

# MSUNDUZI MUNICIPALITY



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# **The Msunduzi Municipality**

## **SUPPLY CHAIN MANAGEMENT POLICY**

*Adopted in terms of section 111 of the Municipal Finance Management Act,  
No.56 of 2003 and the Municipal Supply Chain Management Regulations*

**8<sup>th</sup> Review May 2016**

**MUNICIPAL SUPPLY CHAIN MANAGEMENT POLICY  
LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003**

**Date of adoption:**

Council resolves in terms of section 111 of the Local Government Municipal Finance Management Act (No. 56 of 2003), to adopt the following proposal as the Supply Chain Management Policy of the Msunduzi Municipality.

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## Definitions

1. 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 –

**“competitive bidding process”** means a competitive bidding process referred to in paragraph 12 (1) (d) of this Policy;

**“competitive bid”** means a bid in terms of a competitive bidding process;

**“Emergency”** referred to in subparagraph 36(1) (a) (i) of this policy means a deviation that is based on it being an emergency case that is reasonable/justifiable based on evidence that:

- Immediate action is necessary in order to avoid a dangerous or risky situation or misery;
- The time available would make it impossible/ impractical to go through a bidding process;
- The deviation is not as a result of the need for procurement being identified/agreed upon/budgeted/planned in the past but not attended to timeously and
- The deviation is not as a result of improper planning

**“final award”**, 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”** means quotations referred to in paragraph 12 (1) (c) of this Policy;

**“GCC”** means General Conditions of Contract

**“in the service of the state”** means to be –

(a) a member of –

- (i) any municipal council;
- (ii) any provincial legislature; or

- (iii) 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;

**“JBCC”** means a principal building agreement issued by the Joint Building Contracts Committee

**“long term contract”** means a contract with a duration period exceeding one year;

**“list of accredited prospective providers”** means the list of accredited prospective providers which the municipality must keep in terms of paragraph 14 of this policy;

**“other applicable legislation”** means any other legislation applicable to municipal supply chain management, including –

- (a) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- (b) the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
- (c) the Construction Industry Development Board Act, 2000 (Act No.38 of 2000);

**“Single provider”** referred to in subparagraph 36(1) (a) (ii) of this policy means a deviation that is based on it being an sole supplier/provider case that is reasonable/justifiable based on evidence that:

- A thorough analysis of the market was done and
- Where required, a transparent and equitable pre-selection process.

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

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



**“the Regulations”** means the Local Government: Municipal Finance Management Act, 2003, Municipal Supply Chain Management Regulations published by Government Notice 34350 of 2011;

**“Urgency”** referred to in subparagraph 22(1)(b)(2) of this policy means a deviation that is based on it being an urgency case that is reasonable/justifiable based on evidence that:

- The early delivery of the goods/services is of critical importance;
- The time available would make it impossible/ impractical to go through a bidding process;
- The deviation is not as a result of the need for procurement being identified/agreed upon/budgeted/planned in the past but not attended to timeously and
- The deviation is not as a result of improper planning

**“written or verbal quotations”** means quotations referred to in paragraph 12(1)(b) of this Policy.

## CHAPTER 1 IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

### Supply chain management policy

2. (1) All officials and other role players in the supply chain management system of the municipality must implement this Policy in a way that –
  - (a) gives effect to –
    - (i) section 217 of the Constitution; 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 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) This Policy applies when the Msunduzi Municipality–
  - (a) procures goods or services;
  - (b) disposes goods no longer needed;
  - (c) selects contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies,
  - (d) selects 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) This Policy, except where provided otherwise, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –
  - (a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
  - (b) electricity from Eskom or another public entity, another municipality or a municipal entity.

**Amendment of the supply chain management policy**

3. (1) The accounting officer must –
  - (a) at least annually review the implementation of this Policy; and
  - (b) when the accounting officer considers it necessary, submit proposals for the amendment of this Policy to the council
- (2) If the accounting officer submits proposed amendments to the council that differs from the model policy issued by the National Treasury, the accounting officer must –
  - (a) ensure that such proposed amendments comply with the Regulations; and
  - (b) report any deviation from the model policy to the National Treasury and the relevant provincial treasury.
- (3) 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) In cases where council adopt special programs to achieve set policy objectives and where the special programs impacts on the mechanism of supply chain the accounting officer must:
  - (a) Prepare a report setting out the arrangements for the project
  - (b) Show the impact on supply chain management

**Delegation of supply chain management powers and duties**

4. (1) The council hereby delegates all powers and duties to the accounting officer which are necessary to enable the accounting officer –
  - (a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
    - (i) Chapter 8 or 10 of the Act; and
    - (ii) this Policy;
  - (b) to maximise administrative and operational efficiency in the implementation of this Policy;
  - (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this Policy; and
  - (d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- (2) Sections 79 and 106 of the Act apply to the sub delegation of powers and duties delegated to an accounting officer in terms of subparagraph (1).

- (3) The accounting officer may not sub delegate any supply chain management powers or duties to a person who is not an official of the Msunduzi Municipality or to a committee which is not exclusively composed of officials of the Msunduzi Municipality
- (4) This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.

### Sub delegations

- 5. (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) of this paragraph and paragraph 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) above R2 million (VAT included), but not exceeding R10 million (VAT included), may be sub delegated but only to –
    - (i) the chief financial officer;
    - (ii) a senior manager; or
    - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member;
  - (c) not exceeding R2 million (VAT included) may be sub delegated but only to –
    - (i) the chief financial officer;
    - (ii) a senior manager;
    - (iii) a manager directly accountable to the chief financial officer or a senior manager; or
    - (iv) a bid adjudication committee.
- (3) An official or bid adjudication committee to which the power to make final awards has been sub delegated in accordance with subparagraph (2) must within five days of the end of each month submit to the official referred to in subparagraph (4) a written report containing particulars of each final award made by such official or committee during that month, including–
  - (a) the amount of the award;
  - (b) the name of the person to whom the award was made; and
  - (c) the reason why the award was made to that person.

