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LOCAL AUTHORITY NOTICE

LOCAL AUTHORITY NOTICE 56

TLOKWE CITY COUNCIL

Notice is hereby given in terms of Section 13 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) that Council adopted the Supply Chain Management By-law as follows, with effect from publication hereof.

SUPPLY CHAIN MANAGEMENT BY-LAW

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ANNEXURE A**DRAFT SUPPLY CHAIN MANAGEMENT BY-LAW****INTRODUCTION**

This document sets out ethical and sound supply chain management practices to be followed by all staff that will be involved in supply management of goods and services so as to ensure value for money outcomes for the Tlokwe City Council.

This policy is based upon and supplements the General Procurement Guidelines and the regulations issued under the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) and the regulations in terms of Section 112(1) of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) (MFMA) and are to apply to the purchase of goods and services of all kinds including specialised goods and services.

The processes in this document take account of the role of the Supply Chain Management Unit which will be established to provide for a centre of procurement excellence and to streamline procurement at all levels within Council. The Supply Chain Management Unit will be responsible to further develop the Council's procurement policies, establish contracts, manage tendering processes, provide centralised procurement services for Council and provide assistance and advice to all staff. The performance of these responsibilities will be undertaken in consultation and under the supervision of the Municipal Manager.

These policies and procedures represent the minimum standards which the staff of Council is expected to achieve in their procurement activities. They will be reviewed and updated as appropriate in order to continuously improve procurement within Council.

The Council's Supply Chain Management By-law is intended to be a dynamic document, reflecting continuing developments in procurement practice and incorporating changing legislative and environmental requirements.

CHAPTER 1 - GENERAL SUPPLY CHAIN MANAGEMENT GUIDELINES

These Guidelines are issued by the Tlokwe City Council not only as a prescription of standards of behaviour, ethics and accountability which are required in the Municipality, but also as a statement of Council's commitment to a supply management system which enables the emergence of sustainable small, medium and micro businesses which will add to the common wealth of the City and the achievement of enhanced economic and social well-being within the community.

INTRODUCTION

The bedrock of a successful Supply Chain Management By-law at local government rests upon certain core principles of behaviour, i.e. the Five Pillars. They are best described as pillars for the reason that if any one of them is contravened, then the Supply Chain Management system will disintegrate.

The Five Pillars are:

- Value for money
- Open and effective competition
- Ethics and fair dealing
- Accountability and reporting
- Equity.

These Guidelines address those Five Pillars and prescribe a minimum set of standards that is to be observed. The Guidelines are to be supplemented by the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000), the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) and the Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003).

1. VALUE FOR MONEY

- 1.1 This is an essential test against which Council must justify a procurement outcome. Price alone is often not a reliable indicator and Council will not necessarily obtain the best value by accepting the lowest price offer that meets mandatory requirements. Best value for money means the best available outcome when all relevant costs and benefits over the procurement cycle are considered.
- 1.2 The supply chain management function itself must also provide value and must be carried out in a cost-effective way. The Supply Chain Management Unit should -
- (a) avoid any unnecessary costs and delays between Council and or suppliers;
 - (b) monitor the supply arrangements and reconsider them if they cease to provide the expected benefits; and
 - (c) ensure continuous improvement in the efficiency of internal processes and systems.

2. OPEN AND EFFECTIVE COMPETITION

- 2.1 This requires -
- (a) a framework of procedure laws, policies, practices and procedures that are transparent, i.e. they must be readily accessible to all parties;
 - (b) openness in the procurement process;
 - (c) encouragement of effective competition through procurement methods that are suited to market circumstances;
 - (d) observance of the provision of the Municipal Finance Management Act *supra*; and
 - (e) observance of the provisions of the Preferential Procurement Policy Framework Act *supra*.
- 2.2 The Supply Chain Management Unit needs to apply effort and research to get the best possible outcome from the market by ensuring that -
- (a) potential suppliers have reasonable access to procurement opportunities and the available opportunities are published by Council;

- (b) where market circumstances limit competition, the unit should recognise that fact and use procurement methods that take account of it;
- (c) adequate and timely information is provided to suppliers to enable them to bid;
- (d) bias, nepotism, bribes and favouritism are eliminated;
- (e) the cost of bidding for opportunities do not deter potential suppliers; and
- (f) costs incurred in promoting competition are at least commensurate with the benefits received.

3. ETHICS AND FAIR DEALING

- 3.1 In procurement, if all parties comply with ethical standards, they can -
 - (a) deal with each other on a basis of mutual trust and respect; and
 - (b) conduct their business in a fair and reasonable manner and with integrity.
- 3.2 All staff of Council that are associated with procurement, particularly those dealing directly with suppliers or potential suppliers, are required -
 - (a) to recognise and deal with conflicts of interest or the potential therefore;
 - (b) to deal with suppliers even-handedly;
 - (c) to ensure they do not compromise the good standing of Council through acceptance of gifts or hospitality;
 - (d) to be scrupulous in their utilisation of public property;
 - (e) to provide all assistance in the elimination of fraud and corruption; and
 - (f) to avoid association contrary to the Regulations in terms of the MFMA in every respect with Officials and/or political office-bearers who are suppliers and/or service providers of any goods and services that will be procured by Council.

4. ACCOUNTABILITY AND REPORTING

- 4.1 This involves ensuring that individuals and organisations are answerable for their plan, actions and outcomes.
- 4.2 Openness and transparency in administration, by external scrutiny through public reporting, is an essential element of accountability.
- 4.3 Within the supply chain management framework -
 - (a) heads of department are accountable to the Accounting Officer for the overall management of procurement activities;
 - (b) other personnel tasked to exercise any procurement functions, must follow these Guidelines and are accountable to management.

5. EQUITY

- 5.1 The word "equity" in the context of these Guidelines means the application and observance of government policies which are designed to advance persons or categories of persons previously or presently disadvantaged by unfair discrimination.
- 5.2 This fifth pillar is vital to public sector procurement in South Africa. It ensures that government is committed to economic growth by implementing measures to support industry generally, and especially to advance the development of Small, Medium and Micro Enterprises and Historically Disadvantaged Individuals.
- 5.3 In accordance with the Reconstruction and Development Programme, SMMEs and HDIs need to play a bigger role in the economy.
- 5.4 The government has implemented the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) as the foundation on which all procurement activities are to be based. Its aim is to -
- (a) advance the development of SMMEs and HDIs;
 - (b) promote women and physically handicapped people;
 - (c) create new jobs
 - (d) promote local enterprises in specific provinces, in a particular region, in a specific local authority, or in rural areas; and
 - (e) support the local product.
- 5.5 No public procurement system should be operated if it is not founded on this pillar.

CHAPTER 2 - POLICY STATEMENT

1. INTRODUCTION

- 1.1 The Municipal Finance Management Act *supra* was promulgated on 1 July 2004.
- 1.2 The object of this Act is to secure sound and sustainable management of the fiscal and financial affairs of municipalities and municipal entities by establishing norms and standards and other requirements for -
- (a) ensuring transparency, accountability and appropriate lines of responsibility in the fiscal and financial affairs of municipalities and municipal entities;
 - (b) the management of revenues, expenditures, assets and liabilities and the handling of financial dealings;
 - (c) budgetary and financial planning processes and the coordination of those processes with the processes of other spheres of government;
 - (d) borrowing;
 - (e) the handling of financial problems in municipalities;
 - (f) supply chain management; and
 - (g) other financial matters.

- 1.3 Section 111 of the Municipal Finance Management Act *supra* requires each municipality and municipal entity to adopt and implement a supply chain management policy, which gives effect to the requirements of the Act.

2. GOAL

The goal of this policy is to ensure sound, sustainable and accountable Supply Chain Management within the Tlokwe City Council, whilst promoting black economic empowerment as a priority of the City in terms of the goals and objectives of the City's Preferential Procurement Policy.

3. OBJECTIVES

- 3.1 The objectives of this policy are -

- 3.1.1 to give effect to Section 217 of the Constitution of the Republic of South Africa, 1996;
- 3.1.2 to implement a policy that is fair, equitable, transparent, competitive and cost effective;
- 3.1.3 to comply with all applicable provisions of the Municipal Finance Management Act and the Regulations thereto;
- 3.1.4 to ensure consistency with all other applicable legislation, including -
 - 3.1.4.1 the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000);
 - 3.1.4.2 the Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003);
 - 3.1.4.3 the Construction Industry Development Board Act, 2000 (Act 38 of 2000);
 - 3.1.4.4 the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000); and
 - 3.1.4.5 the Promotion of Administrative Justice Act, 2002 (Act 3 of 2002).

- 3.2 This policy will also strive to ensure that the objectives for uniformity in supply chain management systems between organs of state in all spheres, is not undermined and that consistency with national economic policy on the promotion of investments and doing business with the public sector is maintained.

4. OVERSIGHT

- 4.1 The Municipal Finance Management Act prohibits a Councillor from being a member of a bid committee or any other committee evaluating or approving quotations or bids nor may a Councillor attend any such meeting as an observer.
- 4.2 Council, however, has an oversight role to ensure that the Municipal Manager implements all supply chain management activities in accordance with this policy.

- 4.3 The Executive Mayor must provide general political guidance over the fiscal and financial affairs of the Tlokwe City Council and may monitor and oversee the exercising of responsibilities assigned to the Municipal Manager and Chief Financial Officer in terms of the Municipal Finance Management Act.
- 4.4 For the purposes of such oversight, the Municipal Manager shall, within 10 (ten) days of the end of each quarter, submit a report on the implementation of this By-law to the Executive Mayor and, within 30 days of the end of each financial year, shall submit a similar report to Council.
- 4.5 In addition, if any serious problem arises in relation to the implementation of this By-law, the Municipal Manager shall immediately report to Council accordingly.
- 4.6 All such reports shall be made public in accordance with Section 21A of the Municipal Systems Act.
- 4.7 All resolutions adopted by the Accounting Officer for the procurement of goods and services for the municipality in terms of the procurement process are submitted to Council on monthly basis (see MM Resolutions part of Council Agenda).

5. COMPLIANCE WITH ETHICAL STANDARDS

- 5.1 In order to create an environment where business can be conducted with integrity and in a fair and reasonable manner, this By-law will strive to ensure that the Municipal Manager and all representatives of the Tlokwe City Council involved in supply chain management activities shall act with integrity and in accordance with the highest ethical standards.
- 5.2 All supply chain management representatives shall adhere to the Code of Conduct of Municipal Staff contained in Schedule 2 of the Systems Act and the City's Code of Ethical Standards.

CHAPTER 3

1. POLICY AND DIRECTION

- 1.1 The City Council of Tlokwe recognises that in a climate of rapid change and stringent fiscal objectives, it must manage the supply chain management function so as to -
 - (a) remain focussed on it's core functions and objective;
 - (b) adopt supply chain management practices that;
 - (i) take advantage of available economies of scale;
 - (ii) improve risk management in high value-high risk procurement activities, and;
 - (c) position the Council in a manner so as to take advantage of emerging technologies such as electronic commerce and the use of electronic funds transfer when paying suppliers' accounts.
- 1.2 To achieve this, Council will direct the majority of its procurement through a single Supply Chain Management Unit which will be accountable and responsible to the Chief Financial Officer. The Supply Chain Management Unit will help to further develop the City Council's Supply Chain Management By-law in line with these Procedures and the relevant provisions of that which is applicable to Council in terms of Chapter 11 of the Municipal Finance Management Act of 2003, and the regulations. The Supply Chain

Management By-law must be approved by Council on the recommendation of the Municipal Manager.

2. LEGAL REQUIREMENTS, OBJECTIVES AND PRINCIPLES

2.1 Legal Requirements

In terms of Section 112 of the Municipal Finance Management Act of 2003 which sets out the general responsibilities of Accounting Authorities, one of which is to ensure that Council has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.

2.2 Value for Money

"Value for money" remains an essential test against which Supply Chain Management outcomes in Council must be justified. It is the basis for comparing procurement alternatives and offers from suppliers in order to identify the one that meets the needs in the most cost-effective manner when all costs and benefits are taken into account.

2.3 Core Principles

2.3.1 In achieving value for money, Council will base supply chain management outcomes around core principles of government procurement. This means that Council is committed to -

- (a) ensure transactions achieve the best net value for money outcome for Council;
- (b) provide suppliers with the opportunity to compete for business in an open and transparent manner; and
- (c) encourage effective competition through supply chain management methods that suite and encourage effective competition by means of procurement methods that are suited to market circumstances.

2.3.2 In addition, ethics and fair dealing considerations require Council to conduct procedures so as to ensure that -

- (a) suppliers are dealt with even-handedly;
- (b) Council is not compromised through the acceptance by staff, contractors or consultants of gifts, bribes or hospitality;
- (c) conflicts of interest at all levels are identified and managed; and
- (d) there is scrupulous use of public property.

2.3.3 National competitiveness and industry development principles involve Council in-

- (a) strictly observing the requirements of the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000);
- (b) providing ease of access to Council business by keeping low the costs of doing business, especially for Small, Medium and Micro Enterprises;
- (c) promoting value added activities and skills development of the workforce; and

- (d) encouraging competitive businesses within our City with enhanced capacity to grow, invest, innovate and export.

2.4 Objectives

In order to achieve the goal of placing its people first, the Tlokwe City Council commits itself to -

- (a) ensure full compliance with all relevant legislation;
- (b) ensure that the procuring of goods and/or services is in line with Council's strategic plan and within the parameters set by the budget;
- (c) grant historically disadvantaged individuals fair business opportunities that are consistent with the relevant legislative framework;
- (d) ensure that local business and labour are supported and utilised as far as possible to not only curb further job losses, but also to create more opportunities for jobs;
- (e) apply the basic principles of fairness, equity, transparency, competitiveness and cost effectiveness in all activities pertaining to the acquisition or disposal of goods and services.

2.5 Development Programme for Suppliers

In subscribing to our motto of the "City of Expertise", Tlokwe City Council will endeavour to run regular education and information programmes for the development of small, medium and micro-size enterprises on a continuous basis (SMMEs). These programmes shall be co-ordinated by the Department Local Economic Development in support of, but not limited to, the following initiatives:

- (a) Advice, guidance and training where appropriate and needed in areas such as marketing, financing, accounting, procurement, quality assurance and management.
- (b) Negotiation skills regarding the acquisition of materials, labour and other production means at competitive prices.
- (c) Assistance in drawing up business plans and negotiating financial arrangements with financial institutions.
- (d) A basic understanding of the legal aspects concerning contracts and the most common pitfalls to be avoided when entering into a contract.
- (e) Applying regulations consistent with the relevant legislative framework.

2.6 Petty Cash Purchases

Petty Cash Procurement is subject to the Council's Expenditure Management Policy, Policy B.35.

3. PERFORMANCE AND ACCOUNTABILITY

To ensure that the supply chain management operates effectively and standards are above reproach, Council has acknowledged the need for values and a code of conduct to govern procurement behaviour and need to ensure the value-adding capacity of the Supply Chain Management Unit that will function under the direct supervision of the Chief Financial Officer.

3.1 Values and Code of Conduct

The values and code of conduct are premised on the belief that all members of staff who are involved in any supply chain management function must possess high levels of professional ethics and have the highest standards of personal integrity. Council expects a standard of behaviour in relation to supply chain management based on -

- (a) open, honest and co-operative business relations with colleagues and suppliers;
- (b) confidentiality of both Council and commercial information;
- (c) avoidance of conflict of interest or a perception of bias;
- (d) disclosure of possible conflicts of interest, whether real or capable of being perceived, to be immediately reported to the Municipal Manager;
- (e) fair dealing and impartiality in the conduct of tender evaluations; and
- (f) the highest possible standard of professional competence and the encouragement of similar standards amongst all staff of Council.

4. SUPPLY CHAIN MANAGEMENT UNITS

- (a) The Tlokwe City Council must establish a Supply Chain Management Unit to implement its Supply Chain Management Policy.
- (b) The Supply Chain Management Unit must, where possible, operate under the direct supervision of the Chief Financial Officer or an Official to whom this duty has been delegated in terms of Section 82 of the MFMA *supra*.

4.1 Role of the Supply Chain Management Unit

4.1.1 The Municipal Manager must have a Supply Chain Management Unit to implement Council's supply chain management system.

4.1.2 The Supply Chain Management Unit will maintain a role as a centre of procurement excellence and help to further develop Council's Supply Chain Management By-law, establish contracts, manage tendering processes effectively, provide a centralised procurement service for Council, provide assistance and advice to the staff of Council as well as build a data basis of suppliers and potential suppliers in collaboration with the Manager Economic Development.

4.1.3 These core responsibilities encompass -

- (a) executing, managing and monitoring contracts on behalf of Council;
- (b) developing, in consultation with end users, tender specifications, tender evaluation methodologies and plans, and the briefing and debriefing of tenderers;

- (c) coordinating supply chain management across all Council departments; and
- (d) providing reports and statistics on Supply Chain Management to Council.

4.1.4 The Chief Supply Chain Management Officer is responsible for ensuring that Council's Supply Chain Management By-law and procedures are effectively implemented, and for guiding the Supply Chain Management Unit in its operations while also ensuring that all officials involved are trained in accordance with Treasury Guidelines.

4.1.5 All communication and/or correspondence with the Supply Chain Management Unit to this document must be addressed to the

Chief Financial Officer
Tlokwe City Council
Private Bag X1257
Potchefstroom, 2520.

5. RISK MANAGEMENT

5.1 The Supply Chain Management By-law must provide for an effective system of risk management for the identification, consideration and avoidance of potential risks in the supply chain management system.

.. Risk management must include -

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

5.2 The activities of the Supply Chain Management Unit will also allow better risk management in procurement. It is the policy of Council to share risks, assigning responsibility for each particular risk to Council or to the supplier/contractor, depending on who is best able to manage that risk.

6. BROADER COMPLIANCE REQUIREMENTS

6.1 The Council's supply chain management activities must also comply with relevant legislation and government policies, and include -

- (a) the provisions of the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000);
- (b) occupational health and safety requirements;

- (c) matters relating to the environment;
- (d) the government's trade and foreign policies.
- (e) the provisions of the Broad-based Black Economic Empowerment Act, 2003 (Act 53 of 2003).
- (f) Support as far as possible in promoting the Proudly South African Campaign.

7. RECORDING AND REPORTING

- 7.1 Standards of accountability expect staff to record their decisions and the reasons for taking actions that are not consistent with the General Supply Chain Management Guidelines, Council's Supply Chain Management By-law or Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) and the Framework for Supply Chain Management.
- 7.2 That the Municipal Manager or Chief Financial Officer must on a monthly basis be notified in writing of all verbal quotations and written price quotations be accepted by an official acting in terms of delegated powers. Compliance with Council's Expenditure Management By-law must be adhered to with regard to the acquisition of goods and services.

