation of this document;
  - enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this document; and
  - comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Local Government Municipal Finance Management Act of 2003 Act.
- 3.1.2. No departure shall be made from the provisions of this policy without the approval of the Municipal Manager of Msunduzi Municipality
- 3.1.3. The Municipal Manager shall for oversight purpose
- within 30 days of the end of each financial year, submit a report on the implementation of this the policy and the equivalent policy of any municipal entity under the sole or shared control of the Msunduzi Municipality to the council of the Msunduzi Municipality.
  - whenever there are serious and material problems in the implementation of this policy, immediately submit a report to the council who must then submit the report to the Municipal Manager of Msunduzi Municipality for submission to the council;
  - within 10 days of the end of each quarter, submit a report on the implementation of the policy to the mayor; and
  - make the reports public in accordance with section 21A of the Municipal Systems Act of 2000.

### 3.2. Implementation of the procedure manual for Infrastructure Procurement and Delivery Management

3.2.1. Infrastructure procurement and delivery management shall be undertaken in accordance with all applicable legislation and the relevant requirements of the latest edition of the National Treasury Standard for Infrastructure Procurement and Delivery Management.

**Table 1: End-of-stage deliverables**

Stage		Person assigned the responsibility for approving or accepting end of stage deliverables
No	Name	
0	Project initiation	End User accepts the initiation report
1	Infrastructure planning	Infrastructure Process Manager approves the infrastructure plan
2	Strategic resourcing	Demand and Acquisition Manager approves the delivery and / or procurement strategy
3	Pre-feasibility	Infrastructure Process Manager accepts the pre-feasibility report
	Preparation and briefing	Infrastructure Process Manager accepts the strategic brief
4	Feasibility	Infrastructure Process Manager accepts the feasibility report
5	Concept and viability	Infrastructure Process Manager accepts the concept report
6	Design development	Infrastructure Process Manager accepts the design development report
7	Design documentation	6A Production information Infrastructure Process Manager accepts the parts of the production information which are identified when the design development report is accepted as requiring acceptance
		6B Manufacture, fabrication and construction information The contract manager accepts the manufacture, fabrication and construction information
8	Works	The contract owner/project manager certifies completion of the works or the delivery of goods and associated services
9	Handover	The owner or end user accepts liability for the works
10	Package completion	The contract owner or supervising agent certifies the defects certificate in accordance with the provisions of the contract The contract manager certifies final completion in accordance with the provisions of the contract Infrastructure Process Manager accepts the close out report

3.2.2. Pre-feasibility and feasibility reports are required as end-of-stage deliverables for stages 3 and 4, respectively, where one or more of the following applies:

- a) the major capital project is required for:
  - a major public enterprise where the total project capital expenditure exceeds R1,5 billion; or
- b) the project is not:
  - a building project with or without related site works; or
  - a process-based, somewhat repetitive or relatively standardised project where the risk of failing to achieve time, cost and quality objectives is relatively low;

### 3.3. Supervision of the Infrastructure Delivery Management Unit

The Infrastructure Delivery Management Unit shall be directly supervised by the Deputy Municipal Manager Infrastructure (DMM) as a delegated person in terms of section 82 of the Municipal Finance Management Act (MFMA).

### 3.4. Objections and Complaints

Persons aggrieved by decisions or actions taken in the implementation of this policy, may lodge within 14 days of the decision or action, a written objection or complaint against the decision or action. Objection and complaints will be managed in accordance to section 50A of the SCM Policy for goods and services.

## 4. CONTROL FRAMEWORK FOR INFRASTRUCTURE DELIVERY MANAGEMENT

### 4.1. Assignment of responsibilities for approving or accepting end of stage deliverables

The responsibilities for approving or accepting end of stage deliverables shall be as stated in Table 2.

**Table 2: Responsibilities for approving or accepting end of stage deliverables in the control framework for the management of infrastructure delivery**

Stage		Person assigned the responsibility for approving or accepting end of stage deliverables
No	Name	
0	Project initiation	End User accepts the initiation report
1	Infrastructure planning	Infrastructure Process Manager approves the infrastructure plan
2	Strategic resourcing	Demand and Acquisition Manager approves the delivery and / or procurement strategy
3	Pre-feasibility	Infrastructure Process Manager accepts the pre-feasibility report
	Preparation and briefing	Infrastructure Process Manager accepts the strategic brief
4	Feasibility	Infrastructure Process Manager accepts the feasibility report

Stage		Person assigned the responsibility for approving or accepting end of stage deliverables
No	Name	
	Concept and viability	Infrastructure Process Manager accepts the concept report
5	Design development	Infrastructure Process Manager accepts the design development report
6	Design documentation	6A Production information Infrastructure Process Manager accepts the parts of the production information which are identified when the design development report is accepted as requiring acceptance
		6B Manufacture, fabrication and construction information The contract manager accepts the manufacture, fabrication and construction information
7	Works	The contract owner/project manager certifies completion of the works or the delivery of goods and associated services
8	Handover	The owner or end user accepts liability for the works
9	Package completion	The contract owner or supervising agent certifies the defects certificate in accordance with the provisions of the contract The contract manager certifies final completion in accordance with the provisions of the contract Infrastructure Process Manager accepts the close out report.

## 4.2. Gateway Reviews

### 4.2.1. Gateway reviews for major capital projects above a threshold

4.2.1.1. The Municipal Manager shall appoint a gateway review team to accordance with the provisions of clause 4.1.13.1.2 of the procedure manual to undertake gateway reviews for major capital projects.

- a) A gateway review team shall comprise not less than three persons who are not involved in the project associated with the works covered by the end of the stage 4 deliverable, and who are familiar with various aspects of the subject matter of the deliverable at the end of the stage under review. Such a team shall be led by a person who has at least six years postgraduate experience in the planning of infrastructure projects and is registered either as a professional engineer in terms of the Engineering Profession Act, a professional quantity surveyor in terms of the Quantity Surveying Profession Act or a professional architect in terms of the Architectural

Profession Act. The members of the team shall, as relevant, have expertise in key technical areas, cost estimating, scheduling and implementation of similar projects.

- b) All major capital projects having an estimated capital expenditure equal to or above the threshold established in Table 3 shall have a gateway review of the end-of-stage 4 deliverable, prior to the acceptance of such deliverable. The review shall be initiated by the organ of state which intends implementing the project. The focus of such a review shall in the first instance be on the quality of the documentation, and thereafter on:

**Table 3: Gateway review threshold**

Organ of the State	Estimated cost inclusive of VAT
Msunduzi Municipality	R50 million

## 5. CONTROL FRAMEWORK FOR INFRASTRUCTURE PROCUREMENT

- 5.1 The responsibilities for taking the key actions associated with the formation and conclusion of contracts including framework agreements above the quotation threshold shall be as stated in Table 4.