- (4) A written report referred to in subparagraph (3) must be submitted –
  - (a) to the accounting officer, in the case of an award by –
    - (i) the chief financial officer;
    - (ii) a senior manager; or
    - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or
  - (b) to the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by –
    - (i) a manager referred to in subparagraph (2)(c)(iii); or
    - (ii) a bid adjudication committee of which the chief financial officer or a senior manager is not a member.
- (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.

#### **Oversight role of council**

6. (1) The council reserves its right to maintain oversight over the implementation of this 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 this Policy and the supply chain management policy of any municipal entity under the sole or shared control of the municipality, to the council of the municipality; and
  - (ii) whenever there are serious and material problems in the implementation of this 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.

**Supply chain management unit**

7. (1) A supply chain management unit is hereby established to implement this Policy.
- (2) The supply chain management unit operates 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.

**Training of supply chain management officials**

8. The training of officials involved in implementing this Policy should be in accordance with any Treasury guidelines on supply chain management training.

## CHAPTER 2 SUPPLY CHAIN MANAGEMENT SYSTEM

### Format of supply chain management system

9. This Policy provides systems for –
- (i) demand management;
  - (ii) acquisition management;
  - (iii) logistics management;
  - (iv) disposal management;
  - (v) risk management; and
  - (vi) performance management.

### *Part 1: Demand management*

#### System of demand management

10. (1) The accounting officer must establish and implement an appropriate demand management system in order to ensure that the resources required by the Msunduzi Municipality support its operational commitments and its strategic goals outlined in the Integrated Development Plan
- (2) The demand management system must –
- (a) include timely planning and management processes to ensure that all goods and services required by the municipality are quantified, budgeted for and timely and effectively delivered at the right locations and at the critical delivery dates, and are of the appropriate quality and quantity at a fair cost;
  - (b) take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature,
  - (c) provide for the compilation of the required specifications to ensure that its needs are met; and
  - (d) take into account an analysis of the past spending.
  - (e) To undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.

## **Part 2: Acquisition management**

### **System of acquisition management**

11. (1) The accounting officer must implement the system of acquisition management set out in this Part in order to ensure –
- (a) that goods and services are procured by the Msunduzi Municipality in accordance with authorised processes only;
  - (b) that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
  - (c) that the threshold values for the different procurement processes are complied with;
  - (d) that the approval of the thresholds for supply chain officials are set and reviewed annually;
  - (e) that bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation;
- and
- (f) that any Treasury guidelines on acquisition management are properly taken into account.
- (2) When procuring goods or services contemplated in section 110(2) of the Act, the accounting officer must make public the fact that such goods or services are procured otherwise than through the municipality's supply chain management system, including -
- (a) the kind of goods or services; and
  - (b) the name of the supplier.
- (3) Publications in the Media
- In respect of any contract relating to the publication of official and legal notices and advertisements in the media by or on behalf of the City, there is no requirement for a competitive bidding process to be followed
- (4) The Head: Supply Chain Management may request quotations directly from Community Based Vendors in a specific area or from a specific community for the procurement of goods and services for amounts less than R30 000 (including construction works )

### **Range of procurement processes**

12. (1) Goods and services may only be procured by way of –
- (a) petty cash purchases, up to a transaction value of R500 (VAT included);
  - (b) written or verbal quotations for procurements of a transaction value over R500 up to R2 000 (VAT included);
  - (c) Written price quotations for procurements of a transaction value over R10 000 up to R30 000 (VAT included);



- (d) Formal written price quotations for procurement of a transaction value over R30 000 to R200 000.00 (VAT included)
- (e) a competitive bidding process for–
  - (i) procurements above a transaction value of R200 000 (VAT included); and
  - (ii) the procurement of long term contracts.
- (2) The accounting officer may, in writing-
  - (a) lower, but not increase, the different threshold values specified in subparagraph (1); or
  - (b) direct that –
    - (i) written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000;
    - (ii) written price quotations be obtained for any specific procurement of a transaction value lower than R30 000;
    - (iii) formal written price quotation (7 day quotation) process to be followed for any specific procurement transaction value lower than R200 000,or
    - (iv) a competitive bidding process be followed for any specific procurement of a transaction value over R200 000.
- (5) 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.
- (6) Publications in the Media  
In respect of any contract relating to the publication of official and legal notices and advertisements in the media by or on behalf of the City, there is no requirement for a competitive bidding process to be followed

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

13. 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;
  - (b) has authorised the municipality to obtain a tax clearance from the South African Revenue Services that the provider's tax matters are in order; and

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

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

14. (1) The accounting officer must –
- (a) utilize mandatory list of prospective providers of goods and services using central supplier database kept by National Treasury for the procurement requirements through written or verbal quotations, formal written price quotations; competitive bidding process and
  - (b) All prospective providers of goods and services doing business with Msunduzi Municipality must be registered with Treasury Central Supplier Database and
  - (c) Msunduzi Municipality must assist prospective providers of goods and services to register with National Treasury central supplier database (SCD).
- ;

#### **Petty cash purchases**

15. 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 follows –
- (a) verbal quotations must be obtained from at least three different providers registered with National Treasury Central Supplier Database;
  - (b) If it is not possible to obtain at least three verbal quotations the reason must be recorded and reported quarterly to the Head of Supply Chain Management or another official designated by the accounting officer;
  - (c) the names of and prices quoted by the potential suppliers must be recorded and the order must only be placed against a written confirmation from the selected supplier
  - (d) the Chief Financial officer must set the maximum number of petty cash purchases or the maximum amounts per month for each manager and these numbers or amounts must be reviewed each month by the accounting officer;

- (e) the manager reporting directly to the Chief Financial Officer may delegate responsibility for the petty cash in writing to an official reporting directly to him; and
- (f) a monthly petty cash reconciliation report from each manager must be provided to the chief financial officer, including –
  - (i) the total amount of petty cash purchases for that month; and
  - (ii) receipts and appropriate documents for each purchase.
- (e) the accounting officer must review the monthly petty cash reconciliation regularly

### **Written or verbal quotations**

16. The conditions for the procurement of goods or services through written or verbal quotations, are as follows:
- (a) Quotations must be obtained from at least three different providers registered with National Treasury Central Supplier Database;
  - (b) to the extent feasible, providers must be requested to submit such quotations in writing;
  - (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and reported to the Head Supply Chain Management 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) if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.
  - (f) a schedule of the prospective providers from whom the quotations were requested and the date of request must be kept and reviewed regularly by the Accounting officer against the list of the accredited prospective providers registered with central supplier database to ensure that rotation of prospective suppliers is being done.