8. SUPPLY CHAIN MANAGEMENT SYSTEM

- 8.1 The Municipal Manager must develop and implement an effective and efficient supply chain management system for the acquisition of goods and services and the disposal and letting of assets, including the disposals of goods no longer required.
- 8.2 The supply chain management system must provide for the following:
 - (a) Demand management.
 - (b) Acquisition management (including contracts and contract management).
 - (c) Logistics management.
 - (d) Disposal management.
 - (e) Risk management.
 - (f) Regular assessment of supply chain management performance.

CHAPTER 4 - GENERAL PROVISIONS AND APPLICATION OF BY-LAW

1. DEFINITIONS

- 1.1 In this Supply Chain Management By-law, unless the context indicates otherwise -
 - 1.1.1 "adjudication points" mean the points referred to in the Council's Preferential Procurement Policy;
 - 1.1.2 "bid" means a written offer submitted to the Council in response to an invitation to bid in a competitive process;
 - 1.1.3 "bidder" means any person submitting a bid;
 - 1.1.4 "by-law" means this Supply Chain Management By-law as amended from time to time;
 - 1.1.5 "Council" means the Tlokwe City Council or any person(s) or committee delegated with the authority to act on its behalf;

- 1.1.6 "Municipal Manager" means the Accounting Officer as defined in the Municipal Finance Management Act, 2003 (Act 56 of 2003);
- 1.1.7 "closing time" means the time and day specified in the bid documents for the receipt of bids;
- 1.1.8 "Construction Industry Development Board Act" means the Construction Industry Development Board Act, 2000 (Act 38 of 2000) and includes the regulations thereto;
- 1.1.9 "construction works" means any work in connection with -
 - 1.1.9.1 the erection, maintenance, alteration, renovation, repair, demolition or dismantling of or addition to a building or any similar structure;
 - 1.1.9.2 the installation, erection, dismantling or maintenance of a fixed plant;
 - 1.1.9.3 the construction, maintenance, demolition or dismantling of any bridge, dam, canal, road, railway, sewer or water reticulation system or any similar civil engineering structure; or
 - 1.1.9.4 the moving of earth, clearing of land, the making of an excavation, piling or any similar type of work;
- 1.1.10 "consultant" means a person or entity providing services requiring knowledge based expertise;
- 1.1.11 "contract" means the agreement which is concluded when the City accepts, in writing, a bid or quote submitted by a provider;
- 1.1.12 "contractor" means any person whose bid or quote has been accepted by the City;
- 1.1.13 "day(s)" means calendar days unless the context indicates otherwise;
- 1.1.14 "delegated authority" means any person or committee delegated with authority by the Council in terms of the provisions of the Municipal Finance Management Act;
- 1.1.15 "electronic bulletin board" means an electronic method of obtaining bids or quotations through a third party;
- 1.1.16 "in the service of the state" means -
 - 1.1.16.1 a member of any municipal council, any provincial legislature or the National Assembly or the National Council of Provinces;
 - 1.1.16.2 an official of any municipality or municipal entity;
 - 1.1.16.3 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 1 of 1999);
 - 1.1.16.4 a member of the board of directors of any municipal entity;

- 1.1.16.5 a member of the accounting authority of any national or provincial public entity; or
- 1.1.16.6 an employee of Parliament or a provincial legislature;
- 1.1.17 "local" must have a business address in the demarcated area of Potchefstroom;
- 1.1.18 "municipal entity" means an entity as defined in the Systems Act *supra*;
- 1.1.19 "Municipal Finance Management Act" means the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) and includes the regulations thereto;
- 1.1.20 "non-responsive" as stipulated in Section 44;
- 1.1.21 "person" includes a natural or juristic entity;
- 1.1.22 "preference points" mean the points referred to in the Council's Preferential Procurement By-law;
- 1.1.23 "Preferential Procurement Policy Framework Act" means the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) and includes the regulations thereto;
- 1.1.24 "quotation" or "quote" means a written or electronic offer to the Council in response to an invitation to submit a quotation;
- 1.1.25 "Republic" means the Republic of South Africa;
- 1.1.26 "responsible agent" means those internal project managers being Council officials or external consultants responsible for the administration of a project or contract;
- 1.1.27 "SARS" means the South African Revenue Service;
- 1.1.28 "standards" as prescribed by the SANS (South African National Standards);
- 1.1.29 "Systems Act" means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);
- 1.1.30 "tender"/"tenderer" means bid/bidder in the context of construction works procurement;
- 1.1.31 "unsolicited bid" means an offer submitted by any person at its own initiative without having been invited by the Council to do so.
- 1.2 Words importing the singular shall include the plural and *vice versa* and words importing the masculine gender shall include females and words importing persons shall include companies, closed corporations and firms, unless the context clearly indicates otherwise.
- 1.3 All amounts/limits stated in this document shall be deemed to be inclusive of Value Added Tax (VAT).

2. COMMENCEMENT AND REVIEW

- 2.1 This By-law is effective with effect from a date determined by Council.
- 2.2 This By-law shall be reviewed annually.

3. APPLICATION OF BY-LAW

- 3.1 This By-law applies to -
 - 3.1.1 the acquisition of all goods and services, construction works and consultant services;
 - 3.1.2 the disposal by the Council of goods and assets no longer needed;
 - 3.1.3 the selection of contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Systems Act applies; or
 - 3.1.4 the selection of external mechanisms referred to in Section 80(1)(b) of the Systems Act for the provision of municipal services in circumstances contemplated in Section 83 of that Act.
- 3.2 Unless specifically stated otherwise, this By-law does not apply if Council contracts with another organ of state for -
 - 3.2.1 the provision of goods or services to the municipality;
 - 3.2.2 the provision of a municipal service; or
 - 3.2.3 the procurement of goods and services under a contract secured by that other organ of state, provided that the relevant supplier has agreed to such procurement.
- 3.3 The following supply chain management systems have accordingly been developed in accordance with the requirements of the Municipal Finance Management Act:
 - 3.3.1 Demand management system.
 - 3.3.2 Acquisition management system.
 - 3.3.3 Logistics management system.
 - 3.3.4 Disposal management system.
 - 3.3.5 Risk management system.
 - 3.3.6 Performance management system.
 - 3.3.7 Code of ethical standards.

These systems must be adhered to in all supply chain management activities undertaken by the Council.

4. DELEGATIONS

- 4.1 Any delegation or sub-delegation of powers and duties required in order to give effect to this By-law shall comply with the provisions of the Municipal Finance Management Act and any other applicable legislation.
- 4.2 No decision-making authority may be delegated to an advisor or consultant.

5. COMPETENCY

- 5.1 The Municipal Manager shall ensure that all persons involved in the implementation of this By-law meet the prescribed competency levels, and where necessary, shall provide relevant training.
- 5.2 The training of officials involved in implementing this By-law shall be in accordance with any National Treasury guidelines on supply chain management training.

6. SUPPLY CHAIN MANAGEMENT UNIT

The Council shall establish a Supply Chain Management Unit to implement this By-law.

7. AMENDMENTS TO BY-LAW

- 7.1 No additions, amendments, or deviations from this By-law shall, subject to Clause 66, be valid unless approved by the Tlokwe City Council.
- 7.2 When deemed necessary, the Municipal Manager shall submit proposals for the amendment of this By-law to the Tlokwe City Council for approval.
- 7.3 When amending this By-law the Council shall take into account 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.

8. COMMUNICATION WITH THE COUNCIL

All correspondence with regard to this By-law shall be addressed to the Municipal Manager.

9. AVAILABILITY OF SUPPLY CHAIN MANAGEMENT BY-LAW

Copies of these By-law procedures are available on the Council's website.

CHAPTER 5 - DEMAND MANAGEMENT SYSTEMS**1. INTRODUCTION**

- 1.1 Demand management shall provide for an effective system to ensure that the resources required to support the strategic operational commitments of the Council are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy the needs of the Council.
- 1.2 The Council's Integrated Development Plan (IDP) is a comprehensive strategy document setting out how the Council intends to tackle its development challenges in a financial year. It is on the basis of the IDP that the resources of the municipality will be allocated and on which the budget is based.

- 1.3 In order to achieve the objectives of good governance and to address deficiencies in supply chain management, fundamental institutional reforms will have to be implemented. These reforms will promote efficient and effective provisioning and procurement systems and practices to enable the Council to deliver the required quantity and quality of services to the communities.
- 1.4 The establishment of uniformity in policies, procedures, documents and contract options and the implementation of sound systems of control and accountability shall form the cornerstone of institutional reform.
- 1.5 The development of a world-class professional supply chain management system should result in continuing improvement in affordability and value for money, based on total cost of ownership and quality of procurement as competition amongst suppliers is enhanced.
- 1.6 In dealing with suppliers and potential suppliers, the Council shall respond promptly, courteously and efficiently to enquiries, suggestions and complaints.

2. MAJOR ACTIVITIES

- 2.1 Demand management lies at the beginning of the supply chain and the major activities associated with identifying demand are -
 - 2.1.1 establishing requirements;
 - 2.1.2 determining needs; and
 - 2.1.3 deciding on appropriate procurement strategies.
- 2.2 Demand management accordingly shall involve the following activities:
 - 2.2.1 Understanding the future needs.
 - 2.2.2 Identifying critical delivery dates.
 - 2.2.3 Identifying the frequency of the need.
 - 2.2.4 Linking the requirement to the budget.
 - 2.2.5 Conducting expenditure analyses based on past expenditure.
 - 2.2.6 Determining requirements.
 - 2.2.7 Conducting commodity analyses in order to check for alternatives.
 - 2.2.8 Conducting industry analyses.

CHAPTER 6 - AQUISITION MANAGEMENT SYSTEM

1. INTRODUCTION

The objectives of this acquisition management system are to ensure -

- 1.1 that goods and services, construction works and consultant services are procured by the Council only in accordance with the authorised procedures incorporated herein;
- 1.2 that expenditure on goods and services, construction works and consultant services is incurred in terms of an approved budget;
- 1.3 that the threshold values of the different procurement procedures are complied with;
- 1.4 that bid documentation, evaluation and adjudication criteria and general conditions of contract are in accordance with the requirements of relevant

legislation including, the Preferential Procurement Policy Framework Act and any conditions of the Construction Industry Development Board Act; and

- 1.5 that procurement guidelines issued by the National Treasury, including on the appointment of consultants, are taken into account.

2. APPLICATION

This acquisition management system contains the general conditions and procedures which are applicable, as amended from time to time, to all procurement, contracts, and orders for the Council.

3. SUPPLIER DATABASE

- 3.1 The Municipal Manager shall ensure that the Council's supplier database is updated at least quarterly and at least once per year shall, through newspapers commonly circulating locally, the website of the Council, and any other appropriate ways, invite prospective suppliers of goods and services, construction works and consultant services to apply for listing as an accredited prospective supplier.
- 3.2 Prospective suppliers shall however be allowed to submit applications for listing on the database at any time.

4. COMBATING ABUSE OF THE SUPPLY CHAIN MANAGEMENT BY-LAW

- 4.1 The Municipal Manager shall be entitled to take all reasonable steps to prevent abuse of the supply chain management system and to investigate any allegations against an official, or other role player, of fraud, corruption, favouritism, unfair, irregular or unlawful practices or failure to comply with the supply chain management system and when justified shall -
- 4.1.1 take appropriate steps against such official or other role player; or
- 4.1.2 report any alleged criminal conduct to the South African Police Service.
- 4.2 The Municipal Manager may reject a recommendation for the awarding of a contract if the recommended bidder or person submitting a quote, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract.
- 4.3 The Council may invalidate recommendations or decisions that were unlawfully or improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by -
- 4.3.1 a councillor in contravention of Section 5 or 6 of the Code of Conduct for Councillors in Schedule 1 of the Systems Act; or
- 4.3.2 a municipal official in contravention of Section 4 or 5 of the Code of Conduct for Municipal Staff Members, as set out in Schedule 2 of the Systems Act.
- 4.4 The Municipal Manager may cancel a contract awarded to a person if -
- 4.4.1 the person committed a corrupt or fraudulent act during the procurement process or the execution of the contract, or
- 4.4.2 an official or other role player committed any corrupt or fraudulent act during the procurement process or in the execution of the contract that benefited that person.

- 4.5 The Municipal Manager may reject the bid or quote of any person if that person or any of its directors has -
- 4.5.1 failed to pay municipal rates and taxes or municipal service charges and such rates, taxes and charges are in arrears for more than three months;
 - 4.5.2 failed, during the last five years, to perform satisfactorily on a previous contract with the Council or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
 - 4.5.3 abused the supply chain management system of the Council or has committed any improper conduct in relation to this system;
 - 4.5.4 been convicted of fraud or corruption during the past five years;
 - 4.5.5 willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - 4.5.6 been listed in the Register for Tender Defaulters in terms of Section 29 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004) or has been listed on National Treasury's database as a person prohibited from doing business with the public sector.
- 4.6 The Municipal Manager shall inform the Provincial Treasury of any actions taken in terms of Clauses 4.1 to 4.5 above.

5. APPOINTMENT OF OBSERVER

Where appropriate, the Municipal Manager may appoint a neutral or independent observer in order to ensure fairness and transparency in the application of this acquisition management system.

6. CONTRACTS HAVING BUDGETARY IMPLICATIONS BEYOND THREE FINANCIAL YEARS

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

7. PROUDLY SOUTH AFRICAN CAMPAIGN

The Council supports the Proudly South African Campaign as reflected in the Council's Preferential Procurement By-law.

CHAPTER 7 - BEST PRACTICE AND STANDARDS

1. DEFINING AND JUSTIFYING REQUIREMENTS

Before any supply chain management process is instituted, -

- (a) the requirement must be defined and justified;
- (b) appropriate approval to spend money must be obtained; and
- (c) it must be established whether a period contract for the goods or services already exists.

2. REQUIREMENT DEFINITION

Before any procurement action is instituted the relevant department must define and justify requirements. The more complex and the higher the value of the procurement the more likely that this step will involve a formal process such as a business case analysis which must be approved before a purchasing commitment can be entered into.

3. DELEGATION OF SUPPLY CHAIN MANAGEMENT POWERS AND DUTIES BY COUNCIL

3.1 Council must delegate such supply chain management powers and duties to the Municipal Manager in order to enable the Municipal Manager -

- (a) to maximise administrative and operational efficiency in the implementation of the Supply Chain Management By-law;
- (b) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of the Supply Chain Management By-law; and
- (c) to comply with his or her responsibilities in terms of Section 115 and other applicable provisions of the MFMA *supra*.

3.2 Sections 79 and 106 of the MFMA *supra* apply to the sub-delegation of powers and duties delegated to an Municipal Manager in terms of Sub-regulation (1).

4. DELEGATIONS BY THE MUNICIPAL MANAGER

Section 79 of the MFMA *supra* empowers the Municipal Manager of a municipality to delegate decision-making powers to officials. Regarding procurement of goods and/or services, the following should apply:

- 4.1 All delegations must be in writing.
- 4.2 The Municipal Manager must decide whether he/she delegates decision-making powers regarding the final award of bids to the Tender Adjudication Committee and what the thresholds in this regard should be.
- 4.3 Should the Municipal Manager resolve that the Tender Adjudication Committee award all bids up to a specified value, bids above this threshold must be referred to the accounting officer for finalisation.
- 4.4 Should the Tender Adjudication Committee or the Municipal Manager resolve to award a bid to a bidder other than the bidder recommended by the Evaluation or Adjudication Committee respectively, the Municipal Manager must, within seven working days, in writing notify the Auditor-General, the relevant Provincial Treasury and the National Treasury of the reasons for deviating from such recommendations. The Tlokwe City Council must also be notified in writing of such a deviation.
- 4.5 No supply chain management powers or duties may be delegated or sub-delegated to -
 - (i) a person who is not an official of Council; or
 - (ii) a committee which is not exclusively composed of officials of Council.

- 4.6 This regulation 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 Regulation 26 of the MFMA Supply Chain Management Regulations.

5. SUB-DELEGATIONS

- 5.1 The Municipal Manager may in terms of Section 79 of the MFMA *supra* sub-delegate any supply chain management powers and duties, including those delegated to the Accounting Officer in terms of Regulation 4(1), but any such sub-delegation must be consistent with Sub-regulation (2) and Regulation 4 of the MFMA Supply Chain Management Regulations.

- 5.2 The power to make a final award –

- (a) above R10 million (VAT included) may not be sub-delegated by the Municipal Manager;
- (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 Tender 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 Tender Adjudication Committee.

- 5.3 An official or Tender Adjudication Committee to which the power to make final awards has been sub-delegated in accordance with Sub-regulation (2), must within five days of the end of each month submit to the official referred to in Subsection (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;
- (c) the reason why the award was made to that person; and
- (d) scorecards.

- 5.4 A written report referred to in Sub-regulation (3) must be submitted -
- (a) to the Municipal Manager, in the case of an award by –
 - (i) the Chief Financial Officer;
 - (ii) a Senior Manager; or
 - (iii) A Tender 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 tender, in the case of an award by –
 - (i) a manager referred to in Sub-regulation (2)(c)(iii); or
 - (ii) a Tender Adjudication Committee of which the Chief Financial Officer or a Senior Manager is not a member.

5.5 Sub-regulations (3) and (4) do not apply to procurements out of petty cash.

5.6 This regulation 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 Regulation 26 of the MFMA Supply Chain Management Regulations.

5.7 No decision-making in terms of any supply chain management powers and duties may be delegated to an advisor or consultant.

6. OVERSIGHT ROLE OF COUNCIL

6.1 The Council must maintain oversight over the implementation of its Supply Chain Management By-law.

6.2 For the purposes of such oversight the Municipal Manager must –

- (a) within 30 days of the end of each financial year, submit a report on the implementation of the Supply Chain Management By-law;
- (b) whenever there are serious and material problems in the implementation of the Supply Chain Management By-law, immediately submit a report to Council.

6.3 The reports of a municipality must be made public in accordance with Section 21A of the Municipal Systems Act.

7. COMMITTEE SYSTEM FOR COMPETITIVE BIDS

This Supply Chain Management By-law provides for -

- (a) a committee system for competitive bids consisting of at least -
 - a Tender Specifications Committee
 - a Tender Evaluation Committee
 - a Tender Adjudication Committee;
- (b) the appointment by the Municipal Manager of the members of each committee, taking into account Section 117 of the MFMA *supra*.

8. APPOINTMENT OF COMMITTEES

The Municipal Manager must appoint the following Tender Committees:

8.1 Tender Specifications Committee

This is the committee responsible for the compiling of bid (tender) specifications. The specifications should be written in an unbiased manner to allow all potential tenders/bidders to offer their goods and or services or to purchase immovable property owned by Council. The preparation of specifications must be composed of officials of Council and may, when appropriate, include external specialists.