**Table 4: Procurement activities and gates associated with the formation and conclusion of contracts above the quotation threshold**

No	Activity	Gate	Sub-Activity (see Table 3 of the procedure manual)	Key action	Person assigned responsibility to perform key action
1*	Establish what is to be procured	1.3 PG1	Obtain permission to start with the procurement process	Make a decision to proceed / not to proceed with the procurement based on the broad scope of work and the financial estimates.	Project manager/ End user
2*	Decide on procurement strategy	2.5 PG2	Obtain approval for procurement strategies that are to be adopted including specific approvals to approach a confined market or the use of the negotiation procedure	Confirm selection of strategies so that bid offers can be solicited	Demand and Acquisition manager
3	Solicit bid offers	3.2 PG3	Obtain approval for procurement documents	Grant approval for the issuing of the procurement documents	Procurement documentation committee/ Bid Specification committee

No	Activity	Gate	Sub-Activity (see Table 3 of the procedure manual)	Key action	Person assigned responsibility to perform key action
		3.3 <b>PG4</b>	Confirm that budgets are in place	Confirm that finance is available for the procurement to take place	Financial Services Support Manager
4	Evaluate bid offers	4.2 <b>PG5</b>	Obtain authorisation to proceed with next phase of bid process in the qualified, proposal or competitive negotiations procedure	Review evaluation report, ratify recommendations and authorise progression to the next stage of the bid process	Bid Evaluation Committee
		4.7 <b>PG6</b>	Confirm recommendations contained in the bid evaluation report	Review recommendations of the evaluation committee and refer back to evaluation committee for reconsideration or make recommendation for award	Tender Committee (BAC)
5	Award contract	5.3 <b>PG7</b>	Award contract	Formally accept the bid offer in writing and issue the contractor with a signed copy of the contract	MM
		5.5 <b>GF1</b>	Upload data in financial management and payment system	Verify data and upload contractor's particulars and data associated with the contract or order	Contract Monitor
6	Administer contracts and confirm	6.4 <b>PG8 A</b>	Obtain approval to waive penalties or low performance damages.	Approve waiver of penalties or low performance damages	Contract manager
		6.5 <b>PG8 B</b>	Obtain approval to notify and refer a dispute to an adjudicator	Grant permission for the referral of a dispute to an adjudicator or for final settlement to an arbitrator or court of law	Contract Manager
		6.6 <b>PG8 C</b>	Obtain approval to increase the total of prices, excluding contingencies and price adjustment for inflation, or the time for completion at the award of a contract or the issuing of an order up to a specified percentage	Approve amount of time and cost overruns up to the threshold	Tender Committee (BAC)

No	Activity	Gate	Sub-Activity (see Table 3 of the procedure manual)	Key action	Person assigned responsibility to perform key action
	compliance with requirements	6.7 <b>PG8 D</b>	Obtain approval to exceed the total of prices, excluding contingencies and price adjustment for inflation, or the time for completion at award of a contract or the issuing of an order by more than 20% and 30%, respectively	Approve amount of time and cost overruns above a the threshold	Tender Committee (BAC)
		6.8 <b>PG8 E</b>	Obtain approval to cancel or terminate a contract	Approve amount	Contract Manager
		6.9 <b>PG8 F</b>	Obtain approval to amend a contract	Approve proposed amendment to contract	Tender Committee (BAC)

5.2 The responsibilities for taking the key actions associated with the quotation procedure and the negotiation procedure where the value of the contract is less than the threshold set for the quotation procedure shall be as follows:

- a) SCM Manager shall grant approval for the issuing of the procurement documents, based on the contents of a documentation review report developed in accordance with the provisions of the standard;
- b) the authorised person may award the contract if satisfied with the recommendations contained in the evaluation report prepared in accordance with the provisions of the standard.

5.3 The responsibilities for taking the key actions associated with the issuing of an order in terms of a framework agreement shall be as stated in Table 5.

**Table 5: Procurement activities and gates associated with the issuing of an order above the quotation threshold in terms of a framework agreement**

Activity	Key action	Person assigned responsibility to perform key action
1 <b>FG1</b> Confirm justifiable reasons for selecting a framework contactor where there is more than one framework agreement covering the same scope of work	Confirm reasons submitted for not requiring competition amongst framework contractors or instruct that quotations be invited	Contract Monitor
3 <b>FG2</b> Obtain approval for procurement documents	Grant approval for the issuing of the procurement documents	Contract Manager
4 <b>FG3</b> Confirm that budgets are in place	Confirm that finance is available so that the order may be issued	FSS Manager
6 <b>FG4</b> Authorise the issuing of the order	If applicable, review evaluation report and confirm or reject recommendations. Formally accept the offer in writing and issue the contractor with a signed copy of the order	Delegated Authority

## 6. INFRASTRUCTURE DELIVERY MANAGEMENT REQUIREMENTS

### 6.1. Institutional Arrangements

#### 6.1.1. Committee System for Procurement

##### 6.1.1.1. General

6.1.1.1.1. A committee system comprising the documentation committee also known as bid specification committee, evaluation committee and tender committee (BAC) also known as bid adjudication committee shall be applied to all procurement procedures where the estimated value of the procurement exceeds the financial threshold for quotations and to the putting in place of framework agreements.

6.1.1.1.2. The evaluation committee shall, where competition for the issuing of an order amongst framework contractors takes place and the value of the order exceeds the financial threshold for quotations, evaluate the quotations received.

6.1.1.1.3. The persons appointed in writing as technical advisors and subject matter experts may attend any committee meeting.

- 6.1.1.1.4. No person who is a political officer bearer, a public office bearer including any councilor of a municipality, a political advisor or a person appointed in terms of section 12A of the Public Service Act of 1994 or who has a conflict of interest shall be appointed to a procurement documentation, evaluation or tender committee (BAC).
- 6.1.1.1.5. Committee decisions shall as far as possible be based on the consensus principle i.e. the general agreement characterised by the lack of sustained opposition to substantial issues. Committees shall record their decisions in writing. Such decisions shall be kept in a secured environment for a period of not less than five years after the completion or cancellation of the contract unless otherwise determined in terms of the National Archives and Record Services Act of 1996.
- 6.1.1.1.6. Committees may make decisions at meetings or, subject to the committee chairperson's approval, on the basis of responses to documents circulated to committee members provided that not less than sixty percent of the members are present or respond to the request for responses. Where the committee chairperson is absent from the meeting, the members of the committee who are present shall elect a chairperson from one of them to preside at the meeting.

6.1.1.2. **Procurement Documentation Committee (BSC)**

6.1.1.2.1. The Municipal Manager shall appoint in writing on a procurement by procurement basis:

- a) the persons to review the procurement documents and to develop a procurement documentation review report in accordance with clause 4.2.2.1 of the procedure manual; Where the procurement relates to the provision of new infrastructure or the rehabilitation, refurbishment or alteration of existing infrastructure, such a report shall be prepared by one or more persons who participated in the review and who are registered as:
- a professional architect or professional senior architectural technologist in terms of the
  - Architectural Profession Act or a professional landscape architect or a professional
  - landscape technologist in terms of the Landscape Architectural Profession;
  - professional engineer or professional engineering technologist in terms of the
  - Engineering Profession Act; or
  - a professional quantity surveyor in terms of the Quantity Surveying Professions Act.
- b) the members of the procurement documentation committee.