### **Formal written price quotations**

17. (1) The conditions for the procurement of goods or services through formal written price quotations, are as follows:
- (a) quotations must be obtained in writing from at least three different providers registered with National Treasury Central Supplier Database;
  - (b) ;
  - (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the Head: Supply Chain Management or an official designated by the chief financial officer, and
  - (d) a schedule of the prospective providers from whom the quotations were requested and the date of request must be kept and reviewed regularly by the Accounting officer against the list

of the accredited prospective providers registered with central supplier database to ensure that rotation of prospective suppliers is being done

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

18. The procedure for the procurement of goods or services through written or verbal quotations or formal written price quotations, is as follows:
- (a) when using the list of accredited prospective providers registered with central supplier database, the accounting officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;
  - (b) all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, be advertised for at least seven days on the website and an official notice board of the municipality;
  - (c) offers received must be evaluated on a comparative basis taking into account unconditional discounts;
  - (d) 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;
  - (e) offers below R30 000 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;
  - (e) acceptable offers, which are subject to the preference points system (PPPFA and associated regulations), must be awarded to the bidder who scored the highest points;
  - (f) all contracts awarded by the Msunduzi Municipality must be recorded in a contracts register of the municipality detailing at least (i) the name of the selected provider (ii) the date of the award (iii) the duration of the contract (iv) retention percentage If applicable (v) Surety and or penalty amount

### **Competitive bids**

19. (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) No requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

**Process for competitive bidding**

20. The procedures for the following stages of a competitive bidding process are as follows:
- (a) Compilation of bidding documentation as detailed in paragraph 21;
  - (b) Public invitation of bids as detailed in paragraph 22;
  - (c) Site meetings or briefing sessions as detailed in paragraph 22;
  - (d) Handling of bids submitted in response to public invitation as detailed in paragraph 23;
  - (e) Evaluation of bids as detailed in paragraph 28;
  - (f) Award of contracts as detailed in paragraph 29;
  - (g) Administration of contracts
    - (i) After approval of a bid, the accounting officer and the bidder must enter into a written agreement.
  - (h) Proper record keeping
    - (i) Original / legal copies of written contracts agreements should be kept in a secure place for reference purposes.

**Bid documentation for competitive bids**

21. The criteria to which bid documentation for a competitive bidding process must comply, must –
- (a) take into account –
    - (i) the general conditions of contract and any special conditions of contract, if specified;
    - (ii) any Treasury guidelines on bid documentation; and
    - (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
  - (b) include the preference points system to be used , goals as contemplated in the Preferential Procurement Regulations and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
  - (c) 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) may only be awarded to the preferred bidder after the Chief Financial Officer has verified in writing that the budgetary provision exists for the acquisition of the goods, infrastructure projects and or

services and that is consistent with the integrated Development Plan, the bidders are required 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 30 days;
- (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
- (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), or, when unsuccessful, in a South African court of law.
- (f) all bids must be submitted in writing on the prescribed bid documentation in a sealed marked envelope and must be deposited by the bidders themselves or their appointed representatives into the designated bid box by no later than the date and time stipulated in the bid documentation.
- (g) The Msunduzi Municipality may disqualify any offer or bid submitted for the following reasons:
  - (i) the bidder failed to comply with all submission requirements as stated in the tender document;
  - (ii) the entity or one of its directors are listed on National Treasury's database as a person prohibited from doing business with the public sector;
  - (iii) there are outstanding municipal rates and taxes or service charges from any municipality by the entity or any of its directors that are in arrears for longer than 3 months unless credit arrangements have been made in terms of council policies;
  - (iv) the entity has failed to perform satisfactory on previous contracts with any municipality or other organ of the state, after that entity was given written notice that performance was unsatisfactory;
  - (v) any of the directors committed a corrupt or fraudulent act in competing for a particular contract or in the execution of a contract;

- (vi) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of a contract that benefited the entity or any of its directors;
- (vii) the entity or any its directors abused the supply chain management system or committed any improper conduct in relation to such system;
- (viii) any director has been convicted for fraud or corruption during the last 5 years;
- (ix) the entity or any of its directors has willfully neglected, reneged on or failed to comply with any government municipal or other public sector contract during the last 5 years;
- (x) the entity or any of its directors has misrepresented facts or information in the tender document submitted;
- (xi) the entity or any of its directors has submitted two tender documents (from the same company) unless the other tender document is an alternative offer;
- (xii) any persons whose tax matters have not been declared as being in order by the South African Revenue Services for awards in excess of R30 000 incl Vat;
- (xiii) the entity or any of its directors has failed to submit with the bid documentation, an original, valid tax clearance certificate
- (xiv) the accounting officer or designated committee must ensure that the municipal rates and taxes or municipal charges owed by the preferred bidder or any of its directors to the municipality or municipal entity are not in arrears for more than three months.
- (g) The Msunduzi Municipality may give preference to local suppliers and/or service providers
- (h) The Msunduzi Municipality may reject all bids if and when deemed necessary i.e. when there is a lack of effective competition or bids are not substantially responsive.