8.2 Tender Evaluation Committee

8.1.1 The Tender Evaluation Committee must -

- (a) evaluate bids in accordance with -
 - (i) the specifications for a specific procurement; and
 - (ii) the preference point system in terms of the Preferential Procurement Policy Framework Act;
 - (iii) the policy of alienation of immovable property of which Council is the owner;
- (b) evaluate each bidder's ability to execute the contract;
- (c) check in respect of each bidder whether -
 - (i) a tax clearance certificate issued by the South African Revenue Service has been submitted; and
 - (ii) municipal rates and taxes and municipal service charges are not in arrears;
- (d) verify whether national industrial participation programme requirements have been complied with, if the contract is in excess of R100 million; and
- (e) submit to the Adjudication Committee a report and recommendations regarding the awarding of the bid or any other related matter.

8.2.2 The Tender Evaluation Committee must in so far as may be possible -

- (a) be cross-functional;
- (b) be composed of -
 - (i) officials from departments requiring the goods or services; and
 - (ii) at least one supply chain management practitioner;
- (c) allow for a neutral or independent person to monitor the fairness of the proceedings.

8.3 Tender Adjudication Committee

8.3.1 The Tender Adjudication Committee must -

- (a) consider the report and recommendations of the Tender Evaluation Committee; and
- (b) either -
 - (i) make a final award or a recommendation to the Municipal Manager to make the final award, depending on its delegations; or
 - (ii) make another recommendation to the Municipal Manager on how to proceed with the relevant procurement.

8.3.2 The Tender Adjudication Committee must -

- (a) be cross-functional; and
- (b) consist of -
 - (i) the Chief Financial Officer or, if the Chief Financial Officer is not available, another top or senior management official of Council designated by the Chief Financial Officer;
 - (ii) at least four top or senior management officials of Council;
 - (iii) at least one supply chain management practitioner; and
 - (iv) a technical expert in the relevant field.

8.3.3 The Municipal Manager 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.

8.3.4 Neither a member of the Tender Evaluation Committee nor an advisor or person assisting the Evaluation Committee, may be a member of the Tender Adjudication Committee.

8.3.5 If the Tender Adjudication Committee decides to award a bid other than the one recommended by the Tender Evaluation Committee, the Tender Adjudication Committee must immediately notify the Municipal Manager; provided that the Municipal Manager may at any stage of a bidding process refer any recommendation made by the Evaluation Committee for reconsideration of the recommendation.

8.3.6 The Municipal Manager must comply with Section 114 of the MFMA *supra* within 10 working days.

8.4 Participation of advisors

The Municipal Manager may procure the services of advisors to assist in the execution of the supply chain management function. Obtaining these services must be through a competitive bidding process. No advisor may, however, form part of the final decision-making process regarding the award of bids, as this will counter the principle of vesting accountability with the Municipal Manager. The Municipal Manager cannot delegate decision-making authority to a person other than an official.

8.5 Quorum at meeting

The Tender Adjudication Committee cannot undertake business without a quorum present, which quorum shall consist of half plus one of its total membership with voting power (rounded to the nearest whole number).

CHAPTER 8 - SPECIALISED FORMS OF PROCUREMENT

1. ACQUISITION OF GOODS OR SERVICES FROM OTHER ORGANS OF STATE OR PUBLIC ENTITIES

In the case of goods or services procured from another organ of state or public entity (including the Department of Water Affairs, Eskom or any other such entities), such procurement shall be made public through the annual budget or a separate process, giving details of the nature of the goods or services to be procured and the name(s) of the supplier(s).

2. ACQUISITION OF IT RELATED GOODS OR SERVICES AND BANKING SERVICES

2.1 Acquisition of IT related goods or services

- (1) The Municipal Manager may request the State Information Technology Agency (SITA) to assist the municipality with the acquisition of IT related goods or services through a competitive bidding process.
- (2) The parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to SITA.
- (3) If the transaction value of IT related goods or services exceeds R50 million in any financial year, the Accounting Officer must notify SITA together with a motivation of the IT needs of the municipality. If SITA comments on the submission and the municipality disagrees with such comments, the comments must be made public in terms of Section 21A of the Municipal Systems Act.

2.2 Acquisition of Banking Services

- (1) A contract for the provision of banking services to the municipality –
 - (a) must be procured through competitive bids;
 - (b) must be consistent with Section 7 or 85 of the MFMA *supra*; 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 Regulation 22(1) of the MFMA Supply Chain Management Regulations. Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act 94 of 1990).

2.3 Acquisition of goods necessitating special safety arrangements

- (1) The acquisition and storage of goods in bulk which necessitate special safety arrangements, including gasses and fuel, must be restricted.
- (2) Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership and cost advantages for the municipality.

3. PUBLIC-PRIVATE PARTNERSHIPS

- 3.1 The procurement of Public-Private Partnerships is a highly regulated process and numerous procedures must be complied with in terms of the Systems Act *supra* and the Municipal Finance Management Act *supra* before the Council may consider commencing with procurement procedures.
- 3.2 Once the preliminary legal requirements mentioned above have been complied with then, in terms of the legislative requirements under the Systems Act, the Municipal Finance Management Act and in particular Regulation 4 of the Municipal Public-Private Partnership Regulations, GG No. 27431, R. 309 (1 April 2005), this By-law shall apply to the procurement of Public-Private Partnerships.
- 3.3 In addition to the requirements of this By-law, when procuring a Public-Private Partnership the Council must solicit the views and recommendations of National Treasury and the relevant provincial treasury on -
 - 3.3.1 the proposed bid documentation at least 30 (thirty) days before bids are publicly invited; and
 - 3.3.2 the evaluation of the bids received and the preferred bidder at least 30 (thirty) days before an award is made.
- 3.4 A Public-Private Partnership agreement may not be awarded until the provisions of Section 120(6) of the Municipal Finance Management Act have been complied with. Section 120(6) obliges the Council to *inter alia* publicise certain information regarding the Public-Private Partnership within prescribed time limits, invite public comment on the proposed Public-Private Partnership agreement and solicit the views and recommendations of National Treasury and other listed government departments
- 3.5 If the Public-Private Partnership agreement will have multi-year budgetary implications for the Council, then the provisions of Section 33 of the Municipal Finance Management Act must be complied with in addition to the matters referred to above.

4. RANGE OF PROCUREMENT PROCESSES

Goods, services, construction works and consultant services shall be procured through the range of procurement processes set out below.

5. COMPETITIVE BIDS

Where the estimated transaction value exceeds R200 000, or for any contract exceeding one year in duration (which includes any defects liability period, if applicable).

6. ANNUAL BIDS

For the supply of goods and services or construction works that is of an *ad hoc* or repetitive nature for a predetermined period of time.

7. APPOINTMENT OF CONSULTANTS

7.1 A Supply Chain Management By-law may allow the Municipal Manager to procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.

7.2 A contract for the provision of consultancy services to the municipality 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.

7.3 In addition to any requirements prescribed by these Regulations for competitive bids, bidders must furnish the municipality with 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.

7.4 The municipality 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.

8. DEVIATION FROM OFFICIAL PROCUREMENT PROCESSES

8.1 The Municipal Manager may dispense with the official procurement processes established by the By-law and to procure any required goods or services through any convenient process, which may include direct negotiations, but only –

- (a) in an emergency;
- (b) if such goods or services are produced or available from a single provider only;
- (c) in any other exceptional case where it is impractical to follow the official procurement processes; or
- (d) to 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.

- 8.2 The Municipal Manager must record the reasons for any deviations in terms of Sub-regulations (1)(a) and (b) and report them to the next meeting of the Council, and include it as a note to the annual financial statements.
- 8.3 Sub-regulation (2) does not apply to the procurement of goods and services contemplated in Regulation 11(2) of the MFMA Supply Chain Management Regulations.
- 8.4 The Municipal Manager may determine a closure date for the submission of bids which is less than the 14 days requirement, but only if such shorter period can be justified on the grounds of emergency.

9. FUNDS APPROVAL AND AVAILABILITY

Prior to any purchase requisition, the relevant Head of Department, in consultation with the Municipal Manager when appropriate, must ensure that funds are available for the intended procurement. This is an essential step in any procurement action and especially for higher value items.

10. GOVERNMENT TAX

It is a prerequisite for suppliers of goods and services to quote prices inclusive of taxes and duties. The gross value of the goods and/or services must be indicated individually in the final amount.

11. INSURANCE AND INDEMNITY

- 11.1 The Supply Chain Management Unit will ensure that Council's contracts include appropriate clauses regarding mutual indemnity where required. Suppliers must in all circumstances adhere to all legislation.
- 11.2 Where appropriate, contracts may include a clause requiring the contractor to indemnify Council against all costs and liability arising out of the presence of the contractor's representatives on Council's property or property under lease to Council, and against all liability for any injury or death while carrying out their duties and for loss or damage to their personal effects.

12. PROCUREMENT METHODS

12.1 General

12.1.1 Monetary limits will define the methods to be applied for procurement of all goods and services, as follows:

- (a) Less than R2 000 in value.
- (b) Between R2 000 and R30 000 in value.
- (c) Between R30 000 and R200 000.
- (d) Over R200 000 in value.

12.1.2 The above amounts may be revised annually within the thresholds as provided in the relevant regulations pertaining thereto.

12.1.3 These methods will enable Heads of Department to acquire quotations for purchases up to R30 000 and the Supply Chain Management Unit to seek quotations up to R200 000 without the expense, either to Council or a potential supplier, of having to go through a formal tender process. This must be undertaken in consultation with the Municipal Manager.

- 12.1.4 Whilst these are the general processes that will apply, at any time the Chief Procurement Officer may decide in consultation with the Municipal Manager to use alternative methods more appropriately aligned to the nature of the purchase, e.g. the purchase of goods or services of a repetitive nature where a standing offer arrangement might be more suitable, or the use of open tender arrangements where a procurement is particularly sensitive.

12.2 **Compilation of list of accredited prospective suppliers.**

- (1) The Municipal Manager must –
 - (i) keep and at least quarterly update a list of accredited prospective providers of goods and services that must be used for the procurement requirements of the municipality;
 - (ii) at least once a year through newspapers commonly circulating locally, the website of the municipality and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as an accredited prospective provider;
 - (iii) specify the listing criteria for accredited prospective providers; and
 - (iv) disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.
- (2) The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services.
- (3) Prospective providers must be allowed to submit applications for listing at any time.
- (4) The list must be compiled per commodity and per type of service. Where no suitable suppliers are available from the list of prospective suppliers, quotations may be obtained from other possible suppliers. If it is not possible to obtain at least three (3) quotations, the reasons should be recorded and approved by the Accounting Officer or his/her delegate.
- (5) The Supply Chain Management Unit must develop and maintain a categorised database list on prospective suppliers from which candidates can be selected for both preferential procurement and targeted supplier development programmes. This supplier data base shall –
 - (a) indicate whether a supplier qualifies as a HDI (Historically Disadvantaged Individual) supplier;
 - (b) indicate the percentage of ownership/shareholding of HDI suppliers in traditional supplier businesses based upon written proof that has been verified;
 - (c) contain the address *domicilium citandi* of the HDI or HDI business;
 - (d) provide statistics pertaining to the number of local job opportunities the business provides to the citizens of Potchefstroom.

12.3 Goods and Services valued at less than R2 000

12.3.1 Procurement of goods and services, either by way of quotations or through a competitive bidding process, must be within the following threshold values (VAT included):

12.3.1.1 Where purchases are to be made to the value of less than R2 000 (VAT included), the authority to approve such purchases will be delegated to the Head of Department. This authority is delegated in terms of this By-law on condition that -

- (a) there is no consistent acquisitions of the like goods on a very regular basis;
- (b) the required funds are contained in the Departmental Budget;
- (c) the rotational principle is applied to avoid nepotism, fraud, the acceptance of bribes, gifts and hospitality in exchange for selecting the same service provider.

12.3.2 One written quotation from a local business may be accepted for procurement up to R2 000, subject to the above condition.

12.4 Goods and Services valued between R2 000 and R30 000

12.4.1 The Municipal Manager may procure goods and services without inviting competitive bids or price quotations by obtaining at least three (3) written quotations from, where applicable, a list of prospective suppliers.

12.4.2 The following conditions have to be followed:

- (a) The essential tests of value for money and open and effective competition can be satisfied. It may sometimes be difficult to justify a value for money decision when only one quote has been sought.
- (b) If a Head of Department considers there is value in obtaining additional written quotes, the staff should do so, but on condition they take into account the trade-off between the additional costs as compared to any saving from cheaper prices.
- (c) The rates are considered reasonable and consistent with normal market rates for items of a like nature (this applies to quotes that are under market rates, as well as quotes that are over market rates).
- (d) Requirements are not split into components or a succession of orders for the same goods or services in order to enable the procurement to take place under this procurement method rather than the next.
- (e) If it is not possible to obtain at least three written quotations, the reasons must be recorded and approved by the Chief Financial Officer.
- (f) Should any conditions of procurement be applicable, they must be communicated to the potential supplier(s) in writing. It is important that suppliers know the terms and conditions of any purchase before they submit their offer.

- (g) When seeking written quotations, the Supply Chain Management Unit must attach copies of the conditions of purchase to the invitation.
- (h) Where the Supply Chain Management Unit, in consultation with the Municipal Manager and Heads of Department, decides that a formal tender process is the more appropriate method for obtaining offers and selecting a supplier, the steps outlined in 12.5 are to be followed even though the total value may be less than R30 000.

12.5 Goods and Services valued between R30 000 and R200 000

- 12.5.1 The Municipal Manager should invite and accept price quotations for requirements up to an estimated value of R200 000 from as many suppliers as possible, that are registered on the list of prospective suppliers. (Clause 12.2.5 of the By-law).
- 12.5.2 The Municipal Manager should apply the prescripts of the Broad-Based Black Economic Empowerment Act and its associated Regulations for all procurement equal to or above R30 000. However, these prescripts may be applied for procurements with a value of less than R30 000, if and when one or more of the suppliers requests an evaluation on the point system.
- 12.5.3 All requirements in excess of R30 000 (VAT included) that are to be procured by means of written price quotations, must be advertised for a least seven days on the website and an official notice-board of the municipality.

12.6 Goods and Services valued over R200 000

- 12.6.1 The Municipal Manager should invite competitive bids for all procurement per case above R200 000 by means of a public advertisement. A case is regarded as the consolidated requirement of related items, which requirement exists at a given point in time, and at the time of consolidation is known and has been quantified. It should cover the estimated total value (VAT included) of all the items concerned for the complete service or supply and not only the value of any individual item appearing on the consolidated schedule of requirements.
- 12.6.2 The prescripts of the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) and its associated Regulations must be adhered to.
- 12.6.3 Bids must be advertised at least in a commonly circulated newspaper in the municipality's area of jurisdiction to ensure exposure to potential bidders.

12.7 Two-stage bidding process

For large complex plants or projects of special nature when it may be undesirable to prepare complete detailed technical specifications in advance, the Municipal Manager may make use of a two-stage bidding process. Under the first stage unpriced technical proposals on the basis of conceptual design or performance specifications are invited, subject to technical as well as commercial clarifications and adjustments, to be followed by amended bidding documents and the submission of final technical proposals and priced bids in the second stage.

The Municipal Manager may reduce the different thresholds for procurement of goods and/or services within his/her own area of jurisdiction as indicated in Chapter 7, Clause 5.

12.8 National Industrial Participation Programme

Before awarding a contract above R100 million which is subject to the National Industrial Participation Programme, the Municipal Manager must obtain clearance for the recommended bidder from the Department of Trade and Industry. If no response is received by the Municipal Manager within 30 days of the request, this clearance of the recommended bidder as a precondition for the award of the contract falls away.

12.9 General Conditions Applicable to Bids and Quotations

The bid documentation for competitive bids must comply with -

- (a) the norms and standards as prescribed in the guidelines of the National Treasury;
- (b) the prescripts of the Construction Industry Development Board, in the case of a bid relating to the construction industry;

12.10 It must also be ensured that -

- (c) bid documentation include evaluation and adjudication criteria, including the criteria prescribed in terms of the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) and its related regulations, as well as the Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003) and its related regulations;
- (d) bid documentation compel all bidders to declare any conflicts of interest bidders may have in a specific bid;
- (e) bid documentation prescribe that disputes be settled by means of mutual consultation, mediation or, when unsuccessful, in a South African court of law;
- (f) bids are advertised in at least the local media for at least 14 days before closure, except in urgent cases when bids may be advertised for such shorter period as the Accounting Officer may determine;
- (g) bids be opened in public immediately after the official time of closure for the submission of bids. When requested by any bidder or member of the public, the names of the bidders who submitted bids in time must be read out and when possible/practical, also the respective total bidding prices. A register must be compiled of all bids received in time during the opening process of the bids.

13. GENERAL CONDITIONS APPLICABLE TO BIDS AND QUOTATIONS

13.1 The Council may not consider a bid or quote unless the provider who submitted the bid or quote –

13.1.1 has furnished the Council with that provider's –

- (a) full name;
- (b) identification number or company or other registration number; and
- (c) tax reference number and VAT registration number, if any;

13.1.2 has submitted a valid tax clearance certificate certifying that the provider's tax matters are in order;

- 13.1.3 has furnished their tax reference numbers, proof of VAT registration, if any, or tax clearance certificate and identification or registration numbers;
- 13.1.4 has indicated whether the provider is in the service of the state/municipality, or has been in the service of the state/municipality in the previous twelve months.
- 13.1.5 has indicated, if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholders are in the service of the state/municipality or has been in the service of the state/municipality in the previous twelve months; or
- 13.1.6 has indicated whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to in subparagraph (k) is in the service of the state/municipality or has been in the service of the state/municipality in the previous twelve months.
- 13.2 The Council is prohibited from making any award above R15 000, or such other amount as may be prescribed in future, to any person if SARS has not declared that person's tax matters to be in order.
- 13.3 Before making an award the Council must check with SARS if the person's tax matters are in order and if SARS does not respond within seven days, such person's tax matters may, for the purposes of Clause 78, be presumed to be in order.
- 13.4 Irrespective of the procurement process followed, the Council is prohibited from making an award to a person -
 - 13.4.1 who is in the service of the state;
 - 13.4.2 if not a natural person of which any director, manager or principal shareholder or stakeholder is in the service of the state; or
 - 13.4.3 who is an advisor or consultant contracted with the Council.
- 13.5 The notes to the annual financial statements of the Council must disclose particulars of any award above R2 000 to a person who is a spouse, child or parent of a person in the service of the state, or who has been in the service of the state in the previous twelve months, including -
 - 13.5.1 the name of the person;
 - 13.5.2 the capacity in which the person is in the service of the state; and
 - 13.5.3 the amount of the award.
- 13.6 No requirement for any goods or services or construction works above an estimated transaction value of R200 000 may be split into parts or items of lesser value merely for the sake of procuring the goods or services or construction works otherwise than through the competitive bidding process.

14. COMPETITIVE BIDS

14.1 General

- 14.1.1 Competitive bids must be called for any procurement of goods of services or construction works where the estimated transaction cost exceeds R200 000 or for any contract exceeding one year in duration.

14.1.2 A requirement for goods or services or construction works consisting of different parts or items must as far as possible be treated and dealt with as a single bid.