6.1.1.2.2. The procurement documentation committee shall comprise one or more persons. The chairperson shall be an employee of Msunduzi Municipality with requisite skills. Other members shall, where relevant, include a representative of the end user or the department requiring infrastructure delivery.

6.1.1.2.3. No member of, or technical adviser or subject matter expert who participates in the work of the any of the procurement committees or a family member or associate of such a member, may bid for any work associated with the bid which is considered by these committees.

### 6.1.1.3. **Evaluation Committee (BEC)**

6.1.1.3.1. The Municipal Manager shall appoint in writing:

- a) the members of the evaluation committee to prepare the evaluation and, where applicable, the quality evaluations, in accordance with clauses 4.2.3.2 and 4.2.3.4 of the procedure manual, respectively;
- b) The evaluation report shall be prepared by one or more persons who are conversant with the nature and subject matter of the procurement documents or the framework contract, and who are registered as:
  - a professional architect or professional senior architectural technologist in terms of the Architectural Profession Act;
  - a professional engineer or professional engineering technologist in terms of the Engineering Profession Act;
  - a professional landscape architect or a professional landscape technologist in terms of the Landscape Architectural Profession;
  - a professional project manager or a professional construction manager in terms of the Project and Construction Management Professions Act; or
  - a professional quantity surveyor in terms of the Quantity Surveying Profession Act.

6.1.1.3.2. The evaluation committee shall comprise not less than three people. The chairperson shall be an employee of Msunduzi Municipality with requisite skills. Other members shall include a supply chain management practitioner and, where relevant, include an official from the department requiring infrastructure delivery.

6.1.1.3.3. The evaluation committee shall review the evaluation reports prepared in accordance with sub clause 4.2.3 of the procedure manual and as a minimum verify the following in respect of the recommended bidder:

- a) the capability and capacity of a bidder to perform the contract;
- b) the bidder's tax and municipal rates and taxes compliance status;
- c) confirm that the bidder's municipal rates and taxes and municipal service charges are not in arrears;
- d) the Compulsory Declaration has been completed; and
- e) the bidder is not listed in the National Treasury's Register for Tender Defaulters or the List of Restricted Suppliers.

6.1.1.3.4. No bid submitted by a member of, or technical adviser or subject matter expert who participates in the work of the procurement documentation committee or a family member or associate of such a member, may be considered by the evaluation committee.

6.1.1.3.5. The chairperson of the evaluation committee shall promptly notify the Chief Financial Officer (CFO) of any respondent or bidder who is disqualified for having engaged in fraudulent or corrupt practices during the bid process.

#### 6.1.1.4. **Tender Committee (BAC)**

6.1.1.4.1. The Msunduzi Municipality will utilize the current bid adjudication committee for both goods and services and infrastructure procurement deliver management unit.

6.1.1.4.2. No member of the evaluation committee may serve on the tender committee (BAC). A member of an evaluation committee may, however, participate in the deliberations of a tender committee (BAC) as a technical advisor or a subject matter expert.

6.1.1.4.3. The tender committee (BAC) shall:

- a) consider the report and recommendations of the evaluation committee and:
  - verify that the procurement process which was followed complies with the provisions of this document;
  - confirm that the report is complete and addresses all considerations necessary to make a recommendation;
  - confirm the validity and reasonableness of reasons provided for the elimination of bidders; and
  - consider commercial risks and identify any risks that have been overlooked or fall outside of the scope of the report which warrant investigation prior to taking a final decision; and
- b) refer the report back to the evaluation committee for their reconsideration or make a recommendation to the authorised person on the award of a bid, with or without conditions, together with reasons for such recommendation.

- 6.1.1.4.4. The tender committee (BAC) shall consider proposals regarding the cancellation, amendment, extension or transfer of contracts that have been awarded and make a recommendation to the MM on the course of action which should be taken.
- 6.1.1.4.5. The tender committee (BAC) shall consider the merits of an unsolicited offer and make a recommendation to the Municipal Manager
- 6.1.1.4.6. The tender committee (BAC) shall report to the Municipal Manager any recommendation made to award a contract to a bidder other than the bidder recommended by the evaluation committee, giving reasons for making such a recommendation.
- 6.1.1.4.7. The tender committee (BAC) shall not make a recommendation for an award of a contract or order if the recommended bidder or framework contractor has:
- a) made a misrepresentation or submitted false documents in competing for the contract or order; or
  - b) been convicted of a corrupt or fraudulent act in competing for any contract during the past five years.
- 6.1.1.4.8. The tender committee may on justifiable grounds and after following due process, disregard the submission of any bidder if that bidder or any of its directors, members or trustees or partners has abused the delivery management system or has committed fraud, corruption or any other improper conduct in relation to such system. The National Treasury and the KZN provincial treasury shall be informed where such bidders are disregarded.
- 6.1.2. **Actions of an authorised person relating to the award of a contract or an order**
- 6.1.2.1. **Award of a contract**
- 6.1.2.2. The authorised person shall, if the value of the contract inclusive of VAT, is within his or her delegation, consider the report(s) and recommendations of the tender committee (BAC), or in the case of the awards for contracts below the quotation threshold, the recommendation of the SCM manager, and either:
- a) award the contract after confirming that the report is complete and addresses all considerations necessary to make a recommendation and budgetary provisions are in place; or
  - b) decide not to proceed or to start afresh with the process.
- 6.1.2.3. The authorised person shall immediately notify the Municipal Manager if a bid other than the recommended bid is awarded, save where the recommendation is changed to rectify an irregularity.

Such person shall, within 10 working days, notify in writing the Auditor-General, the National Treasury and KZN provincial treasury of the reasons for deviating from such recommendation.

#### 6.1.2.4. Issuing of an order

The authorised person shall, if the value of an order issued in terms of a framework contract, is within his or her delegation, consider the recommendation of the BAC or the SCM Manager as relevant, and either:

- a) authorise the issuing of an order in accordance with the provisions below of clause 4.2.5 of the procedure manual; or
  - confirm that the required goods or services, or any combination thereof, are within the scope of work associated with the relevant framework contract; and
  - consider the recommendations of the adjudication where competition amongst framework contracts takes place or a significant proportion of the total of the prices is negotiated, based on the financial parameter contained in the framework contract, and either
  - confirm the reasonableness of such recommendations and sign the acceptance of the order, or refer the evaluation report and recommendation back to those who prepared the report.
- b) decide not to proceed or to start afresh with the process.

#### 6.1.3. **Conduct of those engaged in infrastructure delivery**

##### 6.1.3.1. **General Requirements**

6.1.3.1.1. All personnel and agents of Msunduzi Municipality shall comply with the requirements of the CIDB Code of Conduct for all Parties engaged in Construction Procurement. They shall:

- a) behave equitably, honestly and transparently;
- b) discharge duties and obligations timeously and with integrity;
- c) comply with all applicable legislation and associated regulations;
- d) satisfy all relevant requirements established in procurement documents;
- e) avoid conflicts of interest; and
- f) not maliciously or recklessly injure or attempt to injure the reputation of another party.