### **Public invitation for competitive bids**

- 22.** (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 commonly circulating locally, the website of the municipality 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 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 ocutmentation provided by the municipality; and
    - (iii) 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.
- (4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

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

**23.** The procedures for the handling, opening and recording of bids, are as follows:

- (a) Bids–
  - (i) must be opened only in public;
  - (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
  - (iii) received after the closing time should not be considered and returned unopened immediately.
- (a) 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;
- (b) No information, except the provisions in subparagraph (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
- (d) The accounting officer 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 on the website in terms of section 75 of the MFMA, the reference number of the bid, the description of the goods, services or infrastructure projects, names of all bidders, the B-BBEE status level of contribution of all bidders, the aforementioned information should be published in 10 working days after closure of the bid.

### **Negotiations with preferred bidders**

- 24.** (1) The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation –
- (a) does not allow any preferred bidder a second or unfair opportunity;
  - (b) is not to the detriment of any other bidder; 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.



**Two-stage bidding process**

25. (1) A two-stage bidding process is allowed for –
- (a) large complex projects;
  - (b) projects where it may be undesirable to prepare complete detailed technical specifications; or
  - (c) long term projects with a duration period exceeding three years;
  - (d) projects where evaluation of bids is based on functionality as a criterion
  - (e) projects where evaluation of bids is based on a stipulated minimum threshold for local production and content
- (2) In the first stage:
- (a) projects referred to in subparagraphs (1)(a) to (c), technical proposals or bids on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments;
  - (b) projects referred to in subparagraphs (1) (d), proposals or bids must be invited and evaluated in terms of the functionality evaluation criteria embodied in the bid documents
  - (c) projects referred to in subparagraphs (1) (e), proposals or bids must be evaluated in terms of the stipulated minimum threshold for local production and content.
- (2) In the second stage:
- a. Projects referred to in subparagraphs (1) (a) to (c), final technical proposals and priced bids should be invited.
  - b. Projects referred to in subparagraphs (1) (d) to (e), only proposals or bids that achieve the minimum qualifying score/percentage for functionality and minimum stipulated threshold for local production and content respectively must be evaluated further in accordance with the 80/20 or 90/10 preference point systems prescribed in Preferential Procurement Regulations 5 and 6.

**Committee system for competitive bids**

26. (1) A committee system for competitive bids is hereby established, consisting of the following committees for each procurement or cluster of procurements as the accounting officer may determine:
- (a) a bid specification committee;
  - (b) a bid evaluation committee; and
  - (c) a bid adjudication committee;
- (2) The accounting officer appoints the members of each committee, taking into account section 117 of the Act; and

- (3) A neutral or independent observer, appointed by the accounting officer, must attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.
- (4) The committee system must be consistent with –
  - (a) paragraph 27, 28 and 29 of this Policy; and
  - (b) any other applicable legislation.
- (5) The accounting officer may apply the committee system to formal written price quotations.

#### **Bid specification committees**

27. (1) A bid specification committee must compile the specifications for each procurement of goods or services by the municipality.
  - (2) Specifications –
    - (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
    - (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;
    - (c) must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
    - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or 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 word “equivalent”;
    - (f) must stipulate the appropriate preference point system to be utilized in the evaluation and adjudication of bids in terms of the points system set out in the Preferential Procurement Regulations 2011; and
    - (g) must be approved by the accounting officer prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.
  - (3) A bid specification committee must be composed of one or more officials of the municipality preferably the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.
  - (4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.

**Bid evaluation committees**

28. (1) A bid evaluation committee must –
- (a) evaluate bids in accordance with –
    - (i) the specifications for a specific procurement; and
    - (ii) the points system set out in terms of paragraph 27(2)(f).
  - (b) evaluate each bidder's ability to execute the contract;
  - (c) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, and;
  - (d) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
- (2) A bid evaluation committee must as far as possible be composed of-
- (a) officials from departments requiring the goods or services; and
  - (b) at least one supply chain management practitioner of the municipality.

**Bid adjudication committees**

29. (1) A bid adjudication committee must –
- (a) consider the report and recommendations of the bid evaluation committee; and
  - (b) either –
    - (i) depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or
    - (ii) make another recommendation to the accounting officer how to proceed with the relevant procurement.
- (2) A bid adjudication committee must consist of at least four senior managers of the municipality which must include –
- (a) the chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer; 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.
- (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 (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

### **Procurement of banking services**

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

**Procurement of IT related goods or services**

31. (1) The accounting officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.
- (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.

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

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

**Procurement of goods necessitating special safety arrangements**

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

### **Proudly SA Campaign**

**34.** The Msunduzi Municipality supports the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services from:

- Firstly – suppliers and businesses within the municipality or district;
- Secondly – suppliers and businesses within the relevant province;
- Thirdly – suppliers and businesses within the Republic.

### **Appointment of consultants**

**35.** (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, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the municipality.

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

**36.** (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; or
    - (iv) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
  - (b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.
- (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) Subparagraph (2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this policy.

### **Unsolicited bids**

37. (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- (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) The accounting officer must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, 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.

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

- 38.** (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, favouritism, unfair or irregular practices or failure to comply with this Policy, and when justified –
    - (i) take appropriate steps against such official or other role player; or
    - (ii) report any alleged criminal conduct to the South African Police Service;
  - (c) check the National Treasury’s database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
  - (d) reject any bid from a bidder–
    - (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality, or to any other municipality or municipal entity, are in arrears for more than three months; or



- (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
- (e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
- (f) cancel a contract awarded to a person if –
  - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
  - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
- (g) reject the bid of any bidder if that bidder or any of its directors –
  - (i) has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;
  - (ii) has been convicted for fraud or corruption during the past five years;
  - (v) has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - (vi) (iv) has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- (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.