15. BID SPECIFICATIONS

- 15.1 Bid specifications must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services.
- 15.2 Bid specifications must take account of any accepted standards such as those issued by South African National Standards, the International Standards Organisation or any authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply.
- 15.3 Bid specifications shall, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design.
- 15.4 Bid specifications 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.
- 15.5 Bid specifications may not make any reference to any particular trade mark, name, patent, design, type, specific origin or producer, unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the words "equivalent".
- 15.6 Bid specifications and/or bid documentation must indicate each specific goal for which adjudication points may be awarded.
- 15.7 Bid specifications and/or bid documentation must be approved by the Municipal Manager prior to publication of the invitation for bids.
- 15.8 Where specifications are based on standard documents available to bidders, a reference to those documents is sufficient.

16. TENDER/BID SPECIFICATIONS COMMITTEE

- 16.1 All bid specifications and bid documentation must be compiled by the Tender Specifications Committee constituted for each project or procurement activity.
- 16.2 The bid Specifications Committee shall be comprised of at least one Council official, preferably the manager responsible for the function involved, and at least one supply chain management practitioner of the Council.
- 16.3 Where appropriate a representative of Internal Audit and/or Legal Services and/or an external specialist advisor may form part of this committee.
- 16.4 No person, advisor or corporate entity involved with the bid Specifications Committee, or director of such corporate entity, or anybody having a vested interest, may bid for any resulting contracts.

17. BID DOCUMENTATION

- 17.1 Bid documentation must clearly indicate the terms and conditions of contract, specifications, criteria for evaluation and adjudication procedures to be followed where applicable.

- 17.2 An appropriate contract and/or delivery period must be specified for all contracts.
- 17.3 General conditions of contract and supply chain management guidelines of the National Treasury in respect of goods and services must be taken into account when compiling bid documents.
- 17.4 The requirements of the Council's Preferential Procurement By-law, as amended from time to time, must be clearly set out in the bid documentation.
- 17.5 The bid documentation and evaluation criteria shall not be aimed at hampering competition, but rather to ensure fair, equitable, transparent, competitive and cost effective bidding as well as the protection or advancement of persons, or categories of persons, as embodied in the Council's Preferential Procurement By-law.
- 17.6 Bid documentation must require bidders to furnish their tax reference numbers, VAT registration numbers and identification or registration numbers, and a valid tax clearance certificate from the South African Revenue Service (SARS).
- 17.7 Bid documentation must stipulate the dispute resolution process to be followed during the implementation of the project including mutual consultation, adjudication, mediation or, where unsuccessful, in a court of South African law.
- 17.8 A provision for the termination of the contract in the case of non or underperformance must be included in the bid documentation.
- 17.9 Unless otherwise indicated in the bid documents, the Council shall not be liable for any expenses incurred in the preparation and/or submission of a bid.
- 17.10 Bid documentation must state that the Council shall not be obliged to accept the lowest or any bid.
- 17.11 Unless the Municipal Manager otherwise directs, bids are invited in the Republic only and the laws of the Republic shall govern contracts arising from the acceptance of bids.
- 17.12 Bid documentation must compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted.
- 17.13 Bid documentation must accordingly require a bidder to disclose whether that bidder or a spouse, child or parent of the bidder or, if the bidder is not a natural person, any director or manager of, or any major shareholder or stakeholder in the bidder, or a spouse, child or parent of that director, manager, shareholder or stakeholder is in the service of the state or is an advisor or consultant who has an interest in the supply chain management system or in any way participates in the final decision making process.

18. CONSTRUCTION WORKS

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

19. BIDS EXCEEDING R10 MILLION

- 19.1 If the estimated value of the contract exceeds R10 million, the bid documentation must require the bidders to furnish -

19.1.1 if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements -

19.1.1.1 for the past three years; or

19.1.1.2 since their establishment if established during the past three years,

19.1.2 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;

19.1.3 particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract; and

19.1.4 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 Council is expected to be transferred out of the Republic.

20. ALTERNATIVE BIDS

20.1 Bid documentation shall state that alternative bids may be submitted, provided that a bid free of qualifications and strictly in accordance with the bid documents is also submitted.

20.2 An alternative bid shall be submitted on a separate complete set of bid documents and shall be clearly marked "Alternative Bid" to distinguish it from the unqualified bid referred to above.

20.3 Bid documentation shall state that the Council will not be bound to consider alternative bids.

21. PUBLIC INVITATION FOR COMPETITIVE BIDS

21.1 On completion of the bid specification and bid document processes the Council shall publicly invite bids.

21.2 Bid invitation shall be by notice published in the press, in newspapers circulating in the Potchefstroom area, in English and in the electronic media (including the Council's official website) or at dissemination centres as applicable or any other appropriate ways.

21.3 The bid notice shall, as soon as possible after the publication contemplated above, be posted on a notice-board at designated Council offices.

21.4 The bid notice may require payment of a non-refundable deposit by bidders wanting to collect bid documents. This deposit shall be determined by the Council's Chief Financial Officer from time to time.

21.5 The public notice contemplated by Clause 21.2 above shall specify -

21.5.1 the title of the proposed contract and the bid or contract reference number;

21.5.2 such particulars of the contract as the Council deems fit;

21.5.3 the date, time and location of any site inspection, if applicable;

21.5.4 the place where the bid documentation is available for collection and the times between which bid documentation may be collected;

21.5.5 that bids may only be submitted on the bid documentation provided by the Council;

21.5.6 the deposit payable, if any;

21.5.7 the place where bids must be submitted; and

21.5.8 the closing date and time for submission of bids.

21.6 The bid notice shall further state that all bids for the contract must be submitted in a sealed envelope on which it is clearly stated that such envelope contains a bid and the contract title and contract or bid reference number for which the bid is being submitted.

21.7 Bid documentation shall be available for collection by prospective bidders until the closing date of bids.

22. ISSUING OF BID DOCUMENTS

22.1 Bid documents and any subsequent notices may only be issued by offices designated by the Municipal Manager from time to time.

22.2 Details of all prospective bidders who have been issued with bid documents must be recorded by the issuing office but shall remain confidential for the duration of the bid period.

22.3 Details of prospective bidders must, wherever possible, include the full name of the person drawing documents, a contact person, a contact telephone and fax number and a postal and email address.

23. SITE INSPECTIONS

23.1 Site inspections, where applicable, shall be compulsory.

23.2 If site inspections are to be held, full details must be included in the bid notice/bid document.

24. PRE-QUALIFICATION OF BIDDERS

24.1 Only in exceptional circumstances shall the Council employ the practice of pre-qualifying bidders.

24.2 This may apply to bids for large complex projects of a specialist or long term nature or where there are legislative, design, technological and/or safety reasons to restrict bidding to firms who have proven their capability and qualification to meet the specific requirements of the bid, including projects where it may be undesirable to prepare complete detailed technical specifications or long term projects with a duration exceeding three years.

24.3 The notice inviting bidders to pre-qualify must comply with the provisions of this By-law on competitive bid invitations.

24.4 Once bidders have pre-qualified for a particular project, they shall be given not less than 7 (seven) days to submit a bid after having been called on to do so.

25. VALIDITY PERIODS

- 25.1 The period for which bids are to remain valid and binding must be indicated in the bid documents.
- 25.2 The validity period is calculated from the bid closure date and bids shall remain in force and binding until the end of the final day of that period.
- 25.3 This period of validity may be extended by mutual consent in writing between the Council and the bidders, provided that the original validity period has not expired and that all bidders are given an opportunity to extend such period.
- 25.4 If an appeal is lodged in terms of Clause 45.2 the Responsible Agents must ensure that all bidders are requested to extend the validity of their bids where necessary in order to ensure that the bids are valid throughout the appeal period or until the appeal is finalised.

26. CONTRACT PRICE ADJUSTMENT

- 26.1 For all contract periods equal to or exceeding one year, an appropriate contract price adjustment formula must be specified in the bid documents.
- 26.2 In general, if contract periods do not exceed one year, the bid shall be a fixed price bid and so not subject to contract price adjustment.
- 26.3 However, if as a result of any extension of time granted the duration of a fixed price contract exceeds one year, the contract will automatically be subject to contract price adjustment for that period by which the extended contract period exceeds such one year. An appropriate contract price adjustment formula must be specified in the bid documents.
- 26.4 Notwithstanding clause 26.2, if the bid validity period is extended, then contract price adjustment may be applied.

27. CONTRACTS PROVIDING FOR COMPENSATION BASED ON TURNOVER

- 27.1 If a service provider acts on behalf of the Council 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.
- 27.2 The contract between the service provider and the Council must stipulate -
 - 27.2.1 a cap on the compensation payable to the service provider; and
 - 27.2.2 that such compensation must be performance based.

28. PROVISIONAL SUMS AND PRIME COST ITEMS

If monetary allowances for provisional sums or prime cost items have been included in the bid documents, they shall be dealt with in terms of this acquisition management system.

29. SAMPLES

- 29.1 Where samples are called for in the bid documents, samples (marked with the bid and item number as well as the bidder's name and address) shall be delivered separately (to the bid) to the addressee mentioned in the bid documents by no later than the closing time of the bid.
- 29.2 Bids may not be included in parcels containing samples.
- 29.3 If samples are not submitted as required in the bid documents, then the bid concerned may be declared invalid.
- 29.4 Samples shall be supplied by a bidder at his/her own expense and risk. The Council shall not be obliged to pay for such samples or compensate for the loss thereof, unless otherwise specified in the bid documents, and shall reserve the right not to return such samples and to dispose of them at its own discretion.
- 29.5 If a bid is accepted for the supply of goods according to a sample submitted by the bidder, that sample will become the contract sample. All goods/materials supplied shall comply in all respects to that contract sample.

30. CLOSING OF BIDS

- 30.1 Bids shall close on the date and at the time stipulated in the bid notice.
- 30.2 For bids for goods and services the bid closure date must be at least 14 (fourteen) days after publication of the notice.
- 30.3 For construction works the bid closure date must be at least 21 (twenty-one) days after publication of the notice.
- 30.4 Notwithstanding the above, if the estimated contract value exceeds R10 million (VAT included) or if the contract is of a long term nature, then the bid closure date must be at least 30 (thirty) days after publication of the notice.
- 30.5 For banking services the bid closure date must be at least 60 (sixty) days after publication of the notice.
- 30.6 For proposal calls using a two envelope system, the bid closure date must be at least 30 (thirty) days after publication of the notice.
- 30.7 The bid closing date may be extended if circumstances justify this action; provided that the closing date may not be extended unless a notice is published in the press at least one week prior to the original bid closing date. This notice shall also be posted on the notice-boards at designated Council offices, and a notice to all bidders to this effect shall be issued.
- 30.8 The Municipal Manager may determine a closure date for the submission of bids which is less than the 30 or 14 day 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.

31. COMMUNICATION WITH BIDDERS BEFORE BID CLOSING

- 31.1 The Council may, if necessary, communicate with bidders prior to bids closing in order to supply additional information or to clarify vague points in the bid documents.

- 31.2 Such communication shall be in the form of a notice issued in accordance with Clause 46 and should, where possible, be issued at least one week prior to the bid closing date.
- 31.3 Notwithstanding a request for acknowledgement of receipt of any notice issued in accordance with Clause 31.2, the bidder will be deemed to have received such notice if the procedures described in Clause 50 have been complied with.

32. SUBMISSION OF BIDS

- 32.1 Bids must be submitted before the closing time, at the address and in accordance with the directives in the bid documents.
- 32.2 Each bid must be in writing using non-erasable ink and must be submitted on the official Form of Bid issued with the bid documents.
- 32.3 The bid must be submitted in a separate sealed envelope with the name and address of the bidder, the bid number and title, the bid box number (where applicable) and the closing date indicated on the envelope. The envelope may not contain documents relating to any bid other than that shown on the envelope.
- 32.4 The onus shall be on the bidder to place the sealed envelope in the official marked and locked bid box provided for this purpose, at the designated venue not later than the closing date and time specified in the bid notice.
- 32.5 Postal bids will be accepted for consideration only if they are received in sufficient time to be lodged in the appropriate bid box by the closing time for such bids, it being understood that Council disclaims an responsibility for seeing that such bids are in fact lodged in the bid box. Proof of posting of a bid will not be accepted as proof of delivery to the appropriate place for the receipt of bids.
- 32.6 No bids forwarded by telegram, facsimile or similar apparatus shall be considered. However, photostat copies of bids or facsimiles which are submitted in the prescribed manner will be considered, provided the original Forms of Bid can be shown to have been posted or couriered prior to the close of bids.
- 32.7 Electronic bids will only be accepted in response to a request for bids via an electronic bulletin board and if such bids are supplemented by sealed hard copies in accordance with Clauses 32.2 and 32.3.
- 32.8 The bidder shall choose a *domicilium citandi et executandi* in the Republic and unless notice of the change thereof has duly been given in writing, it shall be the address stated in the bid.
- 32.9 No person may amend or tamper with any bids or quotations after their submission.

33. LATE BIDS

- 33.1 A bid is late if it is not placed in the relevant bid box by the closing time for such bid.
- 33.2 A late bid shall not be admitted for consideration and where feasible shall be returned unopened to the bidder with the reason for the return thereof endorsed on the envelope.

34. PROCEDURALLY NON-COMPLIANT BIDS

- 34.1 Any bids received without envelopes will be sealed in an envelope, and the bid number and title, the bid box number (where applicable) and the closing date will be written on the envelope, if ascertainable.
- 34.2 Bids received in envelopes (sealed or unsealed) without a bid number or title on the envelope, will be opened if possible in the presence of a witness, and the bid number and title ascertained. The envelope will then be sealed and the bid number and title, the bid box number (where applicable) and closing date written on the envelope. Any such envelopes shall be lodged in the applicable bid box, it being understood that the Council disclaims any responsibility for seeing that such bids are in fact lodged in the correct bid box.

35. OPENING OF BIDS

- 35.1 At the specified closing time on the closing date the applicable bid box shall be closed.
- 35.2 The bid box shall be opened in public as soon as practical after the closing time.
- 35.3 Bids found to be inadvertently placed in the incorrect bid box will be redirected provided that the applicable bids either closed on the same day at the same time, or are still open (in which case the Council disclaims any responsibility for seeing that the bids are in fact lodged in the correct bid box).
- 35.4 Immediately after the opening of the bid box, all bids shall be opened in public and checked for compliance.
- 35.5 The official opening the bids shall in all cases read out the name of the bidder and, if practical, the amount of the bid.
- 35.6 As soon as a bid or technical proposal has been opened -
 - 35.6.1 the bid/proposal shall be stamped with the official stamps, and endorsed with the opening official's signature;
 - 35.6.2 the name of the bidder, and where possible, the bid sum shall be recorded in a bid opening record kept for that purpose; and
 - 35.6.3 the responsible official who opened the bid shall forthwith place his/her signature on the bid opening record and shall ensure that the bid opening record and the bid prices, where applicable, are made available for public inspection and are published on the Council's official website.

36. TWO ENVELOPE SYSTEM

- 36.1 If a request for proposal procedure (that is, a two envelope system) is followed, only the technical proposal will be opened at the bid opening.
- 36.2 The unopened envelope containing the financial proposal shall be stamped and endorsed with the opening official's signature and be retained by him/her for safekeeping.
- 36.3 When required the financial offers/bids corresponding to responsive technical proposals shall be opened by the opening official in accordance with Clauses 35.5 and 35.6.

- 36.4 All bidders who submitted responsive technical proposals must be invited to attend the opening of the financial offers/bids.
- 36.5 Envelopes containing financial offers/bids corresponding to non-responsive technical proposals shall be returned unopened after the appeal process described in Clause 46 has been complied with.
- 36.6 After being recorded in the bid opening record, the bids/technical proposals shall be handed over to the official responsible for the supervision of the processing thereof and that official shall acknowledge receipt thereof by signing the bid opening record.

37. INVALID BIDS

- 37.1 Bids shall be considered invalid and shall be endorsed and recorded as such in the bid opening record by the responsible official who opened the bid in the following instances:
- 37.1.1 If the bid is not submitted on the official Form of Bid.
- 37.1.2 If the bid is not completed in non-erasable ink.
- 37.1.3 If the Form of Bid has not been signed.
- 37.1.4 If the Form of Bid is signed, but the name of the bidder is not stated, or is indecipherable.
- 37.1.5 If in a two envelope system, the bidder fails to submit both a technical proposal and a separate sealed financial offer/bid.
- 37.2 When bids are declared invalid at the bid opening, the bid sum of such bids shall not be read out. However, the name of the bidder and the reason for the bid having been declared invalid shall be announced.

38. BID SUM

- 38.1 A bid will not necessarily be invalidated if the amount in words and the amount in figures do not correspond, in which case the amount in words shall be read out at the bid opening.
- 38.2 All rates, with the exception of rates only bids, and proprietary information are confidential and shall not be disclosed.

39. BID EVALUATION: GENERAL

- 39.1 The Council shall not be obliged to accept the lowest or any bid.
- 39.2 For goods and services bids, the Council shall have the right to accept the whole bid or part of a bid or any item or part of an item or accept more than one bid, in the event of a number of items being offered.

40. BID EVALUATION

- 40.1 The responsible delegated official of the Supply Chain Management Unit shall carry out a preliminary evaluation of all valid bids received and shall submit a draft bid evaluation report to the Bid Evaluation Committee for consideration.

- 40.2 Any evaluation of a bid shall consider the bids received and shall note for inclusion in the evaluation report, a bidder -
 - 40.2.1 whose bid does not comply with the provisions of Clauses 4.1 to 4.5 under Chapter 6 - Acquisition Management System, of this By-law;
 - 40.2.2 whose bid does not comply with the provisions of Clause 13.1 under Chapter 8 - General Conditions Applicable to Bids and Quotations, of this By-law;
 - 40.2.3 whose bid is not in compliance with the specifications;
 - 40.2.4 whose bid is not in compliance with the terms and conditions of the bid documentation;
 - 40.2.5 whose bid does not comply with any minimum goals stipulated in terms of Council's Preferential Procurement By-law;
 - 40.2.6 who is not registered and verified on the Council's supplier database within seven days of the closing time for bids. In this regard bid documentation shall state that the responsibility for registration and verification rests solely with the bidder;
 - 40.2.7 who, in the case of construction works acquisitions, does not comply with the requirements of the Construction Industry Development Board Act regarding registration of contractors;
 - 40.2.8 who has failed to submit a valid tax clearance certificate form from the South African Revenue Service (SARS) certifying that the taxes of the bidder are in order or that suitable arrangements have been made with SARS, and
 - 40.2.9 who fails to comply with any applicable Bargaining Council agreements.
- 40.3 Bids shall be evaluated according to the following as applicable:
 - 40.3.1 Bid price (corrected if applicable and brought to a comparative level where necessary).
 - 40.3.2 The unit rates and prices.
 - 40.3.3 The bidder's ability to fulfill its obligations in terms of the bid documents.
 - 40.3.4 Any qualifications to the bid.
 - 40.3.5 The bid ranking obtained in respect of Preferential Procurement as required by the Council's Preferential Procurement By-law.
 - 40.3.6 The financial standing of the bidder, including its ability to furnish the required institutional guarantee, where applicable.
 - 40.3.7 Any other criteria specified in the bid documents.
- 40.4 The Bid Evaluation Committee shall check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears.
- 40.5 The evaluation of bids on an equitable basis may be considered during the evaluation process.