6.1.3.1.2. All personnel and agents engaged in Msunduzi Municipality's infrastructure delivery management system shall:

- a) not perform any duties to unlawfully gain any form of compensation, payment or gratification from any person for themselves or a family member or an associate;
- b) perform their duties efficiently, effectively and with integrity and may not use their position for private gain or to improperly benefit another person;
- c) strive to be familiar with and abide by all statutory and other instructions applicable to their duties;
- d) furnish information in the course of their duties that is complete, true and fair and not intended to mislead;
- e) ensure that resources are administered responsibly;
- f) be fair and impartial in the performance of their functions;
- g) at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual;
- h) not abuse the power vested in them;
- i) not place themselves under any financial or other obligation to external individuals or firms that might seek to influence them in the performance of their duties;
- j) assist Msunduzi Municipality in combating corruption and fraud within the infrastructure procurement and delivery management system;
- k) not disclose information obtained in connection with a project except when necessary to carry out assigned duties;
- l) An employee or agent may not amend or tamper with any submission, bid or contract in any manner whatsoever.
- m) not make false or misleading entries in reports or accounting systems; and
- n) keep matters of a confidential nature in their possession confidential unless legislation, the performance of duty or the provision of the law require otherwise.

#### 6.1.3.2. **Conflicts of Interest**

- 6.1.3.2.1. The employees and agents of Msunduzi Municipality who are connected in any way to procurement and delivery management activities which are subject to this policy, shall:

- a) disclose in writing to the employee of the Msunduzi Municipality to whom they report, or to the person responsible for managing their contract, if they have, or a family member or associate has, any conflicts of interest; and
  - b) not participate in any activities that might lead to the disclosure of Msunduzi Municipality proprietary information.
- 6.1.3.2.2. The employees and agents of Msunduzi Municipality shall declare and address any perceived or known conflict of interest, indicating the nature of such conflict to whoever is responsible for overseeing the procurement process at the start of any deliberations relating to a procurement process or as soon as they become aware of such conflict, and abstain from any decisions where such conflict exists or recuse themselves from the procurement process, as appropriate.
- 6.1.3.2.3. Agents who prepare a part of a procurement document may in exceptional circumstances, where it is in Msunduzi Municipality's interest to do so, submit a bid for work associated with such documents provided that:
- a) Msunduzi Municipality states in the bid data that such an agent is a potential bidder;
  - b) all the information which was made available to, and the advice provided by that agent which is relevant to the bid, is equally made available to all potential bidders upon request, if not already included in the scope of work; and
  - c) the procurement documentation committee is satisfied that the procurement document is objective and unbiased having regard to the role and recommendations of that agent.
- 6.1.3.3. Evaluation of submissions received from respondents and bidders
- 6.1.3.3.1. The confidentiality of the outcome of the processes associated with the calling for expressions of interest, quotations or bids shall be preserved. Those engaged in the evaluation process shall:
- a) not have any conflict between their duties as an employee or an agent and their private interest;
  - b) may not be influenced by a gift or consideration (including acceptance of hospitality) to show favour or disfavour to any person;
  - c) deal with respondents and bidders in an equitable and even-handed manner at all times; and
  - d) not use any confidential information obtained for personal gain and may not discuss with, or disclose to outsiders, prices which have been quoted or charged to Msunduzi Municipality,
- 6.1.3.3.2. The evaluation process shall be free of conflicts of interest and any perception of bias. Any connections between the employees and agents of Msunduzi Municipality and a bidder or respondent shall be disclosed and recorded in the bid evaluation report.

6.1.3.3.3. Msunduzi Municipality personnel and their agents shall immediately withdraw from participating in any manner whatsoever in a procurement process in which they, or any close family member, partner or associate, has any private or business interest.

6.1.3.4. **Non-disclosure Agreements**

Confidentiality agreements in the form of non-disclosure agreements shall, where appropriate, be entered into with agents and potential contractors to protect Msunduzi Municipality's confidential information and interests.

6.1.3.5. **Gratifications, Hospitality and Gifts**

6.1.3.5.1. The employees and agents of Msunduzi Municipality shall not, directly or indirectly, accept or agree or offer to accept any gratification from any other person including a commission, whether for the benefit of themselves or for the benefit of another person, as an inducement to improperly influence in any way a procurement process, procedure or decision.

6.1.3.5.2. The employees and agents of Msunduzi Municipality as well as their family members of associates shall not receive any of the following from any bidder, respondent or contractor or any potential contractor:

- a) money, loans, equity, personal favours, benefits or services;
- b) overseas trips; or
- c) any gifts or hospitality irrespective of value from bidders or respondents prior to the conclusion of the processes associated with a call for an expression of interest or a bid.

6.1.3.5.3. The employees and agents of Msunduzi Municipality shall not purchase any items at artificially low prices from any bidder, respondent or contractor or any potential contractor at artificially low prices which are not available to the public.

6.1.3.5.4. All employees and agents of Msunduzi Municipality may for the purpose of fostering inter-personal business relations accept the following:

- a) meals and entertainment, but excluding the cost of transport and accommodation;
- b) promotional material of small intrinsic value such as pens, paper-knives, diaries, calendars, etc;
- c) incidental business hospitality such as business lunches or dinners, which the employee is prepared to reciprocate;
- d) complimentary tickets to sports meetings and other public events, but excluding the cost of transport and accommodation, provided that such tickets are not of a recurrent nature; and gifts in kind other than those listed in a) to d) which have an intrinsic value greater than **R350** unless they have declared them to the *Municipal Manager*

6.1.3.5.5. Under no circumstances shall gifts be accepted from prospective contractors during the evaluation of calls for expressions of interest, quotations or bids that could be perceived as undue and improper influence of such processes.

6.1.3.5.6. Employees and agents of Msunduzi Municipality shall without delay report to CFO or appropriately delegated authority any incidences of a respondent, bidder or contractor who directly or indirectly offers a gratification to them or any other person to improperly influence in any way a procurement process, procedure or decision.

6.1.3.6. **Reporting of Breaches**

Employees and agents of Msunduzi Municipality shall promptly report to the Municipal Manager or appropriately delegated authority any alleged improper conduct which they may become aware of, including any alleged fraud or corruption.

6.1.4. **Measures to prevent abuse of the infrastructure delivery system**

The Municipal Manager shall investigate all allegations of corruption, improper conduct or failure to comply with the requirements of this policy against an employee or an agent, a contractor or other role player and, where justified:

- a) take steps against an employee or role player and inform the National Treasury and KZN Provincial Treasury of those steps;
- b) report to the South African Police Service any conduct that may constitute a criminal offence;
- c) lodge complaints with the Construction Industry Development Board or any other relevant statutory council where a breach of such council's code of conduct or rules of conduct are considered to have been breached;
- d) cancel a contract if:
- e) it comes to light that the contractor has made a misrepresentation, submitted falsified documents or has been convicted of a corrupt or fraudulent act in competing for a particular contract or during the execution of that contract; or
- f) an employee or other role player committed any corrupt or fraudulent act during the bid process or during the execution of that contract.