### ***Part 3: Logistics, Disposal, Risk and Performance Management***

#### **Logistics management**

- 39.** The accounting officer must establish and implement an effective system of logistics management, which must include -
- (a) the monitoring of spending patterns on types or classes of goods and services incorporating, where practical, the coding of items to ensure that each item has a unique number;
  - (b) the setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;
  - (c) the placing of manual or electronic orders for all acquisitions other than those from petty cash;

- (d) before payment is approved , certification by the responsible officer that the goods and services are received or rendered on time and is in accordance with the order, the general conditions of contract and specifications where applicable and that the price charged is as quoted in terms of a contract;
- (e) appropriate standards of internal control and warehouse management to ensure that goods placed in stores are secure and only used for the purpose for which they were purchased;
- (f) regular checking to ensure that all assets including official vehicles are properly managed, appropriately maintained and only used for official purposes; and
- (g) monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for particular goods or services.

### **Disposal management**

- 40.** (1) The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act, are as follows:
- (i) the accounting officer must establish and implement an appropriate disposal management system in order to ensure that the disposal or letting of assets, including unserviceable, redundant or obsolete assets is in terms of the MFMA;
  - (ii) the disposal management system must include the disposal plan, market assessment, disposal method, how to execute the disposal and the updating of the procurement plan and asset register.
- (2) Assets may be disposed of by
- (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of asset
  - (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
  - (iii) selling the asset; or
  - (iv) destroying the asset.
- (3) The accounting officer must ensure that –
- (a) immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
  - (b) movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;

- (c) firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;
- (d) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;
- (e) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;
- (f) where assets are traded in for other assets, the highest possible trade-in price is negotiated; and
- (g) in the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment.

### **Risk management**

- 41.** (1) The criteria for the identification, consideration and avoidance of potential risks in the supply chain management system, are as follows:
- (a) the Chief Financial Officer must;
    - (i) assess the nature and extent of the risks associated with the municipality's operation
    - (ii) decide the degree of tolerance or an acceptable level of loss or degree of failure
    - (iii) decide how to manage or minimize the risks identified
    - (iv) monitor, report and from time to time reassess the level and implication of the risk exposure
    - (v) 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 Executive committee
- (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) the Strategic Executive Managers are responsible for implementing the risk management policy, including financial risks within their business units
- (h) projects sureties must be determined according to affordability and risk for different categories of contracts as follows:

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

- (i) 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:

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

- (j) payments for small and micro projects must be made within 14 days after submission of a valid tax invoice which has been approved by the Msunduzi Municipality's Representative or as specified in the municipality's Special Conditions of Contracts
- (k) the municipality shall at its discretion, accept signed cessions by Small Medium Enterprises to suppliers so that payments are made directly to suppliers for the supply of materials as a form of assisting Small Medium Enterprises. All cessions shall be in terms of the conditions of the GCC or JBCC, whichever is appropriate
- (l) the service provider may not cede or assign a contract or any monies due or that may become due to it, without the prior written consent of the Head: Supply Chain Management or in terms of the conditions of the contract.

- (m) penalties on late completion of work shall be as per the GCC or JBCC or as specified in the tender documents
  - (n) the senior managers: Finance with the assistance from relevant Senior managers shall carry out all negotiations with insurers, in respect of insurance claims, where necessary.
  - (o) the value and the responsibility for specific insurances required by contractors and service providers shall be specified in the tender documents
  - (p) (i) in some instances it may be in the best interest of the municipality to allow price adjustments due to escalation.  
  
(ii) a careful analysis of escalation clauses and formulas should be taken into account to ensure that the best interests of the municipality are served.  
  
(iii) if the accounting officer resolves to allow escalation, this must be specified in the bid documents, including the formula and the time frames at which intervals such price adjustments will be considered.
  - (q) (i) exchange rate fluctuations must be considered when items are imported or have imported component.  
  
(ii) the future fluctuations of the rand are particularly important if the contract period is over a specific period or if delivery is due at a date some time in the future.  
  
(iii) the accounting officer must make a decision as whether or not the municipality will take risk or whether suppliers will be allocated the risk.  
  
(iv) The standard approach is that the bidder must arrange for forward cover.  
  
(v) An award made during tender validity period expiring, the price will remain fixed and firm
  - (r) (i) extra works or variations and extensions to a contract shall be authorized in writing by the appropriate Senior manager or duly authorized official  
  
(ii) any variation and extension of contract which would produce an increase in the amount of an accepted tender or approved budget shall be reported to the adjudication committee and will require the approval of the Adjudication Committee and/or Accounting Officer before any payment is made.
- (4) contracts may be extended, varied or expanded by not more than 20% (including all applicable taxes) for construction related goods, works and/or services and 15% (including all applicable taxes) for all other goods, works and/or services of the original value of the contract.
- (5) Furthermore, anything beyond the abovementioned thresholds must be reported to Council, any expansion, extension or variation in excess of these thresholds must be dealt with in terms of the provisions of the section 116(3) of the MFMA which will be regarded as an amendment to the contract.

- (s) The Msunduzi Municipality may, prior to the award of the bid, cancel the bid if:
- (i) due to changed circumstances there is no longer a need the goods or services for which the bid were solicited;
  - (ii) funds are no longer available to cover the total envisaged expenditure; or
  - (iii) no acceptable bids were received
- (t) The Msunduzi Municipality may reject all bids if and when deemed necessary.

### **Performance management**

42. (1) The accounting officer must establish and implement an internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes were followed and whether the objectives of this Policy were achieved.
- (2) In the monitoring of supply chain management performance, the accounting officer together with the Chief Financial Officer, must set goals and performance criteria for SCM officials against which performance can be measured,
- (3) Issues that need to be included in the relevant reviews include:
- (a) achievement of goals
  - (b) compliance to norms and standards
  - (c) savings generated
  - (d) Stores efficiency
  - (e) cost variances per item and across business units
  - (f) contract management
  - (g) cost efficiency of the procurement process
  - (h) supply chain management objectives in line with the provisions of the CIDB Act and regulations
  - (i) principles of co-operative governance as expounded in the Constitution are observed
  - (j) regional economic disparities are being addressed and promoted.