- 40.6 Additional information or clarification of bids may be called for if required.
- 40.7 Alternative bids may be considered, provided that a bid free of qualifications and strictly in accordance with the bid documents is also submitted. The Council shall not be bound to consider alternative bids.
- 40.8 If a bidder requests in writing, after the closing of bids, that his/her bid be withdrawn, then such a request may be considered and reported in the bid evaluation report.
- 40.9 If, after bids have been brought to a comparative level, two or more score equal total adjudication points, the recommended bidder shall be the one scoring the highest preference points.
- 40.10 If two or more bids are equal in all respects, the Bid Evaluation Committee shall draw lots to decide on the recommendation for award, or may, in the case of goods and services, recommend splitting the award proportionately, where applicable.
- 40.11 All disclosures of a conflict of interest shall be considered by the Bid Evaluation Committee and if the conflict of interest is of a material nature, this shall be reported to the Bid Adjudication Committee.

41. RECOMMENDATION TO BID ADJUDICATION COMMITTEE

The Bid Evaluation Committee shall, having considered the responsible agent's draft report, submit a report including recommendations regarding the award of the bid or any other related matter, to the Bid Adjudication Committee for approval or for further recommendation to the Municipal Manager for approval.

42. BID ADJUDICATION

42.1 Adjudication Committee

42.1.1 The Bid Adjudication Committee shall comprise at least four senior managers and shall include -

- (a) the Chief Financial Officer or, if the Chief Financial Officer is not available, another manager in the budget and treasury office who reports directly to the Chief Financial Officer and is designated by the Chief Financial Officer;
- (b) at least one senior supply chain management practitioner of the Council; and
- (c) a technical expert in the relevant field who is an official of the Council, if the Council has such an expert.

42.1.2 The Municipal Manager shall appoint the chairperson of the Bid Adjudication Committee. If the chairperson is absent from a meeting, the members of the committee who are present shall elect one of the committee members to preside at the meeting.

42.1.3 Neither a member of a Bid Evaluation Committee nor an advisor or person assisting the Bid Evaluation Committee may be a member of a Bid Adjudication Committee.

43. ADJUDICATION AND AWARD

- 43.1 The Bid Adjudication Committee shall consider the report and recommendations of the Bid Evaluation Committee and, depending on its delegations, either make a final award or a recommendation to the Municipal Manager to make the final award or, make another recommendation to the Municipal Manager on how to proceed with the relevant procurement.
- 43.2 If a 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, notify the Municipal Manager and check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears. The Municipal Manager may, after due consideration of the reasons for the deviation, ratify or reject the decision of the Bid Adjudication Committee, and if the decision of the Bid Adjudication Committee is rejected, refer the decision of the Adjudication Committee back to that committee for reconsideration.
- 43.3 The Municipal Manager may at any stage of the bidding process refer any recommendation made by the Bid Evaluation or Bid Adjudication Committee back to that committee for reconsideration of the recommendation.

44. APPROVAL OF BID NOT RECOMMENDED

- 44.1 If a bid other than the one recommended in the normal course of implementing this By-law is approved, then the Municipal Manager must, in writing and within ten working days, notify the Auditor-General, the Provincial Treasury and the National Treasury of the reasons for deviating from such recommendation.
- 44.2 The requirement of Clause 44.1 does not apply if a different bid was approved in order to rectify an irregularity.

45. NOTIFICATION OF DECISION, APPEALS AND AWARD OF CONTRACT

- 45.1 If the Bid Adjudication Committee, Municipal Manager or other delegated official has resolved that a bid be accepted, the successful and unsuccessful bidders shall be notified in writing of this decision. The written notification to the successful bidder shall inform the successful bidder that any person aggrieved by such decision has a right to appeal such decision, and such decision may be confirmed, varied or revoked on appeal.
- 45.2 Any person aggrieved by a decision in this context can appeal such decision within fourteen (14) days of the written notification of that decision.
- 45.3 Any appeal must state the reasons for the appeal, the way in which the person's rights are affected by the decision and the remedy sought.
- 45.4 The consideration of appeals and if necessary, the invalidation of any decision made, shall be dealt with in terms of the Council's appeals process.
- 45.5 Every notification of acceptance of a bid or award of a contract must be in writing and shall -
- 45.5.1 be delivered by hand on the day that it was signed and dated; or
- 45.5.2 be faxed and posted to the address chosen by the bidder within 14 days of the day that it was signed and dated, with a copy of the transmission verification report kept for record purposes.

46. NEGOTIATIONS WITH PREFERRED BIDDERS

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

46.1.1 does not allow any preferred bidder a second or unfair opportunity;

46.1.2 is not to the detriment of any other bidder; and

46.1.3 does not lead to a higher price than the bid as submitted.

- 46.2 Minutes of such negotiations must be kept for record purposes.

47. CANCELLATION OF BIDS

- 47.1 If it becomes necessary to cancel or re-advertise bids, then a report to this effect shall be submitted to the responsible Council official.

- 47.2 If bids have been cancelled, then all bidders must be notified in writing.

- 47.3 It is not necessary to notify original bidders when calling for new bids, which will be advertised in accordance with Clause 31.2.

- 47.4 No bid may be re-advertised before the expiry of the validity period of the original bid, or any extended validity periods.

- 47.5 Notwithstanding Clause 51.4, where no valid bids are received or where all bidders have indicated in writing that they have no objection to the re-advertisement of the bid, then the bid may be re-advertised forthwith.

48. INCREASE IN APPROVED CONTRACT SUM

- 48.1 Any increase in the approved contract sum that may become necessary as a result of exceptional circumstances during the contract period, must be approved by the Municipal Manager prior to implementation.

- 48.2 Where community participation has been a part of the project, the community must be advised of the proposed increase and be invited to provide written comment.

- 48.3 Any unapproved increase in the contract sum must be explained in a report to the Municipal Manager, requesting condonation for such unapproved increase.

49. ANNUAL BIDS**49.1 General**

49.1.1 It is permissible to invite bids for the supply of goods and services or construction works that is of an *ad hoc* or repetitive nature, for a pre-determined period of time (commonly referred to as an annual bid).

49.1.2 The general acquisition procedure for annual bids shall comply with procedures contained in the acquisition management system for competitive bids.

49.1.3 Bid documentation, where applicable, shall state that the acceptance of annual bids based on a schedule of rates will not necessarily guarantee the bidder any business with the Council.

49.1.4 The practice of using annual bids to circumvent the bid process in respect of what should be planned project work, is not permissible.

49.1.5 Unsolicited items included in an annual bid which are clearly not an alternative to any of the items specified, shall not be considered.

50. EVALUATION AND ADJUDICATION OF ANNUAL BIDS

50.1 Annual bids shall be considered in terms of the evaluation and adjudication procedures above. The evaluation and adjudication of bids must take into account the bid ranking in respect of preferential procurement as required by the Council's Preferential Procurement By-law.

50.2 Subsequent to award, where different selections of items are required in terms of the same annual bid and it is not possible or practical to separate orders for different items from different suppliers, service providers or contractors (in the case of construction works, for example), then the adjudication process will have to be carried out in respect of each application by the responsible Department. Individual orders will then be placed (or contracts awarded) on the basis of the highest total adjudication points received, per application.

50.3 If the selected supplier, contractor or service provider in terms of the selection process specified in the annual bid documentation is unable to provide the required goods, services or construction works at the required time and confirms as such in writing, then the bidder with the next highest adjudication points shall be selected.

51. QUOTATIONS

51.1 General

51.1.1 Where the Council intends to enter into any contract which is for the supply of any goods or services, or the execution of any construction work which involves or is likely to involve an estimated amount less than or equal to R200 000, or any such greater amounts as may be legislated from time to time, then a minimum of three written quotes shall be obtained from providers (excluding consultants) who are suitably qualified and experienced, having the necessary resources, and who are preferably registered and verified on the Council's supplier database. If quotations are obtained from providers who are not listed on the Council's supplier database, such providers must register on the database before they may be recommended for award.

51.1.2 Any request for a written quotation which is likely to be in excess of R30 000 must be advertised for at least seven days on the Council's official website and an official notice-board, as applicable.

51.1.3 Notwithstanding Clause 51.1.1, if quotations have been invited *via* an electronic bulletin board, no additional quotes need to be obtained should the number of responses be less than three.

51.1.4 If it is not possible to obtain at least three written quotations, the reasons must be recorded and approved by the Chief Financial Officer or an official designated by the Chief Financial Officer and such designated official must, within three days of the end of the month, report to the Chief Financial Officer on any approvals given during that month by that official.

51.1.5 The Municipal Manager must record the names of the potential providers and their written quotations.

51.1.6 The practice of breaking out projects in order to circumvent the competitive bid process is not permissible.

52. QUOTATION DOCUMENTATION

All quotation documentation shall comply with the requirements of bid documentation contained in the acquisition management system for competitive bids.

53. BID SPECIFICATION COMMITTEE FOR QUOTATIONS

The delegated authority may convene a Bid Specifications Committee to compile and/or vet the quotation documentation if deemed necessary.

54. VALIDITY PERIODS

All quotation validity periods shall comply with the validity periods provided for in the acquisition management system for competitive bids.

55. QUOTATION PRICES

55.1 In general, all quotations should be submitted on a fixed price basis (not subject to contract price adjustment). Only in exceptional circumstances may contract price adjustment be applied.

55.2 Notwithstanding Clause 55.1 above, if the quotation validity period is extended, then contract price adjustment may be applied.

56. ISSUING AND SUBMISSION OF DOCUMENTATION

56.1 Documents pertaining to quotations (including the quotation itself) may be issued and received by either the originating office or a designated issuing office.

56.2 Quotation documents shall clearly state the place where such documents must be submitted and if necessary, a date by when they must be returned.

56.3 No quotations submitted after any stipulated closing date shall be considered.

56.4 Quotations may be submitted by telefax.

56.5 All prices submitted shall remain confidential until all invited quotations have been received.

57. CONSIDERATION AND ACCEPTANCE OF QUOTATIONS

57.1 All quotations shall be approved by the delegated authority.

57.2 The delegated authority may convene a Bid Evaluation Committee meeting to evaluate the quotations received and to submit a report, including recommendations regarding the award of the quotation or any other related matter, to the delegated authority for approval.

58. APPOINTMENT OF CONSULTANTS

58.1 General

- 58.1.1 Where the estimated value of the fees exceeds R200 000 or where the duration of the appointment will exceed one year, consulting services shall be procured through a competitive bidding process.
- 58.1.2 The procurement of consulting services shall be in accordance with any National Treasury guidelines in respect of consulting services or Construction Industry Development Board guidelines in respect of services related to the build environment and construction works.
- 58.1.3 Bid documentation in the above regard must require bidders to furnish the Council with particulars of all consultancy services, and any similar services (to the services being bid for) provided to an organ of state in the last five years.
- 58.1.4 Bid documentation must ensure that copyright in any document produced and the patent rights or ownership in any plant, machinery, item, system or process designed or devised by a consultant in terms of an appointment by the Council, shall vest in the Council.
- 58.1.5 Where the estimated value of fees is less than R200 000 and the duration of the appointment is less than one year, a selection process as approved by the Municipal Manager shall be followed; provided that any National Treasury and, where applicable, Construction Industry Development Board guidelines in respect of consulting services are taken into account.

59. DEVIATION FROM THE PROCUREMENT PROCESSES

59.1 General

- 59.1.1 The procedures governing procurement in this By-law may be dispensed with and any required goods or services may be procured through any convenient process, which may include direct negotiation, in respect of -
- 59.1.2 any contract relating to an emergency (as described in Clause 60 below) where it would not be in the interest of the Council to invite bids;
- 59.1.3 any goods or services which are available from a single provider only;
- 59.1.4 the acquisition of animals for zoos; or
- 59.1.5 any other exceptional circumstances where it is impractical to follow the official procurement process, including -
 - 59.1.5.1 any contract relating to the publication of notices and advertisements by or on behalf of the Council;
 - 59.1.5.2 the acquisition of special works of art or historical objects where specifications are difficult to compile;
 - 59.1.5.3 any purchase on behalf of the Council at a public auction sale;
 - 59.1.5.4 any contract with an organ of state, a local authority or a public utility corporation or company;

- 59.1.5.5 any contract for the supply of goods or services to the Council by a contractor of an organ of state at the price and on the terms and conditions applicable to the state; provided that that contract has been secured by means of a competitive bidding process, and that both the other organ of state and the provider have consented thereto in writing, and there are demonstrable benefits for the Council to do so;
 - 59.1.5.6 any contract in respect of which compliance therewith would not be in the public interest;
 - 59.1.5.7 *ad hoc* repairs to plant and equipment where it is not possible to ascertain the nature or extent of the work required in order to call for bids; and
 - 59.1.5.8 Expanded Public Works Programme (EPWP) learnership or emerging entrepreneur projects which have been identified and registered as such.
- 59.1.6 Unless there are other approved processes in terms of policy or guidelines (the appointment of consultants where the fees are less than R200 000 or EPWP learnerships for example), a report in respect of any of the circumstances contemplated in Clause 59.1.1 requesting authority to accept an offer without having followed a formal procurement process shall be submitted to the Municipal Manager for approval.
- 59.1.7 Services for the routine repair of plant and equipment shall, where possible, be procured in terms of rates based annual bids for this work.
- 59.1.8 The appointment of learnerships or emerging entrepreneurs in terms of the Expanded Public Works Programme must be carried out in accordance with the Council's Expanded Public Works Programme By-law.

60. EMERGENCY DISPENSATION

- 60.1 The conditions warranting emergency dispensation should include the existence of one or more of the following:
- 60.1.1 The possibility of human injury or death.
 - 60.1.2 The prevalence of human suffering or deprivation of rights.
 - 60.1.3 The possibility of damage to property, or suffering and death of livestock and animals.
 - 60.1.4 The interruption of essential services, including transportation and communication facilities or support services critical to the effective functioning of the Council as a whole.
 - 60.1.5 The possibility of serious damage occurring to the natural environment.
 - 60.1.6 The possibility that failure to take necessary action may result in the Council not being able to render an essential community service.
 - 60.1.7 The possibility that the security of the state could be compromised.

60.2 The prevailing situation, or imminent danger, should be of such a scale and nature that it could not readily be alleviated by interim measures, in order to allow time for the formal procurement process. Emergency dispensation shall not be granted in respect of circumstances other than those contemplated above.

60.3 Where possible, in an emergency situation, three quotes in accordance with general acquisition management principles should be obtained and a report submitted to the Municipal Manager for approval. However, where time is of the essence, the emergency shall be immediately addressed, and the process formalised in a report to the Municipal Manager as soon as possible thereafter.

61. UNSOLICITED BIDS

61.1 The municipality is in terms of Section 113 of the MFMA supra not obliged to consider unsolicited bids received outside a normal bidding process.

61.2 If the municipality decides in terms of Section 113(2) of the MFMA supra to consider an unsolicited bid, it may do so only if –

61.2.1 the product or service offered in terms of the bid is a unique innovative concept that will be exceptionally beneficial to, or have exceptional cost advantages for the municipality;

61.2.2 the person who made the bid is the sole provider of the product or service;

61.2.3 the need for the product or service by the municipality has been established during its strategic planning and budgeting processes; and

61.2.4 the National Treasury and the relevant Provincial Treasury have been notified of the bid and given 60 days to provide written comments and recommendations.

61.3 Any written comments and recommendations of the National Treasury or the relevant Provincial Treasury submitted in terms of Sub-regulation (2)(d) must be taken into account before any contract committing the municipality is signed.

61.4 If any recommendations of the National Treasury or Provincial Treasury are rejected or not followed, the Accounting Officer must table at the next meeting of the Council or the Board -

61.4.1 the comments and recommendations of the National Treasury or Provincial Treasury;

61.4.2 the reasons for rejecting or not following those recommendations; and

61.4.3 its reasons as to why the bid should not be open to other competitors.

62. RATIFICATION OF MINOR BREACHES OF THE BID PROCESSES

Any minor breaches which are purely of a technical nature of the bid processes described in this By-law by an official or committee acting in terms of delegated powers or duties shall be reported to the Municipal Manager for ratification.

63. OBLIGATION TO REPORT

All deviations from competitive bidding processes (excluding quotations and consultant appointments where the transaction value is less than or equal to R200 000) shall be recorded and reported by the Municipal Manager to Council at each Council meeting, and shall be included as a note to the annual financial statements.

64. MANAGEMENT OF THE COUNCIL'S IMMOVABLE PROPERTY

- 64.1 The Council's By-law on the Management of Council's Immovable Property provides a framework for the management and use of the Council's immovable property in a manner that supports the strategic objectives of the Council and the needs and aspirations of the community.
- 64.2 This By-law sets out certain provisions that enable the Council to manage such immovable property and explains certain methodologies and conditions applicable to these enabling provisions, including on the acquisition of immovable property.
- 64.3 Stakeholders, potential business partners and interested parties must all comply with the guidelines contained in the Council's By-law on the Management of Council's Immovable Property.

CHAPTER 9 – LOGISTICS MANAGEMENT SYSTEM**INTRODUCTION**

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

1. SETTING OF INVENTORY LEVELS

- 1.1 Stock items shall be systematically replenished using the re-order point planning strategy in conjunction with minimum and maximum levels.
- 1.2 Open reservations shall be taken into account during the replenishment run.

2. PLACING OF ORDERS

- 2.1 Purchase orders will be created with reference to requisitions where the supply source is contract or quotations (where sourcing had to take place).
- 2.2 All import orders require the vendor to take out a foreign exchange contract in order to fix the Rand based price in the purchase order.
- 2.3 All purchase orders will be captured exclusive of VAT.
- 2.4 Standing orders (also known as "framework orders") will be used in cases where a longer term arrangement, such as after hour services and copier contracts, are required.
- 2.5 Purchase order approvals will be systems based and will involve the procurement department only.
- 2.6 The assets section (for asset creation) and the insurance section (for claims) will be informed after the purchase order approval.

3. RECEIVING AND DISTRIBUTION OF GOODS

- 3.1 Goods will be received on the Council's financial management system with reference to purchase orders.

3.2 No over receipt of stock will be allowed. Under receipts will keep the purchase order open for the outstanding delivery quantity.

3.3 Goods will be issued with reference to reservations. Goods can be issued for consumption against internal orders, cost authorisation, projects and assets under construction.

4. STORES AND WAREHOUSE MANAGEMENT

4.1 The stores and warehousing function operates under the jurisdiction of the Supply Chain Management Unit.

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

5. EXPEDITING ORDERS

5.1 The purchasing expeditor will be required to monitor and expedite outstanding purchase orders.

5.2 Reminder letters can be faxed automatically to vendors based on the reminder levels (days before delivery due date) that are set in the purchase order.