6.1.5. **Awards to persons in the service of the state**

6.1.5.1. Any submissions made by a respondent or bidder who declares in the Compulsory Declaration that a principal is one of the following shall be rejected:

- a) a member of any municipal council, any provincial legislature, or the National Assembly or 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, 1999 (Act No. 1 of 1999);
- e) a member of the accounting authority of any national or provincial public entity; or
- f) an employee of Parliament or a provincial legislature.

6.1.5.2. The notes to the annual financial statements of the Msunduzi Municipality shall disclose particulars of an award of more than R 2000 to a person who is a family member of a person identified in 6.1.5.1 above or who has been in the previous 12 months. Such notes shall include the name of the person, the capacity in which such person served and the amount of the award.

#### 6.1.6. **Collusive Bidding**

Any submissions made by a respondent or bidder who fails to declare in the Compulsory Declaration that the bidding entity:

- a) is not associated, linked or involved with any other bidding entity submitting bid offers; or
- b) has not engaged in any prohibited restrictive horizontal practices including consultation, communication, agreement, or arrangement with any competing or potential bidding entity regarding prices, geographical areas in which goods and services will be rendered, approaches to determining prices or pricing parameters, intentions to submit a bid or not, the content of the submission (specification, timing, conditions of contract etc.) or intention to not win a bid shall be rejected.

#### 6.1.7. **Placing of Contractors under Restrictions**

6.1.7.1. If any bidder which has submitted a bid offer or a contractor which has concluded a contract has, as relevant:

- a) withdrawn such bid or quotation after the advertised closing date and time for the receipt of submissions;
- b) after having been notified of the acceptance of his bid, failed or refused to commence the contract;
- c) had their contract terminated for reasons within their control without reasonable cause;
- d) offered, promised or given a bribe in relation to the obtaining or the execution of such contract;
- e) acted in a fraudulent, collusive or anti-competitive or improper manner or in bad faith towards Msunduzi Municipality; or

- f) made any incorrect statement in any affidavit or declaration with regard to a preference claimed and is unable to prove to the satisfaction of Msunduzi Municipality that the statement was made in good faith or reasonable steps were taken to confirm the correctness of the statements,

A contract manager shall prepare a report on the matter and make a recommendation to the Municipal Manager for placing the contractor or any of its principals under restrictions from doing business with the Msunduzi Municipality

- 6.1.7.2. The Municipal Manager may, as appropriate, upon the receipt of a recommendation made in terms of 6.1.7.1 above and after notifying the contractor of such intention in writing and giving written reasons for such action, suspend a contractor or any principal of that contractor from submitting a bid offer to Msunduzi Municipality for a specified period of time.

- 6.1.7.3. The SCM Information Centre shall:

- a) record the names of those placed under restrictions in an internal register which shall be accessible to employees and agents of Msunduzi Municipality who are engaged in procurement processes; and
- b) notify the National Treasury and KZN provincial treasury and, if relevant, the Construction Industry Development Board, of such decision and provide them with the details associated therewith.

#### 6.1.8. **Complaints**

- 6.1.8.1. All complaints regarding the Msunduzi Municipality's infrastructure delivery management system shall be addressed to the Municipal Manager. Such complaints shall be in writing.
- 6.1.8.2. The SCM Unit shall investigate all complaints regarding the infrastructure procurement and delivery management system and report on actions taken to the Municipal Manager who will decide on what action to take.

## 6.2. **Acquisition Management**

### 6.2.1. **Unsolicited Proposal**

- 6.2.1.1. The Msunduzi Municipality is not obliged to consider unsolicited offers received outside a normal procurement process but may consider such an offer only if:
  - a) the goods, services or any combination thereof that is offered is a demonstrably or proven unique innovative concept;

- b) proof of ownership of design, manufacturing, intellectual property, copyright or any other proprietary right of ownership or entitlement is vested in the person who made the offer;
  - c) the offer presents a value proposition which demonstrates a clear, measurable and foreseeable
  - d) benefit for Msunduzi Municipality;
  - e) the offer is in writing and clearly sets out the proposed cost;
  - f) the person who made the offer is the sole provider of the goods or service; and
  - g) the Municipal Manager finds the reasons for not going through a normal bid processes to be sound.
- 6.2.1.2. The Municipal Manager may only accept an unsolicited offer and enter into a contract after considering the recommendations of the tender committee (BAC) if:
- a) the intention to consider an unsolicited proposal has been made known in accordance with Section 21A of the Municipal Systems Act of 2000 together with the reasons why such a proposal should not be open to other competitors, an explanation of the potential benefits for the Msunduzi Municipality and an invitation to the public or other potential suppliers and providers to submit their comments within 30 days after the notice;
  - b) the Msunduzi Municipality has obtained comments and recommendations on the offer from the National Treasury and KZN provincial treasury;
  - c) the tender committee (BAC) meeting which makes recommendations to accept an unsolicited proposal was open to the public and took into account any public comments that were received and any comments and recommendations received from the National Treasury and KZN provincial treasury; and
  - d) the provisions of 6.2.1.3 are complied with.
- 6.2.1.3. The Municipal Manager shall, within 7 working days after the decision to award the unsolicited offer is taken, submit the reasons for rejecting or not following the recommendations to the National Treasury, the KZN provincial treasury and Auditor General. A contract shall in such circumstances not be entered into or signed within 30 days of such submission.
- 6.2.2. **Tax and Rates Compliance**
- 6.2.2.1. SARS tax clearance
- 6.2.2.1.1. No contract may be awarded or an order issued where the value of such transaction exceeds R 30 000, unless a bidder or contractor is in possession of an original valid Tax Clearance Certificate issued by SARS provided that the bidder is not domiciled in the Republic of South Africa and the SARS has confirmed that such a bidder is not required to prove their tax compliance status.
- 6.2.2.1.2. In the case of a partnership, each partner shall comply with the requirements of 6.2.2.1.1. above.

6.2.2.1.3. No payment shall be made to a contractor who does not satisfy the requirements of 6.2.2.1.2. An employee of Msunduzi Municipality shall upon detecting that a bidder or contractor is not tax compliant, immediately notify such person of such status.