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

43. (1) No award above R30 000 may be made in terms of this Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (2) Before making an award to a person the accounting officer must first check with SARS whether that person's tax matters are in order.

**Prohibition on awards to persons in the service of the state**

44. Irrespective of the procurement process followed, no award may be made to a person in terms of this Policy –
- (a) who is in the service of the state;
  - (b) if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
  - (c) a person who is an advisor or consultant contracted with the municipality.

**Awards to close family members of persons in the service of the state**

45. The accounting officer must ensure that the notes to the annual financial statements 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.

**Ethical standards**

46. (1) A code of ethical standards as set out in the National Treasury's code of conduct for supply chain management practitioners and other role players involved in supply chain management is hereby established for officials and other role players in the supply chain management system of the municipality in order to promote –
- (a) mutual trust and respect; and

- (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
- (2) General Principles
  - (a) the municipality commits itself to a policy of fair dealing and integrity in the conducting of its business. Officials and other role players involved in supply chain management (SCM) are in a position of trust, implying a duty to act in the public interest. Officials and other role players should not perform their duties to unlawfully gain any form of compensation, payment or gratuities from any person, or provider/contractor for themselves, their family or their friends.
  - (b) Officials and other role players involved in SCM should ensure that they perform their duties efficiently, effectively and with integrity, in accordance with the relevant legislation, policies and guidelines. They should ensure that public resources are administered responsibly.
  - (c) Officials and other role players involved in SCM should be fair and impartial in the performance of their functions. They should at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual. They should not abuse the power and authority vested in them.
- (3) *Conflict of interest*

An official or other role player involved with supply chain management –

- (a) must treat all providers and potential providers equitably;
- (b) may not use his or her position for private gain or to improperly benefit another person;
- (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
- (d) must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
- (e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process, or in any award of a contract by the municipality;
- (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal



process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;

- (g) must declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest;
- (h) should not place him/herself under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties; and
- (i) should not take improper advantage of their previous office after leaving their official position.

#### (4) *Accountability*

- (a) Practitioners are accountable for their decisions and actions to the public.
- (b) Practitioners should use public property scrupulously.
- (c) Only accounting officers or their delegates have the authority to commit the municipality to any transaction for the procurement of goods and / or services.
- (d) All transactions conducted by a practitioner should be recorded and accounted for in an appropriate accounting system. Practitioners should not make any false or misleading entries into such a system for any reason whatsoever.
- (e) Practitioners must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system.
- (f) Practitioners must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including
  - (i) any alleged fraud, corruption, favouritism or unfair conduct;
  - (ii) any alleged contravention of the policy on inducements, rewards, gifts and favours to municipalities or municipal entities, officials or other role players; and
  - (iii) any alleged breach of this code of conduct.
- (g) Any declarations made must be recorded in a register which the accounting officer must keep for this purpose. Any declarations made by the accounting officer must be made to the mayor who must ensure that such declaration is recorded in the register.

(5) *Openness*

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

(6) *Confidentiality*

- (a) Any information that is the property of the municipality or its providers should be protected at all times. No information regarding any bid / contract / bidder / contractor may be revealed if such an action will infringe on the relevant bidder's / contractor's personal rights.
- (b) Matters of confidential nature in the possession of officials and other role players involved in SCM should be kept confidential unless legislation, the performance of duty or the provisions of law requires otherwise. Such restrictions also apply to officials and other role players involved in SCM after separation from service.

(7) ***Bid Specification / Evaluation / Adjudication Committees***

- (a) Bid specification, evaluation and adjudication committees should implement supply chain management on behalf of the municipality in an honest, fair, impartial, transparent, cost-effective and accountable manner.
- (b) Bid evaluation / adjudication committees should be familiar with and adhere to the prescribed legislation, directives and procedures in respect of supply chain management in order to perform effectively and efficiently.
- (c) All members of bid adjudication committees should be cleared by the accounting\_officer at the level of "CONFIDENTIAL" and should be required to declare their financial interest annually.
- (d) No person should-

- i. interfere with the supply chain management system of the municipality; or
- ii. amend or tamper with any price quotation / bid after its submission.

**(8) Combative Practices**

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

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

(9) A breach of the code of ethics must be dealt with as follows -

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

**Inducements, rewards, gifts and favours to municipalities, officials and other role players**

**47.** (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –

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

**Sponsorships**

48. 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.

**Objections and complaints**

49. Persons aggrieved by decisions or actions taken in the implementation of this supply chain management system may, within 14 days of the decision or action –
- (a) if the objection or complaint is against the procurement process, submit a written objection or complaint against the decision or action to the accounting officer of the municipality who shall, in turn, within 24 hours refer the written objection or complaint to the independent and impartial person referred to in paragraph 50 for resolution; or
  - (b) if such complaint or objection is against the award of a bid, lodge a written appeal with the Municipal Bid Appeals Tribunal in accordance with the provisions of paragraph 50A.

**Resolution of disputes, objections, complaints and queries**

50. (1) The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes to assist in the resolution of objections and complaints between the municipality and any other person regarding –
- (a) the implementation of the procurement process in terms of the supply chain management system; or
  - (b) any matter arising from the implementation of the procurement process in terms of the supply chain management system.
- (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 objections or complaints received; and
  - (b) submit monthly reports to the accounting officer on all such objections and complaints received, attended to or resolved.
- (4) If the independent and impartial person referred to in paragraph 50.1, is of the view that a matter which should be dealt with in terms of paragraph 50A, he or she shall forthwith refer the matter to the Municipal Bid Appeals Tribunal and that Tribunal shall then hear and determine the matter in accordance with the provisions of paragraph 50A.
- (5) An objection or complaint may be referred to the KwaZulu-Natal Provincial Treasury if:
  - (a) the objection or complaint is not resolved within 60 days; or
  - (b) no response is forthcoming within 60 days.
- (6) If the Provincial Treasury does not or cannot resolve the matter, the objection or complaint may be referred to the National Treasury for resolution.