6. TRANSPORT MANAGEMENT

6.1 All vehicles must be maintained in a good running order.

6.2 The Fleet Management Policy must be adhered to at all times.

6.3 Transport requisition forms and vehicle log books must be kept up to date at all times.

6.4 The information will be available for contract negotiations and regular feedback to the vendors.

7. CONTRACT MANAGEMENT

7.1 Application

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

8. COMPETENCY

All contracts must be administered by an official(s) having the necessary competencies to ensure effective management of the contract.

9. MAINTENANCE AND CONTRACT ADMINISTRATION

9.1 Contracts related to the procurement of goods and services will be captured on the Council's financial management system in the form of a price schedule.

9.2 Value (where the maximum value of the contract is restricted) and volume (where the maximum units procured are restricted) based contracts will be used.

9.3 The use of fixed price, fixed term contracts will be promoted and expenditure will be driven towards contracts versus once-off purchases. Consolidated procurement volumes have to drive down the negotiated contract prices.

9.4 Contract price adjustments shall be processed only in accordance with contract terms and conditions. Price adjustments shall be made on the procurement contract and any current purchase orders shall be changed to reflect the new price.

10. CONTRACT ADMINISTRATION

10.1 Contract administration is the last stage of the tendering and contract cycle, and includes all administrative duties associated with a contract after it is executed, including contract review.

10.2 The effectiveness of contract administration will depend on how thoroughly the earlier steps were completed. Changes can be made far more readily early in the tendering cycle than after contract management has commenced.

10.3 Some of the key early stages, which influence the effectiveness of contract administration, include -

10.3.1 defining the output, that is, writing specifications which identify what the aims and outputs of a contract will be;

10.3.2 assessing risk;

10.3.3 researching the market place (including conducting pre-tender briefings);

10.3.4 formulating appropriate terms and conditions of contract;

10.3.5 identifying appropriate performance measures and benchmarks so that all parties know in advance what is expected, and how it will be tested;

10.3.6 actively creating competition, so the best possible suppliers bid for contracts; and

10.3.7 evaluating bids competently, to select the best contractor, with a strong customer focus and good prospects of building a sound relationship.

11. LEVELS OF CONTRACT ADMINISTRATION

11.1 There are three levels of contract administration:

11.1.1 The first operational level is for standard contracts for goods and services. Day to day contract administration should become no more than a monitoring, record-keeping and payment authorisation role. A standard contract, which requires excessive administration, is almost certainly the product of a failure in contract preparation stages. An example of an operational contract would be a stationery contract.

11.1.2 The second or intermediate level is for more complex contracts for services. An example would be a contract to outsource cleaning services. This type of contract will require a more active role for the contract manager in developing the relationship between the Council and the contractor.

- 11.1.3 The third level is for strategic contracts involving complex partnerships and outsourcing arrangements. These contracts need more active management of the business relationships between the supplier and the users, for example to manage outputs and not the process. Sufficient resources need to be dedicated by all parties to successfully manage these contractor relationships and, where feasible, to achieve partnership. A partnership is the result of mutual commitment to a continuing co-operative relationship, rather than parties working on a competitive and adversary basis.

CHAPTER 10 - DISPOSAL MANAGEMENT SYSTEM

1. GENERAL

- 1.1 Disposal management provides for an effective system for the disposal or letting of assets no longer needed, including unserviceable, redundant or obsolete assets.
- 1.2 Disposal of assets shall be subject to Sections 14 and 90 of the Municipal Finance Management Act and any other applicable legislation.
- 1.3 Assets may be disposed of in the following ways:
 - 1.3.1 Transferring the asset to another organ of state in accordance with the provisions of the Municipal Finance Management Act.
 - 1.3.2 Transferring the asset to another organ of state at market related value or, when appropriate, free of charge.
 - 1.3.3 Selling the asset.
 - 1.3.4 Destroying the asset.
- 1.4 Moveable assets may be sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous to the Council.
- 1.5 In the case of the free disposal of computer equipment, the Provincial Department of Education must first be approached to indicate within 30 days whether any of the local schools are interested in the equipment.
- 1.6 In the case of firearms, the National Conventional Arms Control Committee must approve any sale or donation of firearms to any person within or outside the Republic.
 - 1.6.1 Immovable property may be -
 - (a) sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
 - (b) let only at market related rates except when the public interest or the plight of the poor demands otherwise and provided that all charges, rates, tariffs, scales of fees or other charges relating to the letting of immoveable property are annually reviewed.
- 1.7 Council must ensure that where assets are traded in for other assets, the highest possible trade-in price is negotiated.

2. MAJOR ACTIVITIES

- 2.1 The major activities associated with disposal management shall accordingly include, but not be limited to:
- 2.1.1 establishing requirements;
 - 2.1.2 establishing market value;
 - 2.1.3 obsolescence planning;
 - 2.1.4 depreciation;
 - 2.1.5 identifying where all redundant material is kept or located; and
 - 2.1.6 identifying appropriate strategies relating to the manner in which items are to be disposed of.

CHAPTER 11 - RISK MANAGEMENT SYSTEM

1. GENERAL

- 1.1 Risk Management shall provide for an effective system for the identification, consideration and avoidance of potential risks in the Council's supply chain management system.
- 1.2 Managing risk must be part of the Council's philosophy, practices and business plans and should not be viewed or practiced as a separate activity in isolation from line managers.
- 1.3 Risk Management shall be an integral part of effective management practice.

2. THE RISK MANAGEMENT PROCESS

- 2.1 The risk management process shall be applied to all stages of supply chain management, be it the conceptual stage, project definition, specification preparation, acquisition approval or implementation to completion.
- 2.2 Risk management is an integral part of good management of acquisition activities and cannot be effectively performed in isolation from other aspects of acquisition management.
- 2.3 Appropriate risk management conditions should therefore be incorporated in contracts.
- 2.4 **Key principles:**

12.4.1 The key principles on managing risk in supply chain management include -

- 2.4.1.1 early and systematic identification of risk on a case-by-case basis, analysis and assessment of risks, including conflicts of interest and the development of plans for handling them;
- 2.4.1.2 allocation and acceptance of responsibility to the party best placed to manage risk;
- 2.4.1.3 management of risks in a pro-active manner and the provision of adequate cover for residual risks;

2.4.1.4 assignment of relative risks to the contracting parties through clear and unambiguous contract documentation;

2.4.1.5 acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it; and

2.4.1.6 ensuring that the costs incurred in managing risks are commensurate with the importance of the purchase and the risks to the Council's operations.

3. GUIDELINES

3.1 The Council shall demonstrate that in its supply chain management -

3.1.1 there exists a systematic approach to identifying risks including potential conflicts of interest, analysing their possible likelihood, impacts and consequences and managing those risks as the project proceeds through the phases of pre-bid, post-bid and contract management;

3.1.2 the integrity and correctness of the process of risk identification, analysis, assessment and treatment is such that the relevant Council department can demonstrate that the scope of the risk analysis is appropriate for the stated objectives;

3.1.3 all pertinent matters and assumptions have been tested adequately and that appropriate risk treatment techniques have been implemented;

3.1.4 the causes of risk are clearly identified;

3.1.5 the means of treating the identified risks are apparent;

3.1.6 the party who accepts the risks also accepts responsibility for management of those risks, except where informed, and objective decisions are taken to share risks,

3.1.7 alternatives have been evaluated; and

3.1.8 appropriate conditions are to be incorporated in contracts to avoid or minimise risk including warranties and penalties where appropriate.

4. STEPS IN THE RISK MANAGEMENT

4.1 There are six steps in the risk management process, namely;

4.1.1 establish a framework;

4.1.2 risk identification;

4.1.3 risk analysis;

4.1.4 risk assessment;

4.1.5 risk treatment; and

4.1.6 implementation, monitoring and review.

CHAPTER 12 - PERFORMANCE MANAGEMENT SYSTEM

1. In order to ensure that this By-law achieves its objectives, a performance management system shall be developed to monitor whether the supply chain management processes are being followed and whether the objectives of black economic empowerment are being achieved.
2. Performance management provides for an effective internal monitoring system in order to determine, on the basis of retrospective analysis, whether the authorised supply chain management processes are being followed and whether the desired objectives are being achieved.
3. Performance management shall accordingly be characterised by a monitoring process and retrospective analysis to determine whether -
 - 3.1 value for money has been attained;
 - 3.2 proper processes have been followed;
 - 3.3 desired objectives have been achieved;
 - 3.4 there is an opportunity to improve the process;
 - 3.5 suppliers have been assessed and what that assessment is; and
 - 3.6 there has been deviation from procedures and, if so, what the reasons for that deviation are.
4. The performance management system shall accordingly focus on, amongst others -
 - 4.1 achievement of goals;
 - 4.2 compliance to norms and standards;
 - 4.3 savings generated;
 - 4.4 cost variances per item;
 - 4.5 non-compliance with contractual conditions and requirements; and
 - 4.6 the cost efficiency of the procurement process itself.

CHAPTER 13 - ETHICAL STANDARDS**1. GENERAL**

- 1.1 A code of ethical standards is hereby established for officials and all role players in the supply chain management system in order to promote -
 - 1.1.1 mutual trust and respect; and
 - 1.1.2 an environment where business can be conducted with integrity and in a fair and reasonable manner.
- 1.2 An official or other role player involved in the implementation of the Supply Chain Management By-law -

- 1.2.1 must treat all providers and potential providers equitably;
- 1.2.2 may not use his or her position for private gain or to improperly benefit another person;
- 1.2.3 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;
- 1.2.4 notwithstanding Clause 1.2.3 above, must declare to the Municipal Manager 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;
- 1.2.5 must declare to the Municipal Manager details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the Council.
- 1.2.6 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;
- 1.2.7 must be scrupulous in his or her use of property belonging to the Municipality;
- 1.2.8 must assist the Municipal Manager in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
- 1.2.9 must report to the Municipal Manager any alleged irregular conduct in the supply chain management system which that person may become aware of, including -
 - 1.2.9.1 any alleged fraud, corruption, favouritism or unfair conduct;
 - 1.2.9.2 any alleged contravention of this By-law; or
 - 1.2.9.3 any alleged breach of this code of ethical standards.
- 1.3 Declarations in terms of Clause 1.2.3 above must be recorded in a register which the Municipal Manager must keep for this purpose.
- 1.4 The Municipality has adopted the National Treasury's code of conduct for supply chain management practitioners and other role players involved in supply chain management. This code of conduct is binding on all officials and other role players involved in the implementation of the Supply Chain Management By-law.
- 1.5 A copy of the National Treasury code of conduct is available on the website www.treasury.gov.za/mfma located under "legislation".
- 1.6 A breach of the code of conduct adopted will be dealt with in accordance with Schedule 2 of the Systems Act, Inducements, Rewards, Gifts and Favours.

2. OBJECTIONS AND COMPLAINTS

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

3. RESOLUTION OF DISPUTES, OBJECTIONS AND COMPLAINTS

3.1 Objections, complaints, queries and disputes

3.1.1 The Municipal Manager shall appoint an independent and impartial person not directly involved in the supply chain to assist in the resolution of disputes between the Council and other persons regarding -

3.1.2.1 any decisions or actions taken in the implementation of the supply chain management system; or

3.1.2.2 any matter arising from a contract awarded in the course of the supply chain management system; or

3.1.2.3 to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.

3.1.2 The Municipal Manager or another official designated by the Municipal Manager is responsible for assisting the appointed person to perform his or her functions effectively.

3.1.3 The person appointed must -

3.1.3.1 strive to resolve promptly all disputes, objections, complaints or queries received; and

3.1.3.2 submit monthly reports to the Municipal Manager on all disputes, objections, complaints or queries received, attended to or resolved.

3.1.4 A dispute, objection, complaint or query may be referred to the relevant Provincial Treasury if -

3.1.4.1 the dispute, objection, complaint or query is not resolved within 60 days; or

3.1.4.2 no response is forthcoming within 60 days.

3.1.5 If the Provincial Treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.

3.1.6 The provisions above must not be read as affecting a person's rights to approach a court at any time.

3.2 Rewards, gifts and favours to municipal officials and other role players

3.2.1 No person who is a provider of goods or services or prospective provider of goods or services to a municipality, or a recipient or prospective recipient of goods disposed or to be disposed of by a municipality, may either directly or through a representative or intermediary promise, offer or grant any reward, gift, favour or hospitality to -

- (a) any official of the municipality; or
- (b) any other role player involved in the implementation of the Supply Chain Management By-law of the municipality.

3.2.2 The Municipal Manager must promptly report any alleged contravention of Sub-regulation 3.2.1 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.

3.3 Sponsorships

The Municipal Manager must promptly disclose to the National Treasury any sponsorship promised, offered or granted to the municipality, whether directly or through a representative or intermediary, by any person who is -

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

3.4 Avoiding abuse of the supply chain management system

3.4.1 The Municipal Manager 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 corruption, fraud, favouritism, unfair or irregular practices or failure to comply with the Supply Chain Management By-law, 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, nor any of its directors, are listed as companies or persons prohibited from doing business with the public sector;
- (d) reject any bid from a bidder -
 - (i) who fails to provide written proof from the South African Revenue Service that that bidder either has no outstanding tax obligations or has made arrangements to meet outstanding tax obligations;
 - (ii) whose municipal rates and taxes or municipal service charges owed to the municipality are in arrears for more than three months; or

- (iii) who during the last five years has failed to perform satisfactorily on a previous contract with the municipality after written notice was given to that bidder that performance was unsatisfactory;
- (e) reject a proposal for the award of a contract if the recommended bidder has committed a corrupt or fraudulent act in competing for the particular contract; or
- (f) cancel a contract awarded to a supplier of goods or services-
 - (i) if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract; or
 - (ii) if any official or any other role player committed any corrupt or fraudulent act during the bidding process or the execution of that contract that benefited that supplier;
- (g) reject the bid of any bidder if that bidder or any of its directors -
 - (i) has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;
 - (ii) has been convicted for fraud or corruption during the past five years;
 - (iii) has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - (iv) has been listed in the Register for Tender Defaulters in terms of Section 29 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004);
- (h) inform the National Treasury and relevant Provincial Treasury in writing of any actions taken in terms of paragraph 2.14.16.

3.5 National Industrial Participation Programme

The Accounting Officer must obtain clearance for a recommended bidder from the Department of Trade and Industry in respect of contracts which are subject to the National Industrial Participation Programme of that Department.

3.6 Reporting of supply chain management information

3.6.1 The Accounting Officer must submit to the Provincial Treasury such supply chain management information as that Treasury may require.

3.6.2 Information referred to in Sub-regulation (1) must be submitted to the Treasury in such format and at such intervals as Treasury may require.

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

3.7.1 The Supply Chain Management By-law must, irrespective of the procurement process followed, state that the municipality may not make any award above R15 000 to a person whose tax matters have not been declared by the South African Revenue Service to be in order.

3.7.2 Before making an award to a person, the municipality must first check with SARS whether that person's tax matters are in order.

3.7.3 If SARS does not respond within seven days, such person's tax matters may for purposes of Sub-regulation (1) be presumed to be in order.

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

The municipality may not make any award to a person –

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

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

The notes to the annual financial statements of the Council must disclose particulars of any award of more than R2 000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –

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

3.10 Contracts providing for compensation based on turnover

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

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

4. PREFERENCE POINT SYSTEM GUIDELINES

4.1 General Conditions

4.1.1 The preference point system is applicable to all local South African manufactures/suppliers/service providers.

4.1.2 Historically Disadvantaged Individuals (HDIs): An HDI is a South African Citizen who had no franchise in elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 or the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993).

- 4.1.3 Responsive tenders will be adjudicated by the Tender Adjudication Committee using a system which awards points on the basis of the tendered price and equity ownership.
- 4.1.4 The qualifying tenderer obtaining the highest number of points will be awarded the tender.
- 4.1.5 Points scored will be rounded off to 2 decimal places.
- 4.1.6 In the event of equal points scored, the tender will be awarded to the tenderer scoring the highest number of points for equity owned by the HDI.

4.2 Points awarded for price and functionality

(1) The 80/20 preference point system

This formula must be used to calculate the points for price in respect of tenders with a Rand value equal to/or above R30 000 up to R500 000 or such amounts as are prescribed by legislature. This formula may be used for procurement with a value less than R30 000, if and when appropriate.

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

Where P_s = Points scored for price of tender under consideration
 P_t = Rand value of tender under consideration
 P_{\min} = Rand value of lowest acceptable tender.

(2) The 90/10 Preference Point System

This formula must be used to calculate the points for price in respect of tenders/procurement with a Rand value above R500 000 or such amount as prescribed by legislature.

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

Where P_s = Points scored for price of tender under consideration
 P_t = Rand value of tender under consideration
 P_{\min} = Rand value of lowest acceptable tender.

Example:

Tender 1 = Price R1 600 000

Tender 2 = Price R1 550 000

(a) As Tender 2 is the lowest acceptable tender it earns the maximum points of 90.

(b) Tender 1 – Calculation of points

$$\begin{aligned} P_s &= 90 \left\{ \frac{1 - (P_t - P_{\min})}{P_{\min}} \right\} \\ &= 90 \left\{ \frac{1 - (1\,600\,000 - 1\,550\,000)}{1\,550\,000} \right\} \\ &= 90 \{1 - 0,0323\} \\ &= 90 \{0,9677\} \\ &= \underline{87,093} \end{aligned}$$

The points earned by Tender 1 on price is 87,093.

- (3) In the event of specialised goods or services or where it is in the best interest of Council, the Tender Specifications Committee may stipulate that a maximum of ten points may be scored for functionality within the guideline set out on page 53 and it may further stipulate in the conditions of the tender that a specified minimum points must be scored for functionality in order to qualify for further adjudication.
- (4) The total combined points allowed for functionality and price may however not exceed 80 points in respect of tenders with an estimated Rand value equal to or below R500 000 or 90 points in respect of tenders with an estimated Rand value in excess of R500 000.

4.3 Points awarded for equity ownership by HDIs

- (1) Preference points in respect of a tender must include preference points for equity ownership by HDIs.
- (2) The equity ownership contemplated in Sub-regulation (1) must be equated to the percentage of an enterprise or business owned by individuals or, in respect of a company, the percentage of a company's shares that are owned by individuals who are actively involved in the management of the enterprise or business and exercise control over the enterprise, commensurate with their degree of ownership at the closing date of the tender.
- (3) In the event that the percentage of ownership contemplated in Sub-regulation (2) changes after the closing date of the tender, the tenderer must notify the Council and such tenderer will not be eligible for any preference points.
- (4) Preference points may not be claimed in respect of individuals who are not actively involved in the management of an enterprise or business and who do not exercise control over an enterprise or business commensurate with their degree of ownership.
- (5) Subject to Sub-regulations (1) (2), (3) and (4) all claims made for equity ownership by an HDI must be considered according to the following criteria:
 - (a) Equity within private companies must be based on the percentage of equity ownership.
 - (b) Preference points may not be awarded to public companies and tertiary institutions.
 - (c) The following formula must be applied to calculate the number of points for equity ownership by an HDI:

$$\frac{EP}{NOP}$$

$$NEP = NOP \times 100$$

Where

NEP = Points awarded for equity ownership by an HDI

NOP = The maximum number of points awarded for equity ownership by an HDI

EP = The percentage of equity ownership by an HDI within the enterprise or business, determined in accordance with Sub-regulations (1), (2), (3) and (4).