6.2.2.1.4. Notwithstanding the requirements of 6.2.2.1.1 and 6.2.2.1.3 above the following shall apply, unless a person who is not tax compliant indicates to contract officer/ buyer that it intends challenging its tax compliance status with SARS,

- a) a contract may be awarded to a non-compliant bidder if such a bidder is able to remedy its tax compliance status within a period not exceeding 10 working days after being duly notified of its non-compliant status;
- b) an order may be awarded to a non-compliant contractor if such a contractor is able to remedy its tax compliance status within a period not exceeding 10 working days after being duly notified of its non-compliant status;
- c) a non-compliant contractor shall be issued with a first warning that payments in future amounts due in terms of the contract may be withheld, before the authorising of any payment due to such contractor;
- d) before authorising a further payment due to a non-compliant contractor who has failed to remedy its tax compliance status after receiving a first warning, a second and final warning shall be issued to such contractor;
- e) no payments may be released for any amounts due in terms of the contract due to a non-compliant contractor if, after a period of 30 calendar days have lapsed since the second warning was issued, the non-compliant contractor has failed to remedy its tax compliance status.

6.2.2.1.4.1. The Msunduzi Municipality may cancel a contract with a non-compliant contractor if such a contractor fails to remedy its tax compliance status after a period of 30 calendar days have lapsed since the second warning was issued in terms of 6.2.2.1.4e above.

### 6.2.3. **Municipal Rates and Taxes**

No contract may be awarded to a bidder who, of the principals of that bidder, owes municipal rates and taxes or municipal service charges to any municipality or a municipal entity and are in arrears for more than 3 months.

#### 6.2.4. **Declarations of Interest**

Bids and respondents making submissions in response to an invitation to submit a bid or a call for an expression of interest, respectively shall declare in the Compulsory Declaration whether or not any of the principals:

- a) are an employee of the Msunduzi Municipality or in the employ of the state; or
- b) have a family member or a business relation with a person who is in the employ of the state.

#### 6.2.5. **Invitations to submit expressions of interest or bid offers**

6.2.5.1. All invitations to submit bids where the estimated value of the contract exceeds R200 000 including VAT, except where a confined bid process is followed, and expressions of interest shall be advertised on the Msunduzi Municipality's website and on the National Treasury eTender Publication Portal. Advertisements shall be placed by the Acquisition Manager

6.2.5.2. Advertisements relating to construction works which are subject to the Construction Industry Development Regulations issued in terms of the Construction Industry Development Act of 2000 shall in addition to the requirements of 6.2.4.1 above be advertised on the CIDB website. Advertisements shall be placed by the Acquisition Manager.

6.2.5.3. Where deemed appropriate by the procurement documentation committee an invitation to bid and a call for an expression of interest shall be advertised in suitable local and national newspapers and the Government Tender Bulletin as directed by such person. Advertisements shall be placed by Acquisition Manager.

6.2.5.4. Such advertisements shall be advertised for a period of at least 30 days before closure, except in urgent cases when the advertisement period may be shortened as determined by the Municipal Manager or the appropriately delegated authority.

6.2.5.5. Invitations to submit expressions of interest or bid offers shall be issued not less than 10 working days before the closing date for bids and at least 5 working days before any compulsory clarification meeting. Procurement documents shall be made available not less than 7 days before the closing time for submissions.

#### 6.2.6. **Publication of submissions received and the award of contracts**

6.2.6.1. The Acquisition Manager shall publish within 10 working days of the closure of any advertised call for an expression of interest or an invitation to bid where the estimated value of the contract exceeds R200 000 including VAT on the municipality's or municipal entity's website, the names of all bidders that made submissions to that advertisement, and if practical or applicable, the total of the prices and the preferences claimed. Such information shall remain on the website for at least 30 days.

6.2.6.2. The Acquisition Manager shall publish within 7 working days of the award of a contract the following on the Msunduzi Municipality 's website

- a) the contract number;

- b) contract title;
- c) brief description of the goods, services or works;
- d) the total of the prices, if practical;
- e) the names of successful bidders and their B-BBEE status level of contribution;
- f) duration of the contract; and
- g) brand names, if applicable.

6.2.6.3. The Acquisition Manager shall submit within 7 working days of the award of a contract the information required by National Treasury on the National Treasury eTender Publication Portal regarding the successful and unsuccessful bids. Submissions shall be made by Contract officer/ monitoring officer.

6.2.6.4. The award of contracts relating to construction works which are subject to the Construction Industry Development Regulations issued in terms of the Construction Industry Development Act of 2000 shall in addition to the requirements of 6.2.5.3 be notified on the CIDB website. The notification shall be made by placed by the Acquisition Manager

#### 6.2.7. **Disposal Committee**

6.2.7.1. The Municipal Manager shall appoint on a disposal by disposal basis in writing the members of the disposal committee to decide on how best to undertake disposals in accordance with the provisions of clause 10 of the standard.

6.2.7.2. A disposal committee shall decide how best to undertake disposals relating to the demolition or dismantling of infrastructure or parts thereof, and the disposal of unwanted, redundant or surplus materials, plant and equipment.

6.2.7.3. The disposal committee shall make recommendations to Audit Committee who shall approve the recommendations, refer the disposal strategy back to the disposal committee for their reconsideration, and decide not to proceed or to start afresh with the process.

### 6.3. **Reporting of infrastructure delivery management information**

The CFO shall submit any reports required in terms of the standard to the National Treasury or KZN provincial treasury

## 7. **INFRASTRUCTURE PROCUREMENT**

### 7.1. **Usage of Procurement Procedures**

The Msunduzi Municipality shall not apply the following procedure:

- a) Shopping Procedure

The Msunduzi Municipality shall apply the following procedures listed in Table 6 below;

**Table 6: List of procurement procedures applicable to Msunduzi Municipality**

	Procurement procedure
1	Nominated procedure
2	Open procedure
3	Qualified procedure
4	Quotation procedure
5	Proposal procedure using two envelope system
6	Restrictive Competitive negotiations
7	Open competitive negotiations
8	Negotiated procedure

7.1.1. Provisional Sums and Prime Cost or Sub-Contract Allowance

7.1.1.1. Where monetary allowances in excess of R200 000 in respect of provisional sums or prime cost items have been included in the bid documents, and where the work or items to which the sums relate are to be executed/supplied by sub-contractors/suppliers, then one of the following processes, as determined by the Bid Specification Committee, shall be followed in respect of these allowances:

- a) An **open competitive bidding process** in which bid documents are prepared by the Responsible Agent in consultation with and to the approval of the contractor, invitations to bid are advertised in the media, and whereby the **selected sub-contractor/supplier** is chosen by the Responsible Agent together with the contractor from the responses received. The contractor must satisfy him/herself that the selected sub-contractor/supplier can meet the requirements of the sub-contract/supply agreement, and assumes the risk for the performance of the sub-contractor/supplier. The contractor may, on reasonable grounds, elect not to employ a particular sub-contractor/supplier
- b) A **two-stage selection process**, whereby the Responsible Agent will advertise (in the media) for expressions of interest from suitably qualified sub-contractors/suppliers. From the responses received, the Responsible Agent and the contractor, in conjunction, shall compile a list of at least three (unless less than three responses were received) suitable sub-contractors/suppliers who will then be asked to submit prices for the works/items required. The contractor will assume

the risk for the performance of the **selected sub-contractor/supplier** identified through this process.