#### **50A. MUNICIPAL BID APPEALS TRIBUNAL**

- (1) The council shall establish a Municipal Bid Appeals Tribunal for its area of jurisdiction to hear and determine an appeal against the award of a bid.
- (2) The accounting officer of the municipality, in consultation with the Provincial Treasury, shall appoint the Chairperson, Deputy Chairperson and Members of the Municipal Bid Appeals Tribunal.
- (3) The powers, duties and functions of the Municipal Bid Appeals Tribunal, and matters incidental thereto, are set out in the Rules which are appended to this Supply Chain Management Policy and marked Appendix A.
- (4) The administrative and secretarial work involved in the performance of the duties and functions of the Municipal Bid Appeals Tribunal shall be performed by officers of the Provincial Treasury as set out in the Rules referred to in paragraph 50A.3.
- (5) There shall be no further appeal against a decision of the Municipal Bid Appeals Tribunal.”.

**Contracts providing for compensation based on turnover**

51. If a service provider acts on behalf of Msunduzi 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.

**Part 5 – Preferential Procurement****52. CALCULATION OF THE PREFERENT POINTS SYSTEM**

Preference point system

- (a) The 80/20 preference point system is applicable to bids with a rand value equal to, or above R30 000 and up to a rand value of R1 million( all applicable taxes included).
- (b) The 90/10 preference point system is applicable to bids with a Rand value above R1 million (all applicable taxes included)

Calculation of points for price

The PPPFA prescribes that the lowest acceptable bid will score 80 or 90 points for price. Bidders that quoted higher prices will score lower points for price on a pro-rata basis.

The formulae to be utilized in calculating points scored for price are as follows: 80/20 Preference point system (for acquisition of services, works or goods up to a Rand value of R1 million) (all applicable taxes included)

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

Where

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

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

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

*Preference point system (for acquisition of services, works or goods with a Rand value above R1million) (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 bid or offer under consideration

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

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

Points scored must be rounded off to the nearest 2 decimal places.

#### Calculation of points for B- BBEE status level contributor

Points must be awarded to a bidder for attaining the B- BBEE status level of contribution in accordance with the below:

B- BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
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

or, in respect of Exempted Micro Enterprises (EMEs)

Black Ownership of EME	Deemed B-BBEE Status Level of Contributor	Number of Points for Preference (80/20 System)	Number of Points for Preference (90/10 System)
<u>100%</u>	1	20	10
<u>At least 51%</u>	2	18	9
>50%	3	16	8
≥50%	4	12	5

A bid must not be disqualified from the bidding process if the bidder does not submit a certificate substantiating the B- BBEE status level of contribution or is a non-compliant contributor. Such a bidder will score zero (0) out of the maximum 10 or 20 points respectively for B- BBEE.

#### **Calculation of total points scored for the price and B-BBEE status level of contribution**

The points scored for the price must be added to the points scored for the B- BBEE status level of contribution to obtain the bidder's total points scored out of 100.

#### **C. B-BBEE Status Level Certificates**

In order to qualify for the above preference points,

Exempted Micro Enterprises (EME) must have submitted, to Msunduzi Municipality, a certificate issued by a registered auditor, accounting officer (as contemplated in section 60(4) of the Close Corporation Act, 1984 (Act No. 69 of 1984)) or an accredited verification agency confirming their status as such.

In order for an EME to qualify as a Level 1 or Level 2 BEE Contributor, EME must submit a sworn affidavit on an annual basis, confirming Annual Total Revenue of R10 Million or less, and Level of Black Ownership (Ownership (as contemplated in paragraph 4 of Government Gazette No. 36928)..

In order for a Qualifying Small Enterprise(QSE) to qualify as a Level 1 or Level 2 BEE Contributor, QSE must submit to Msunduzi Municipality a sworn affidavit on an annual basis, confirming Annual Total Revenue of R50 Million or less, and Level of Black Ownership (as contemplated in paragraph 5 of Government Gazette No. 36928).

Any misrepresentation in terms of the above constitutes a criminal offence as set out in the B-BBEE Act as amended

Bidders other than Exempted Micro Enterprises or Qualifying Small Enterprise must submit, to Msunduzi Municipality, their original and valid B-BBEE status level verification certificate, or a certified copy thereof, substantiating their B-BBEE status level of contributor.



The submission of such certificates must comply with the requirements of instructions and guidelines issued by the National Treasury and be in accordance with notices published by the Department of Trade and Industry in the Government Gazette.

Bidders who fail to submit the required certificates, or certified copies thereof, will be deemed to be non-compliant contributors.

Where specific sector charters have been gazetted in terms of the B-BBEE Act, bid documentation for procurement from within such sectors, must specify that only persons verified in terms of the particular sector charter (or Code of Good Practice), or Exempted Micro Enterprises, will qualify for a preference. A status level of contributor in respect of generic Codes of Good Practice will not, in such circumstances, qualify for any preference.

Where no specific sector charter has been gazetted, persons other than Exempted Micro Enterprises or Qualifying Small Enterprise must be verified in terms of the gazetted generic Codes of Good Practice in order to qualify for a preference.

For the purposes of transparency, bidders shall, in respect of all quotations (above R30 000) and competitive bids (over R200 000), be required to claim, in their bid submission, a preference in accordance with their B-BBEE status.

Notwithstanding what is contained in the bid submission, preference points will be allocated during the bid evaluation process in accordance with the verified B-BBEE status level (or deemed status level) of contributor.

#### **D. Evaluation of bids that scored equal points**

In the event that two or more bids have scored equal total points, the successful bid must be the one that scored the highest points for B- BBEE.

If two or more bids have equal points, including equal preference points for BBEE, the successful bid must be the one scoring the highest score for functionality, if functionality is part of the evaluation process.