- (6) Equity claims for a trust may only be allowed in respect of those persons who are both trustees and beneficiaries and who are actively involved in the management of the trust.
- (7) Documentation to substantiate the validity of the credentials of the trustees contemplated in Sub-regulation (6) must be submitted to the Tlokwe City Council.
- (8) A consortium or joint venture may, based on the percentage of the contract value managed or executed by their HDI members, be entitled to equity ownership in respect of an HDI.
- (9) The number of points scored for a consortium or joint venture must be added to the number of points scored for achieving specified goals.
- (10) The points contemplated in Sub-regulation (9) must be added to the points scored for price in order to establish the total number of points scored.
- (11) Subject to Regulations 9 and 10 the contract must be awarded to the tender which scores the highest points.
- (12) A person awarded a contract as a result of preference for contracting with, or providing equity ownership to an HDI, may not subcontract more than 25% of the value of the contract to a person who is not an HDI or does not qualify for such preference.

4.4 Declarations

A tenderer must in the stipulated manner declare that –

- (a) the information provided is true and correct;
- (b) the signatory to the tender document is duly authorised; and
- (c) documentary proof regarding any tendering issue will, when required, be submitted to the satisfaction of the Tender Evaluation Committee of Council.

4.5 Penalties

The Municipal Manager must, upon detecting that a preference in terms of the Preferential Procurement Policy Framework Act and the regulations has been obtained on a fraudulent basis or any specified goals are not attained in the performance of the contract, act against the person awarded the contract.

4.6 Specific goals

- (1) The tendering conditions may stipulate that specific goals, as contemplated in Section 2(1)(d)(ii) of the Act, be attained.
- (2) The stipulation contemplated in Sub-regulation (1) must include the method to be used to calculate the points scored for achieving specific goals.

- (3) Over and above the awarding of preference points in favour of HDIs, the following activities may be regarded as a contribution towards achieving the goals of the RDP (published in Government Gazette 16085 dated 23 November 1994):
 - (a) The promotion of South African owned enterprises.
 - (b) The promotion of export orientated production to create jobs.
 - (c) The promotion of SMMEs.
 - (d) The creation of new jobs or the intensification of labour absorption.
 - (e) The promotion of enterprises located in a specific province for work to be done or services to be rendered in that province.
 - (f) The promotion of enterprises located in a specific region for work to be done or services to be rendered in that region.
 - (g) The promotion of enterprises located in a specific municipal area for work to be done or services to be rendered in that municipal area.
 - (h) The promotion of enterprises located in rural areas.
 - (i) The empowerment of the work force by standardising the level of skill and knowledge of workers.
 - (j) The development of human resources, including by assisting in tertiary and other advanced training programmes, in line with key indicators such as percentage of wage bill spent on education and training and improvement of management skills.
 - (k) The upliftment of communities through but not limited to housing, transport, schools, infrastructure donations and charity organisations.
- (4) Specific goals must be measurable and quantifiable and must be monitored in the execution of the contract for compliance with such goals.

CHAPTER 14 - TENDER CONDITIONS AND PROCEDURES

1. DEFINITIONS

- 1.1 The words and expressions defined in the Act and regulations will, when used in a particular tender, contract or order, have the meaning so assigned to them, and those defined below shall have the meanings hereby assigned to them unless such meanings are inconsistent with the context of a particular tender, contract or order:
 - (a) "acceptance of a tender" means the award of a contract to a tenderer in response to his tender or price quotation;
 - (b) "Act" means the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000);
 - (c) "MFMA" means the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003);
 - (d) "beneficial use" means the use of a supply or service which has been delivered, partially or completely installed and commissioned, and is available for use;

- (e) "Tender/Bid Adjudication Committee" means a committee of Council duly established and delegated with powers and responsibilities as set out in this By-law;
- (f) "Council" means the Tlokwe City Council;
- (g) "closing time" means the date and hour specified in the tender documents for the receipt of tenders/quotations;
- (h) "Contract" means the agreement which results from the acceptance of a tender;
- (i) "contractor" means any natural or legal person whose tender has been accepted by the Council;
- (j) "delivery" means delivery in compliance with the conditions of the contract or order;
- (k) "delivery ex stock" means immediate delivery directly from stock actually on hand;
- (l) "delivery into consignee's store or to his site" means delivered and unloaded in the specified site in compliance with the conditions of the contract or order, the contractor bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained;
- (m) "formal contract" means a written contract, all the terms of which are embodied in a single or composite document signed by all the parties thereto and duly witnessed;
- (n) "free on rail (f.o.r.)" means delivery into a railway truck at the station or private siding of dispatch, the contractor bearing all risks connected with and charges for the placing of the supplies into the railway truck, and in the case of supplies which have been railed f.o.r. a private siding, the contractor also bearing the risk until the supplies have been received at the station of destination, the contractor being liable for all shortages, damages and losses; the said expression shall also be interpreted as including free delivery within the free delivery area in which the station of dispatch is situated;
- (o) "imported content" means that portion of the tender price represented by the costs of components, parts or materials which have been or are still to be imported (whether by the tenderer or his suppliers or subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty, or other similar tax or duty at the South African place of entry, as well as transportation and handling charges to the factory in the Republic where the supplies which have been tendered for, are manufactured;
- (p) "indices" means indices published by the Central Statistical Services, SEIFSA and other bodies approved by the Council, reflecting price adjustments or changes in cost;
- (q) "local content" means that portion of the tender price which is not included in the imported content, provided that local manufacture does take place;
- (r) "manufacture" means the production of products in a factory using labour, materials, components and machinery and includes fabrication, assembly or processing;

- (s) "order" means an official written order issued for the supply of goods or the rendering of a service;
- (t) "period contract" means a contract entered into for the supply of goods, rendering of services or the disposal of movable municipal property during a period of time;
- (u) "preference" means a percentage of the tender price deducted from the tender price of certain products or services, as determined by the Council, for use when calculating the comparative price;
- (v) "price quotation" means a written offer on any documentation which is not necessarily subject to the general conditions and procedures pertaining to tenders;
- (w) "production" means the production of products, whether in a factory or not, and includes manufacturing and other activities such as mining and agriculture;
- (x) "regulations" means the regulations promulgated in terms of the Act;
- (y) "Republic" means the Republic of South Africa;
- (z) "supply chain management" means all procurement of goods and services and the letting and disposal of Council assets;
- (zz) "tender" means a written offer on the official tender documents forming part of an invitation to tender which invitation has been dealt with in accordance with the requirements of the general conditions and procedures contained in this document and, unless otherwise determined by the Council, has been advertised in a locally circulated newspaper and upon Council's procurement notice-boards;
- (zzz) "tenderer" means any natural or legal person submitting a tender or a price quotation;
- (zzzz) "written" or "in writing" means handwritten in ink or any form of mechanical writing.

2. GENERAL DIRECTIVES

2.1 Conditions and procedures

- (a) The general conditions and procedures below have been laid down by Council and are applicable to all tenders, contracts and orders, unless otherwise decided by Council prior to the invitation of tenders.
- (b) Where applicable, special conditions or procedures are also laid down by Council to cover specific supplies or services.
- (c) Where such special conditions or procedures are in conflict with these general conditions and procedures, the special conditions or procedures shall apply.

3. INVITATION OF TENDERS

3.1 General

- (a) Unless otherwise indicated in the tender documents, Council will not be liable for any expense incurred in the preparation and submission of a tender.
- (b) Unless Council directs otherwise, tenders are invited from only within the Republic of South Africa.
- (c) A *domicilium citandi et executandi* shall be chosen in the Republic of South Africa and stated in the tender.
- (d) With certain exceptions, notifications of tender invitations are published in locally circulated newspapers, Council's website and/or Council's procurement notice-boards.
- (e) Tender documents may be obtained directly from the Municipal Manager, Tlokwe City Council, Private Bag X1257, Potchefstroom 2520, upon compliance with the conditions, if any, as stated in the advertisement/notice.
- (f) The tender number must not appear on any envelope unless the envelope contains the tender itself. In particular, the tender number must not appear on an envelope containing a request for tender documents.

4. APPROVED LISTS OF TENDERERS

- 4.1 Where Council considers it advisable that invitations to tender for specific supplies or services should be limited to certain tenderers, potential tenderers are evaluated in the light of the requirements concerned and invitations are extended to all tenderers found to be suitable.
- 4.2 The Tender Adjudication Committee shall remove from a list of approved tenderers the name of any tenderer at his request or if Council considers such a supplier to be no longer suitable to undertake the contracts concerned.
- 4.3 From time to time Council publishes particulars of supplies and services in respect of which there are lists of approved tenderers that can be obtained from the Department Economic Development with the view of inclusion in such list.
- 4.4 New applications for inclusion in the lists are considered by the Tender Adjudication Committee in the light of the requirements pertaining to each list.
- 4.5 Unless otherwise directed by the Council, invitations to tender for the supplies or services concerned are limited to the tenderers whose names are included in the relevant lists.

5. DOCUMENTS TO BE USED AND INFORMATION TO BE FURNISHED

5.1 Tenderers are required to –

- (a) make use of the prescribed tender documents;
- (b) insert tender prices and other required information in the appropriate spaces on the prescribed forms; and

- (c) furnish all further information called for in the signed tender documents and to supply pamphlets, samples, etc. when required.

5.2 Failure of the tenderer to submit a tender signed in ink or to complete the tender document certificates, questionnaires and specification forms in all respects, may invalidate the tender.

5.3 Tenders should not be qualified by the tenderer's own conditions of tender. Tenders qualified by a tenderer's own conditions may be rejected as being invalid and failure of the tenderer to renounce such conditions when called upon to do so, shall invalidate the tender.

6. CHARGE FOR DOCUMENTS

A charge, as required in the tender documents or advertisement, may be raised for tender documents and may be refunded on return of the documents and the submission of a *bona fide* tender only if such a refund is stipulated in the documents or advertisement.

7. AVAILABILITY OF SPECIFICATIONS

7.1 Where SANS or CKS or any other national or internationally approved specifications are referred to in tender documents, requests to consult such specifications or to purchase copies thereof should be made to the local branch of the SA Bureau of Standards.

7.2 Samples

- (a) When samples are called for in tender documents, samples (marked with the tender and item number as well as the tenderer's name and address) shall be dispatched to the address of Council as mentioned in the tender documents so as to reach Council not later than the closing time of the tender. Samples may be sent by air but if air-freighted, shall be delivered by the tenderer's own courier. Tenders shall not be included in parcels containing samples.
- (b) If samples are not submitted as requested, the tender concerned will be declared invalid.
- (c) Samples will not be submitted in support of tenders unless called for in the tender documents.
- (d) Samples will be supplied by a tenderer at his own expense and risk and Council will not be obliged to pay for such samples.
- (e) Unless otherwise specified in the tender documents, Council is not liable for the cost of samples supplied by a tenderer and reserves the right not to return such samples and to dispose of them at its discretion.
- (f) Where a tender is accepted for the supply of goods according to a sample submitted by the tenderer, such sample becomes the contract sample and further samples as required for the purposes of the contract will be provided by the contractor as requested by Council and at the contractor's own expense and risk.
- (g) When samples have served their purpose and are to be returned to the tenderers, the tenderers will be given written notice to remove the samples at their own expense and risk within a specified period, failing which the tenderer

concerned forfeits ownership and the samples shall forthwith be disposed of at the discretion of Council.

8. CLOSING OF TENDERS

- (a) Subject to the provisions of paragraph 8(b), tenders close at 11:00 on the closing date indicated in the tender documents.
- (b) When the closing date falls on a public holiday, tenders may be lodged up to 11:00 on the following working day.

9. VALIDITY PERIODS

The period for which offers are to remain valid and binding is indicated in the tender documents and is calculated from the closing time on the understanding that offers are to remain in force and binding until the close of business on the last day of the period calculated and if this day falls on a Saturday, Sunday or public holiday, the tender is to remain valid and binding until the close of business on the following working day.

10. PARTIAL TENDERS

Tenders may be submitted for some of the specified items or part of the specified quantity or requirement in respect of tenders for supplies and sales only.

11. LODGING OF TENDERS

- (a) Tenders shall be lodged not later than the closing time specified for their receipt at the address and in accordance with the directives in the tender documents.
- (b) Each tender shall be addressed in accordance with the directives in the tender documents and shall be lodged in a separate sealed envelope with the name and address of the tenderer, the tender number and the closing date indicated on the envelope. The envelope shall not contain documents relating to any tender other than that shown on the envelope.
- (c) Unless specifically provided for in the tender invitation, no tenders forwarded by telegram, telex, facsimile or electronic messages are considered. However, photostat copies of tenders or photostat copies of facsimiles which are lodged in the prescribed way and in which the relevant forms and certificates are signed in ink, after being copied, are accepted as valid tenders.
- (d) Tenders shall not be included in packages containing samples as such tenders may be rejected as being invalid.

12. THE TENDERING PROCESS

12.1 The following procedures must apply to procurements involving quotations as well as the formal tender process. For convenience the term "tender" is generally used to cover both.

12.2 In the tendering process all prospective suppliers compete on the same terms and without knowledge of their competitors' tenders. Competitiveness must be maintained throughout the process, and all stages of the process conducted in an open and transparent manner. This means ensuring that -

- (a) all suppliers are given the opportunity to submit a tender on the same terms;

- (b) information provided by the Supply Chain Management Unit is not deceptive or misleading; and
- (c) the conditions and protocols published in the tender request are adhered to, particularly when evaluating tenders.

12.3 The Supply Chain Management Unit under the supervision of the Chief Financial Officer should satisfy themselves that suppliers are not engaging in anti-competitive practices, for example collusion with other tenderers, artificial price fixing and operation of formal or informal cartels. In the event Council is in a position to prove beyond any reasonable doubt that the unethical practice of nepotism, fraud, corruption, acceptance of bribes, gifts, hospitality is evident amongst and between suppliers, then the Council will exercise its right to suspend the said supplier(s) from participating in future tendering on goods and services.

13. MANAGING RISKS

Tender documentation should make clear the policy of Council on risk. Responsibility for managing risks should be allocated to the party (Council/the contractor or supplier) that can best manage them. Where risks are not clearly the responsibility of one party, then they should be shared on an agreed and documented basis.

14. PREPARING THE TENDER DOCUMENTATION

14.1 Good planning will facilitate the development of documentation. Tender requests should be as clear and succinct as possible and avoid imposing unnecessary cost and effort on respondents.

14.2 Well-prepared tender documentation gives suppliers the opportunity to prepare good proposals or tenders, which in turn ensures a good result. The Tender Adjudication Committee has the responsibility for ensuring the quality of the tender documentation.

14.3 The quality process -

- (a) defines needs accurately and in sufficient detail for prospective tenderers to understand the requirements and provide their best tenders;
- (b) sets out the criteria against which all tenders will be evaluated;
- (c) indicates which criteria are mandatory and which are desirable;
- (d) states clearly that failure to respond to or to comply with any mandatory criteria will result in the tender being set aside;
- (e) provides details of the tender evaluation methodology that will be used, including an indicative evaluation time frame;
- (f) identifies any risks that need to be taken into account; make provision in this process for alternatives being offered by the tenderer and motivation why these alternatives should be considered;
- (g) provides information about the terms and conditions of the proposed contract;
- (h) clearly advises tenderers of all the information that they must provide and undertakings that they should give;
- (i) requires SANS standards where possible to be used in specifications;

- (j) requires the compulsory site inspection to be indicated in the tender document when needed.

14.4 The tender documentation will be compiled by the Supply Chain Management Unit in consultation with the relevant Head of Department and will then be submitted to the tender/bid committee for approval prior to a public release.

15. COMMUNICATING WITH PROSPECTIVE TENDERERS

15.1 Upon the necessary approval of the Municipal Manager, the Supply Chain Management Unit will place advertisements for all public tenders in the print media with certain discretions. In addition, Council should make use of Council's Website to provide a facility for prospective suppliers to access and download tender documentation electronically.

15.2 There should be minimal contact with prospective tenderers prior to the closing date. Any contact should be in accordance with the protocols as set out in the tender documentation. Any briefings or clarifications of the request for tender must be provided in a consistent manner to make sure all suppliers have access to the same information and no-one is advantaged or disadvantaged.

16. RECEIVING TENDERS

16.1 The Legal Section of the Council will be responsible to monitor the receipt of all tenders. All tenders must be treated as highly confidential and must be kept secure and sealed until the designated time for opening them. Tenders must be lodged in Council's Tender Box no later than the nominated time on the closing date.

16.2 Where tenders may require special handling, for example where there is likely to be a large volume of documentation, the Legal Section in consultation with the Supply Chain Management Unit will make appropriate arrangements to keep them secure.

16.3 The Legal Section will arrange for tenders to be opened and registered as prescribed in the Regulations. All tenders will then be evaluated by a Tender Evaluation Committee who will then submit their recommendation to the Tender Adjudication Committee. It will be the responsibility of the Legal Section of Council to report any irregular activity(ies) that may result at the time when the Tender Box is opened.

CHAPTER 15 – SUPPLIER SELECTION CRITERIA

1. COMPLIANCE WITH PRESCRIBED FRAMEWORK

The Supply Chain Management By-law and system has to comply with the prescribed framework as follows:

- (1) The Supply Chain Management By-law and system must be fair, equitable, transparent, competitive and cost-effective and comply with a prescribed framework setting norms and standards for supply chain management, including the following:
 - (a) Range of supply chain management processes that municipalities may use, including tenders, auctions and other types of competitive bidding.
 - (b) A municipality may or must use a particular type of process.
 - (c) Procedures for less formal processes where the value of the contract is below a prescribed amount.