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

7.1.1.2. A preference points as described in this policy must be applied in respect of the processes described in clauses above. When monetary allowances of less than R200 000 have been included in the bid documents, and where the work or items to which the sums relate are to be executed/supplied by sub-contractors/suppliers, the contractor must be required to obtain a minimum of three written quotations for the approval of the Responsible Agent

## 7.2. Procurement Documents

7.2.1. **The forms of contract that may be used are as follows:**

**Table 7: Approved forms of contract related to the delivery and maintenance of infrastructure**

Form of Contract	Code	Intended Usage
<b>General Conditions of Contract</b>		
<b>Construction Industry Development Board (CIDB)</b>		
CIDB Standard Professional Service Contract	SPSC	Professional services
CIDB General Conditions of Purchase	-	An order form type of contract for low-value goods without any incidental work or services on or before a specified date being required.
CIDB Contract for the Supply and Delivery of Goods		Simple, regional purchase of readily available materials or commodities which require almost no management of the buying and delivery process, minimal testing, installation and commissioning on delivery.
CIDB General Conditions of Service	-	An order form type of contract where low-value services on or before a specified date are required.
<b>International Federation of Consulting Engineers (FIDIC)</b>		
FIDIC Short Form of Contract	Green Book	Building or engineering works of relatively small capital value, or for relatively simple or repetitive work, or for work of short duration. Use for design by employer- or contractor-designed Works.
FIDIC Conditions of Contract for Construction for Building and Engineering Works designed by the Employer	Red Book	Building or engineering works designed by the employer. (The works may include some elements of contractor-designed works.)
FIDIC Conditions of Contract for plant and design-build for electrical and mechanical plant, and for building and engineering works, designed by the contractor	Yellow Book	The provision of electrical or mechanical plant and the design and construction of building or engineering works.
FIDIC Conditions of Contract for EPC Turnkey Projects	Silver Book	The provision on a design and construct (turnkey) basis of a process or power plant, of a factory or similar facility, or an infrastructure project or other type of development.
FIDIC Conditions of Contract for Design, Build and Operate Projects	Gold Book	"Green field" building or engineering works which are delivered in terms of a traditional design, build and operate sequence with a 20-year operation period. (The contractor has no responsibility for the financing of the project/package or its ultimate commercial success.)
<b>South African Institution of Civil Engineering (SAICE)</b>		
SAICE General Conditions of Contract for Construction Works	GCC	Engineering and construction, including any level of design responsibility.
<b>Joint Building Contracts Committee (JBCC)</b>		
JBCC Principal Building Agreement	PBA	Buildings and related site works designed by the employer.
JBCC Minor Works Agreement	MWA	Buildings and related site works of simple content designed by the employer.
<b>Institution of Civil Engineers (ICE)</b>		
NEC3 Engineering and Construction Contract	ECC	Engineering and construction including any level of design responsibility.
NEC3 Engineering and Construction Short Contract	ECSC	Engineering and construction which do not require sophisticated management techniques, comprise straightforward work and impose only low risks on both the employer and contractor.
NEC3 Professional Services Contract	PSC	Professional services, such as engineering, design or consultancy advice.
NEC3 Professional Services Short Contract	PSCC	Professional services which do not require sophisticated management techniques, comprise straightforward work and impose only low risks on both the client and consultant.
NEC3 Term Service Contract	TSC	Manage and provide a service over a period of time.
NEC3 Term Service Short Contract	TSSC	Manage and provide a service over a period of time, or provide a service which does not require sophisticated management techniques, comprises straightforward work and imposes only low risks on both the employer and contractor.
NEC3 Supply Contract	SC	Local and international procurement of high-value goods and related services, including design.
NEC3 Supply Short Contract	SSC	Local and international procurement of goods under a single order or on a batch order basis and is suitable for use with contracts which do not require sophisticated management

- 7.2.2. The Msunduzi Municipality's preapproved templates for Part C1 (Agreements and contract data) of procurement documents shall be utilised to obviate the need for legal review prior to the awarding of a contract. All modifications to the standard templates shall be approved by procurement documentation committee prior to being issued for bid purposes.
- 7.2.3. Disputes arising from the performance of a contract shall be finally settled in a South African court of law.
- 7.2.4. State additional requirements, if any e.g. use of standard access specifications, health and safety specifications etc.
- 7.2.5. The Municipal Declaration and returnable documents contained in the standard shall be included in all bids for:
- a) consultancy services; and
  - b) goods and services or any combination thereof where the total of the prices is expected to exceed R10 m including VAT.

### **7.3. Developmental Procurement Policy**

- 7.3.1. In order to encourage increased participation and the sustainable growth of the small business sector, the unbundling of larger projects into smaller, more manageable, contracts is encouraged.
- 7.3.2. Unbundling must however be considered in the context of:
- a) economies of scale being lost;
  - b) abortive work becoming necessary;
  - c) additional demands (not only financial) being placed on the municipality's resources; and
  - d) the risk of later phases not being completed as a result of budget cuts becoming necessary in the future.
- 7.3.3. Unbundling, and all of its associated implications, must therefore be carefully considered at the planning stage of any project and the budgets for, and design thereof, should be structured accordingly.
- 7.3.3.1. It is important to note that while it is the municipality's policy to procure construction works in the smallest practicable quantities, the practice of parcelling such procurement in order to avoid complying with the requirements of the different range of procurement processes described in this policy is not permitted.
- 7.3.4. Msunduzi Municipality encourages the participation of subcontracting of 25% of high value infrastructure projects starting from R5 million to local emerging contractors

### **7.4. Payment of Contractors**

The Msunduzi Municipality shall settle all accounts within 30 days of invoice or statement as provided for in the contract.

## 7.5. Approval to utilise specific procurement procedures

7.5.1 Prior approval shall be obtained for the following procurement procedures from the following persons, unless such a procedure is already provided for in the approved procurement strategy:

**Table 8: Procurement Thresholds**

Procedure	Conditions which need to be satisfied in	Threshold R (incl. vat)
Negotiated	The services, goods or works have a value not exceeding a threshold	R75 000
	A professional service contract has a value not exceeding a threshold	R200 000
Nomination Procedure	Any procurement not exceeding a threshold	R1 500 000
Quotation Procedure	Any procurement where the estimated value does not exceed a threshold	R200 000

- a) SCM Manager shall authorise the use of the negotiated procedure above the thresholds provided in table 8 above
- b) SCM Unit Manager shall authorise the approaching of a confined market except where a rapid response is required in the presence of, or the imminent risk of, an extreme or emergency situation arising from the conditions set out in the standard and which can be dealt with or the risks relating thereto arrested within 48 hours; and

7.5.2 The person authorised to pursue a negotiated procedure in an emergency is SCM Manager.

## 7.6. Receipt and Safeguarding of Submissions

7.6.1 A dedicated and clearly marked bid box shall be made available to receive all submissions made.

7.6.2 The bid box shall be fitted with two locks and the keys kept separately by two contract officers. Such personnel shall be present when the box is opened on the stipulated closing date for submissions. The bid box is located in the Foyer, Ground Floor, City hall, 169 Chief Albert Luthuli (Commercial) Road, Pietermaritzburg, 3201 not later than 12h00.