In the event that two or more bids are equal in all respects, the award must be decided by the drawing of lots.

#### **E. Conditions Relating to the Granting of Preferences**

Bidders must, in the manner stipulated in the bid documentation, declare that:

- I. the information provided is true and correct;
- II. the signatory to the bid document is duly authorised; and
- III. documentary proof regarding any bidding issue will, when required, be submitted to the satisfaction of the City.

Only bidders who have completed and signed the necessary declarations may be considered.

The Bid Evaluation Committee must, when calculating comparative prices, take into account any discounts which have been offered unconditionally.

A discount which has been offered conditionally must, despite not being taken into account for evaluation purposes, be implemented when payment is effected.

A trust or joint venture will qualify for preference points for their B-BBEE status level as a legal entity, provided that the entity has submitted its verified B-BBEE status level certificate (or certified copy thereof) to the City.

A trust or joint venture will qualify for preference points for their B-BBEE status level as an unincorporated entity, provided that the entity has submitted its consolidated B-BBEE scorecard as if it is a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid. The consolidated B-BBEE scorecard must be submitted in the form of a certificate issued by an accredited verification agency (or a certified copy thereof).

A bidder may not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that the bidder qualifies for, unless the intended subcontractor is an Exempted Micro Enterprise (EME) that has the capability and ability to execute the sub-contract.

A bidder that has been awarded a contract may not sub-contract more than 25% of the value of the contract to enterprises that do not have an equal or higher B-BBEE status level than the bidder concerned, unless the subcontractors are Exempted Micro Enterprises that have the capability and ability to execute the sub-contract. Compliance with this particular requirement must be monitored by the Responsible Agent during the execution of the contract.

If a service is required that can only be provided by tertiary institutions, such services must be procured through a bidding process from the identified tertiary institutions.

The tertiary institutions referred to in above clause, must submit their B-BEE status in terms of the specialized scorecard contained in the BBEE Codes of Good Practice.

If a service is required that can be provided by one or more tertiary institutions or public entities and enterprises from the private sector, the appointment of a service provider/contractor must be done by means of a competitive bidding process.

Public entities must submit their B-BBEE status in terms of the specialized scorecard contained in the gazetted B-BBEE Codes of Good Practice.

### **53. Local Production and Content**

The National Department of Trade and Industry is empowered to designate industry sectors, in line with national development and industrial policies for local production, where only locally produced goods, services or construction works, or locally manufactured goods that meet a stipulated minimum threshold for local production and content, may be used.

In the case of designated sectors, where in the award of bids, local production and content is of critical importance, such bids must be advertised with a specific condition of bidding, that only locally produced goods, services or construction works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.

Any instructions, circulars and guidelines issued by National Treasury in the above regard must be complied with.

Where there is no designated sector, bids may include, as a specific condition of bidding, that only locally produced goods, services or construction works, or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered, on condition that such prescript and threshold(s) are in accordance with the specific directives issued for this purpose by the National Treasury in consultation with the Department of Trade and Industry.

Every bid issued in terms of clause 53 must be measurable and audited.

Where necessary, for bids referred to in clause 53 to a two-stage bidding process may be followed, where the first stage involves functionality and minimum threshold for local production and content, and the second stage price and B-BBEE level of contribution, with the possibility of price negotiations only with the short listed bidder/s.

A person awarded a contract in relation to a designated sector, may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

#### **54. Other Specific Goals**

##### **Unbundling Strategies**

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.

Unbundling must however be considered in the context of:

- economies of scale being lost;
- abortive work becoming necessary;
- additional demands (not only financial) being placed on the City's resources; and
- the risk of later phases not being completed as a result of budget cuts becoming necessary in the future.

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.

It is important to note that while it is the City's policy to procure goods, services or construction works in the smallest practicable quantities, the practice of parceling such procurement in order to avoid complying with the requirements of the different range of procurement processes described in this policy is not permitted.

#### **55. Increasing Employment Opportunities**

One of the City's key socio-economic objectives is to facilitate the creation of employment for the people of Pietermaritzburg.

Increasing employment opportunities through procurement may be achieved by labour intensive technologies and/or methods of construction in the bid.

It is up to Responsible Agents to thoroughly investigate the options available in the above regard, to evaluate the positive versus negative impact of any proposals, and to specify labour intensive technologies and/or methods where appropriate.

All labour earning less than a threshold wage, determined in accordance with National Guidelines, that is employed for the provision of services or construction works for the City, shall be reported in the prescribed format, on a monthly basis, to Project Management Unit.

## 56. Targeted Labour and/or Targeted Enterprises

The targeting of labour and/or enterprises from specific areas within the boundaries of the Msunduzi Municipal area may be achieved, where appropriate, by specifying in the bid documents, a minimum level of participation (a contract participation goal) that must be achieved in respect of targeted labour and/or targeted enterprises in the performance of the contract.

Specified contract participation goals must be measurable and achievable, and the performance in respect of which must be monitored by the Responsible Agents during the execution of the contract.

Where a minimum contract participation goal has been specified in respect of targeted labour and/or enterprises, the contractor is obliged to meet that goal, and must be penalised if he or she does not.

Contract participation goals in respect of targeted labour and/or enterprises may not be introduced into the preference point system used for the evaluation of bids.

## 57. Provisional Sums and Prime Cost or Sub-contract Allowances

- 57.1 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:
- 57.2 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.
- 57.3 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.
- 57.4 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.

- 57.5 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.

**58. Award of contracts**

- a) A contract must be awarded to the bidder who scored the highest total number of points in terms of the preference point systems.
- b) In exceptional circumstances a contract may, on reasonable and justifiable grounds, be awarded to a bidder that did not score the highest number of points. The reasons for such a decision must be approved and recorded for audit purposes and must be defensible in the court of law.

**59. COMMENCEMENT**

This Policy takes effect on the date of adoption by Full Council.