## 7.7. Opening of Submissions

7.7.1 Submissions shall be opened by an opening panel comprising two people nominated by SCM Manager who have declared their interest or confirmed that they have no interest in the submissions that are to be opened.

7.7.2 The opening panel shall open the bid box at the stipulated closing time and:

- a) sort through the submissions and return those submissions to the box that are not yet due to be opened including those whose closing date has been extended;
- b) return submissions unopened and suitably annotated where:
  - i) submissions are received late, unless otherwise permitted in terms of the submission data;
  - ii) submissions were submitted by a method other than the stated method,
  - iii) submissions were withdrawn in accordance with the procedures contained in SANS 108453; and.
  - iv) only one bid submission is received and it is decided not to open it and to call for fresh bid submissions;
    - record in the register submissions that were returned unopened;
    - open submissions if received in sealed envelopes and annotated with the required particulars and read out the name of and record in the register the name of the bidder or respondent and, if relevant, the total of prices including VAT where this is possible;
    - record in the register the name of any submissions that is returned with the reasons for doing so;
    - record the names of the bidder's representatives that attend the public opening;
    - sign the entries into the register; and
    - stamp each returnable document in each bid submission.

7.7.3 Each member of the opening panel shall initial the front cover of the submission and all pages that are stamped.

7.7.4 Respondents and bidders whose submissions are to be returned shall be afforded the opportunity to collect their submissions.

7.7.5 Submissions shall be safeguarded from the time of receipt until the conclusion of the procurement process.

## **7.8. Use of another organ of state's framework agreement**

The Msunduzi Municipality may make use of another organ of state's framework contract which has been put in place by means of a competitive bid process and there are demonstrable benefits for doing so. The Municipal Manager or delegated authority shall make the necessary application to that organ of state to do so.

## **7.9. Insurances**

7.9.1 Contractors shall be required to take out all insurances required in terms of the contract. Alternatively the insurance shall be principal or employer (Msunduzi Municipality) controlled.

7.9.2 The insurance cover in engineering and construction contracts for loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a

person (not an employee of the Contractor) caused by activity in connection with a contract shall in general not be less than the value stated in Table 9 below, unless otherwise directed by End-user in consultation with SCM.

7.9.3 Lateral earth support insurance in addition to such insurance shall be take out on a case by case basis.

**Table 9: Minimum Insurance Cover**

Type of Insurance	Value
Engineering and construction contracts - loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with a contract	Not less than R20 million
Professional services and service contracts - death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with a contract or damage to property	Not less than R10 million
Professional indemnity insurance	Geotechnical, civil and structural engineering: R5,0 million electrical, mechanical and engineering: R3,0 million architectural: R5,0 million other R3,0 million
Engineering and construction contracts - loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with a contract	Not less than R20 million

7.9.4 The insurance cover in professional services and service contracts for damage to property or death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with a contract shall not be less than the value stated in Table 9 for any one event unless otherwise directed by the infrastructure process manager

7.9.5 SASRIA Special Risk Insurance in respect of riot and associated risk of damage to the works, Plant and Materials shall be taken out on all engineering and construction works.

7.9.6 Professional service appointments shall as a general rule be subject to proof of current professional indemnity insurance being submitted by the contractor in an amount not less than the value stated in

Table 9 in respect of each claim, without limit to the number of claims, unless otherwise directed by the infrastructure process manager in relation to the nature of the service they provide

7.9.7 Msunduzi Municipality shall take out professional indemnity insurance cover where it is deemed necessary to have such insurance at a level higher than the levels of insurance commonly carried by contractors.

7.9.8 Where payment is to be made in multiple currencies, either the contractor or Msunduzi Municipality should be required to take out forward cover. Alternatively, the prices for the imported content should be fixed as soon as possible after the starting date for the contract

## 7.10. Sureties

7.10.1 Projects sureties must be determined according to affordability and risk for different categories of contracts as follows:

**Table 10: Affordability and Risk Measurement**

Project Type	JBCC	GCC	Project Value
Micro	0%	0%	Not Exceeding R60 000
Small	0%	0%	Not Exceeding R100 000
Medium	5%	5%	Not Exceeding R500 000
Major	JBCC	GCC	Exceeding R500 000

7.10.2 The minimum for retention monies held from a contractor during the construction period must be determined according to affordability and risk for different categories of contracts as follows:

**Table 11: Retention Monies**

Project Type	JBCC	GCC	Project Value
Micro	2.5%	2.5%	Not Exceeding R60 000
Small	3.5%	3.5%	Not Exceeding R100 000
Medium	5%	5%	Not Exceeding R500 000
Major	JBCC	GCC	Exceeding R500 000

## 7.11. Written reasons for actions taken

7.11.1 Written reasons for actions taken shall be provided by a contract manager

7.11.2 The written reasons for actions taken shall be as brief as possible and shall as far as is possible, and where relevant, be framed around the clauses in the:

- a) SANS 10845-3, *Construction procurement - Part 3: Standard conditions of bid*, and, giving rise to the reason why a respondent was not short listed, prequalified or admitted to a data base; or

- b) SANS 10845-4, Construction procurement - Part 4: Standard conditions for the calling for expressions of interest; as to why a bidder was not considered for the award of a contract or not awarded a contract.

7.11.3 Requests for written reasons for actions taken need to be brief and to the point and may not divulge information which is not in the public interest or any information which is considered to prejudice the legitimate commercial interests of others or might prejudice fair competition between bidders.

## 7.12. Request for access to information

7.12.1 Should an application be received in terms of Promotion of Access to Information Act of 2000 (Act 2 of 2000), the "requestor" should be referred to the Msunduzi Municipality's Information Manual which establishes the procedures to be followed and the criteria that have to be met for the "requester" to request access to records in the possession or under the control of Msundzi Municipality

7.12.2 Access to technical and commercial information such as a comprehensive programme which links resources and prices to such programme should be refused as such information provides the order and timing of operations, provisions for time risk allowances and statements as to how the contractor plans to do the work which identifies principal equipment and other resources which he plans to use. Access to a bill of quantities and rates should be provided in terms of the Act.

## 8. RISK MANAGEMENT

8.1. The criteria for the identification, consideration and avoidance of potential risks in the supply chain management system, are as follows:

a) the Chief Risk Officer must;

- assess the nature and extent of the risks associated with the municipality's operation
- decide the degree of tolerance or an acceptable level of loss or degree of failure
- decide how to manage or minimize the risks identified
- monitor, report and from time to time reassess the level and implication of the risk exposure
- maintain a risk register that identifies and assesses all known risks and the action taken to manage those risks

b) the risk register must be regularly updated and the outcome reported to the Audit Committee

8.2. 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;

- e) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.
- f) the Senior Managers: Finance must effect all insurance cover and maintain a record of all policy details for noted financial risks
- g) Managers are responsible for implementing the risk management policy, including financial risks within their business units