- (d) Open and transparent pre-qualification processes for tenders.
 - (e) Competitive bidding processes in which only pre-qualified persons may participate.
 - (f) Procedures to open, register and record bids in public.
 - (g) Procedures for the evaluation of bids to ensure best value for money.
 - (h) Procedures for negotiating the final terms of agreements.
 - (i) Screening processes for contractors or tenders above a prescribed value, which may not be less than R10 million.
 - (j) The barring of persons from participating in supply chain management processes, including persons –
 - (i) convicted for corruption during the past five years;
 - (ii) who wilfully neglected or reneged on contracts during the past five years; or
 - (iii) whose tax matters are not cleared by South African Revenue Service.
 - (k) Measures for combating corruption and for promoting ethics of officials and other role players involved in supply chain management.
 - (l) The invalidation of recommendations or decisions that were made, taken or in any way influenced by –
 - (i) Councillors in contravention of item 5 or 6 of the Code of Conduct for Councillors set out in Schedule 1 to the Municipal Systems Act; or
 - (ii) municipal officials in contravention of item 4 or 5 of the Code of Conduct for Municipal Staff Members set out in Schedule 2 to that Act.
 - (m) Dispute settling procedures.
 - (n) The acquisition of goods and services by municipalities through contracts procured by other organs of state.
- (2) Norms and standards set for supply chain management must be fair, equitable, transparent, competitive and cost-effective.
 - (3) Each member of the three tender committees must complete a conflict of interest declaration and a confidentiality agreement prior to the commencement of the tender process.
 - (4) The Tender Evaluation Committee must evaluate each tender in accordance with the evaluation criteria as set out in the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) (PPPFA) that were published in the request documentation.

2. TENDER EVALUATION COMMITTEE

2.1 The Tender Evaluation Committee

- (a) evaluates each tender by -
- (i) applying only the evaluation criteria notified in the request documentation, including the operation of the PPPFA *supra*;
 - (ii) assessing compliance with the statement of requirement and the terms and conditions set out in the request documentation;
 - (iii) assessing the technical viability of the proposed solution;
 - (iv) assessing the capability of the tenderer to provide the goods or services, including technical and management competence and financial sources;
 - (v) contacting referees in accordance with the PPPFA *supra*;
 - (vi) where appropriate, taking account of the benefits and costs involved on a whole-of-life basis; and
 - (vii) documenting any potential constraints or risks and the way the risk is allocated, and assessing the cost to the City Council of that risk allocation;
- (b) prepares a comparative statement of all tenders received;
- (c) identifies the tenderer that represents the best available value for money;
- (d) prepares motivation as well as recommendation to the Tender Adjudication Committee.

- 2.2 If the contract period is longer than a year the Municipal Manager will submit the Tender Adjudication Committee (TAC) recommendations to Council for consideration and approval.

3. PREFERENTIAL POINTS TO BE IMPLEMENTED IN TERMS OF THIS BY-LAW

3.1

Criteria	80/20 points	90/10 points
Registered HDI	6	3
Potchefstroom Local Business	6	3
Disabled persons or women	2	1
Operating from business zoned premises	4	2
Local labour in excess of 10 jobs	2	1

(R30 000 up to R500 000 - 80/20
In excess of R500 000 - 90/10)

- 3.2 Upon awarding points for a registered HDI supplier where the business is not fully owned by previously disadvantaged individuals, a calculation of the points to be awarded should be calculated in proportion to the proven HDI-shareholding, using the equity ownership formula prescribed in the Preferential Procurement Regulations, 2001. The total number of points awarded under this heading may not exceed 20 or 10 points as prescribed in the Preferential Procurement Regulations, 2001.

- 3.3 In the event of tenders or quotations with a value in excess of R30 000, the Tender Specifications Committee may specify a maximum of 25 points for functionality. These points may be subject to the proviso that the total points earned for price and functionality may not exceed the 80 or 90 points as prescribed in the Preferential Procurement Regulations, 2001. As a guideline the following points for functionality may be considered where circumstances prevail necessitating the setting of certain functionality criteria in calling for tenders/quotations:

Functionality criteria	Maximum points
Guarantees furnished (PPPFA)	3
Proven previous track record	3
Special expertise/skills development	2
Other criteria specified by the Tender Specifications Committee in setting up the specifications for a tender or quote	2
BBBEE – In accordance to BBBEE recognition status calculated <i>pro rata</i> according to points allocated out of maximum of 135% (see stipulations in Annexure A)	10
Environment – Proven Environmental friendly practices/materials/minimal pollution as specified	5

4. NEGOTIATION

- 4.1 The Municipal Manager in collaboration with the Tender Adjudication Committee may identify areas for further negotiation with one or more potential suppliers to clarify terms before a final decision is made. Post-tender negotiations, correspondence or discussions with potential suppliers must be conducted by the Municipal Manager and the Supply Chain Management Unit with the involvement of the representative of the user group that initiated the request or an appropriate technical adviser.
- 4.2 When negotiations are to be entered into, they must be conducted before a supplier selection is finalised or a contract is formed. The aim is to improve the value for money outcome and clarify uncertainties, particularly with the signing of a contract, through a structured and ethical process while maintaining a competitive situation throughout the tender process.
- 4.3 Unless it is made clear in the request for tender documentation that a Best and Final Offer (BAFO) process will be adopted, no negotiations with tenderers are to be conducted simply to drive down or influence the tendered price to the benefit of Council, nor is it acceptable for one tenderer to be played off against another by using the lowest priced tender against a higher one's to seek reductions in prices or increases in goods or services beyond that contained in the tender response.
- 4.4 Negotiators must manage the significant risks involved in the negotiation process and ensure they do not -
- (a) put any tenderers at a disadvantage;
 - (b) give a competitor who is clearly not in the lead a chance to improve the bid without giving the same opportunity to other shortlisted competitors;
 - (c) commit Council by unintentionally entering into a binding contract with a tenderer during negotiation, for example by -

- (i) giving a tenderer the impression that they are certain to win a contract (This can give rise to a claim for damages if the tenderer ultimately does not get the contract); or
- (ii) advising that a tender has been accepted before final approval is given.

4.5 There should be no material alteration to the scope of goods or services for which the tender was called. If substantial change does occur, it effectively creates a new offer and, in the interest of procedural fairness, it may be necessary to give all tenderers the opportunity to revise their offers.

4.6 Confidential records of all negotiations must be kept by the Accounting Officer and points of agreement separately documented and confirmed with the other party. It is a requirement that during any process of negotiation all members of the Tender Adjudication Committee are prohibited in terms of this By-law from engaging any private contact or contents of a tender.

5. CONTRACT FORMATION

5.1 The terms and conditions for the supply of the goods or services must be included in contract documents and be agreed upon by both parties. In most cases the contract will be a simple offer, and acceptance, consisting of the request for tender, the tenderers offer, a letter of acceptance from the Accounting Officer, and an acknowledgement of the letter of acceptance.

5.2 In other cases, especially large value procurements or where there are significant risks or major consequences of failure, a more formal contract executed by both parties will be more appropriate. This must be managed by the Municipal Manager in co-operation with the Chief Financial Officer.

5.3 A written contract must be an accurate reflection of the terms and conditions nominated in the request for tender and must take account of any matters of significance emanating from post-tender and contract negotiations.

5.4 While contracts must be fair and reasonable for suppliers, they must protect Council, both against any possible civil action and in the performance of the contractual arrangement. For example, it should establish -

- (a) the objectives to be achieved (obligations of the respective parties);
- (b) service levels;
- (c) implementation plan;
- (d) indicators against which performance can be measured;
- (e) the project manager and liaison officer for both parties;
- (f) the timetable for progress review and reporting;
- (g) milestones and performance incentives;
- (h) procedures for resolving disputes;
- (i) procedures for handling any contract variations;
- (j) procedures for receipt and acceptance of goods or services, including invoice and payment procedures; and

(k) hand over arrangements.

5.5 It may also be necessary to cover other requirements such as intellectual property, liability for loss or damage, confidentiality, privacy and compliance.

5.6 In cases where a formal contract is used, two originals are to be signed by both parties. One is retained by the contractor and the other by the Supply Chain Management Unit.

CHAPTER 16 - ADMINISTRATION OF CONTRACTS

1. SETTLEMENT OF DISPUTES

Should any dispute arise as to the interpretation of the conditions of a tender, contract or order, the decision of Council shall be final, but execution of a contract or order shall not be delayed pending such decision.

2. ORDER FOR GOODS AND SERVICES

Supplies of goods and services shall only be delivered and rendered upon receipt of a written official order from Council, and accounts shall be rendered as indicated on the official order or in the contract, as the case may be.

3. PACKING MATERIAL AND CONTAINERS

3.1 Unless otherwise specifically provided for in a contract, the contractor is responsible for packing supplies at his own cost and in such a manner so as to ensure that there is no loss or damage in transit.

3.2 Unless otherwise agreed, no charge shall be allowed for packing material or containers and such material or containers shall not be returned to the contractor.

3.3 Where provision is expressly made in a contract for the return of packing material or containers, such packing material or containers shall be returned at the contractor's expense and risk. Returnable packing material or containers shall be invoiced at the prices given in the contract and full credit shall be allowed therefore or on receipt of a department's claim which must be supported by a copy of the freight transit order, irrespective of whether they are returnable to the contractor or to a third party.

3.4 Any special packing requirements such as palletising, containerisation, etc. shall be provided if necessary or if so required in the tender documents.

4. CONSIGNMENT

Supplies shall be consigned in the name of the contractor or his representative, otherwise consignments may be rejected. The representative to receive the consignment must be nominated by the contractor in writing and approved by Council, also in writing, prior to the dispatch of the consignment.

5. IMPORT/EXPORT LICENCE

When orders are placed for supplies in respect of which an import licence is required –

(i) the contractor shall not incur any direct costs in connection with the supply or dispatch of such supplies before he has obtained such a licence; or

- (ii) if the government of the country from which the supplies are to be exported refuses or fails to grant such licence within three months from the placing of the order, the order shall be considered to be cancelled and no liability will be accepted for any loss or expenses, irrespective of the nature thereof, including loss or expenditure suffered or incurred by the contractor or any other person in respect of the production, supply, transport or delivery of such supplies.

6. TRANSPORTATION WITHIN THE REPUBLIC OF SOUTH AFRICA

Where use is made of a national transport service for the consignment of supplies and the contractor consigns them by mobile containers, the surcharge for transportation in such containers as well as the extra cost for delivery to the consignee from the destination station and any other incidental charges raised by the transport service, are for the contractor's account. Where, however, in exceptional cases the contract provides for the raising of separate charges for containers, packing or materials for packing and the supplies are, with the prior approval of Council, consigned unpacked in mobile containers, the surcharge for transportation in such mobile containers plus the extra cost for delivery to the consignee at the destination station and any other incidental charges raised by the transport service is for the account of Council.

7. SHIPPING OF SUPPLIES FROM ABROAD

It is necessary to conserve foreign exchange and since this purpose can best be served by shipping goods in vessels that are owned or operated by South African shipping companies or in which such companies have an interest and against bills of lading of such companies, shipping arrangements shall be made accordingly, provided such arrangements do not result in higher costs or excessive delays. Any contractor who intends to make use of a vessel that is not owned or operated by a South African company or in which such company does not have an interest, shall to the satisfaction of Council produce prior evidence that the said companies cannot readily supply the desired service.

8. INSURANCE ON IMPORTED GOODS

Where contractors arrange for insurance of supplies specially imported for the execution of Council's contracts, such an insurance shall be arranged with insurance companies registered in the Republic of South Africa in terms of the Insurance Act, 1943 (Act 27 of 1943), and registered and incorporated under the Companies Act, 1973 (Act 61 of 1973).

9. QUALITY

- 9.1 Goods supplied and services rendered shall be in accordance with, and the contractor guarantees that they are equal in all respects to the samples, patterns, drawings and specifications stipulated in the contract or order and unless otherwise specified, supplies shall be new and unused. Where specific grades and special brands are specified, such grades and brands shall only be supplied unless Council agrees otherwise.
- 9.2 Where a tender calls for a supply or service according to a standard specification of the South African Bureau of Standards, the tenderer is required to take cognisance of the provisions of Sections 15(6), (7) and (8) of the Standards Act, 1982 (Act 30 of 1982).

10. GUARANTEE

- 10.1 Unless the contract stipulates otherwise, the contractor shall guarantee for a period of twelve (12) months that no faulty material or workmanship was used in the manufacture of supplies or in the execution of services and that the finished product is not defective. Should the guarantee not be complied with, Council will, without prejudice to any other rights it may have, demand that the supplies be replaced and the services repaired without any cost to Council.
- 10.2 The period of guarantee shall commence on the date of receipt of the supplies by, or handing over of the services to Council or, where so specified, on the date the supplies or service are brought into commission.
- 10.3 The liability of the contractor under the guarantee shall *inter alia* also cover the free delivery to Council of supplies required in the replacement of defective supplies and where parts are to be replaced, the liability shall include their free installation. The supplies and the parts so replaced or the services so rendered shall be guaranteed for a similar period.

11. SUBSTITUTION FOR LOCAL PRODUCTS

In the event of a contract being concluded for the supply of products that are produced in the Republic of South Africa, a contractor desiring to substitute imported products therefore may do so only if he obtains the prior approval of Council.

12. MARK

Whenever practicable, supplies manufactured in the Republic of South Africa and purchased by Council should be marked by the suppliers "Made in the Republic of South Africa"/"Vervaardig in die Republiek van Suid-Afrika".

13. PAYMENT FOR SUPPLIES AND SERVICES

Subject to the provisions of paragraph 13(v) and any instructions issued with a contract or order, a contractor shall be paid by the Council in accordance with the undermentioned provisions for supplies delivered and services rendered:

- (i) On a basis of delivery f.o.r. (free of rail), a railway station or siding or f.o.r. in a customs warehouse at a port in the Republic of South Africa, only after receipt of a detailed account and a certified transit order, and in the case of f.o.r. a private siding, after receipt of the supplies at the station of destination.
- (ii) On a basis of delivery into a store or to another nominated destination or collected in the Republic of South Africa, only after receipt of a detailed account and after delivery has been effected.
- (iii) On a basis of delivered and erected, commissioned or tested in the Republic of South Africa, only after receipt of a detailed account supported by a departmental certificate of satisfactory execution.
- (iv) In the case of services rendered, unless otherwise specified, only after receipt of a detailed account (including VAT invoices) supported by a departmental certificate of satisfactory execution.

- (v) Payment will normally be effected within 30 days of receipt of statement with all relevant documentation. Should a contractor indicate a special discount on his account provided payment is made within a certain time, every effort shall be made to take advantage of such a discount.
- (vi) It is mandatory that payment must only be made to the contractor. In the event payment is claimed by another party, the latter (approved contracts) must produce a written transfer, power of attorney or authorisation before payment is made. The contractor must confirm that the transfer, power of attorney or authorisation has been given by him and that payment may be claimed in terms thereof.
- (vii) Where applicable valid VAT invoices must be supplied.
- (viii) Notwithstanding the above, if the contractor then accepts payment, then the said contractor will be subject to all proceedings in terms of the Criminal Procedure Act.
- (ix) Any query concerning the non-payment of accounts must be directed to the Chief Financial Officer.

14. INSPECTIONS, TESTS AND ANALYSIS

- (i) If it is a tender condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, then any cost to be recovered shall in all cases be for the account of the tenderer or contractor. The premises of the tenderer or contractor shall be open, at all reasonable hours, for inspection by a representative of Council or of an organisation acting on behalf of Council.
- (ii) Inspections, tests and analysis may be carried out prior to dispatch in regard to such contract supplies as may be deemed necessary by Council and the contractor shall provide, if required, all the required facilities for the inspections, tests and analysis of the supplies free of charge and shall, if required, provide all the materials, samples, labour and available apparatus which may be required for the purpose of such inspections, tests and analysis free of charge unless otherwise specified.
- (iii) If there are no inspection requirements in the tender documents and no mention thereof is made in the letters of acceptance, but during the contract period it is decided that inspections shall be carried out, Council shall itself make the necessary arrangements, including payment arrangements, with the testing authority concerned.
 - (a) If the inspections, tests and analyses referred to in paragraphs 5.14(i) and 5.14(iii) show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by Council; otherwise the cost shall be defrayed by the contractor and Council shall have the right, without prejudice to any other legal remedy it may have, to deduct such costs from payments due to the contractor under the contract or under any other contract.
 - (b) Where the supplies or services referred to in paragraph 5.14.(iii)(a) do not comply with the contract requirements but such supplies or services are nevertheless accepted at whatever price, the cost in connection with the inspection, tests or analyses thereof shall be defrayed by the contractor.

- (iv) Supplies and services which are referred to in paragraphs 14.(i), 14.(ii) and 14(iii)(a) and which do not comply with the contract requirements, will be rejected.
- (v) Any contract supplies will on or after delivery be inspected, tested or analysed and will be rejected if found not to comply with the requirements of the contract and such rejected supplies shall be held at the cost and risk of the contractor who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract.

Failing such removal, the rejected supplies shall be returned at the contractor's cost and risk. Should the contractor fail to provide the substitute supplies forthwith, Council will at its discretion and without giving the contractor further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the contractor.
- (vi) Transport costs and any other expenses with regard to the rejected supplies referred to in paragraph 14(v) and 14(vii) shall be refunded by the contractor.
- (vii) Where imported supplies are to be inspected before shipment, the contractor shall notify his suppliers abroad of the conditions applicable to inspection.
- (viii) The provisions of paragraphs 14(i) to 14(vii) shall not prejudice the right of Council to cancel the contract on account of a breach of the conditions thereof, or to act in terms of paragraphs 15(i) to 15(v) hereof.

15. FAILURE TO COMPLY WITH CONDITIONS AND DELAY EXECUTION

- (i) If a tenderer amends or withdraws his tender after the closing time but before he is notified that his tender has been accepted, or when notified that his tender has been accepted he fails within the period stipulated in the conditions of tender or such extended period of one month as Council should allow, to sign a contract or to provide security when requested to do so, the tenderer will, unless Council decides otherwise and without prejudice to any other right which Council will have under paragraphs 15(ii) to 15(iii), including the right to claim damages if a less favourable tender is accepted or less favourable arrangements are to be made, forfeit any deposit which has been made with the tender.
- (ii) Should the contractor fail to comply with any of the conditions of the contract, Council will be entitled, without prejudice to any of its other rights, to cancel the contract.
- (iii) Upon any delay beyond the contract period in the case of a supplies contract, Council will, without cancelling the contract, be entitled forthwith to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any supplies delivered later at the contractor's expense and risk, or forthwith to cancel the contract and buy such supplies as will be required to complete the contract and without prejudice to its other rights, be entitled to claim damages from the contractor.

- (iv) Upon any delay beyond the contract period in the case of a service contract, Council will, without prejudice to any other right and without cancelling the contract, be entitled forthwith to arrange for the execution of the service not rendered or not rendered in conformity with the contract or to cancel the contract and without prejudice to its other rights, be entitled to claim damages from the contractor.
- (v) In the event of Council availing itself of the remedies provided for in paragraphs 15(ii) to 15(iv) –
 - (a) the contractor shall bear any adverse difference in price of the said supplies or services and these amounts plus any other damages which will be suffered by Council, will be paid by the contractor to Council immediately on demand or Council will deduct such amounts from moneys (if any) otherwise payable to the contractor in respect of supplies or services rendered or to be rendered under the contract or under any other contract or any other amount due to him; or
 - (b) if the contractor fails to supply the goods or render the service within the period stipulated in the contract, Council will have the right, in its sole discretion either to deduct as a penalty from the value of the contract sum an amount of one-fourteenth per cent thereof per day, for the period of delay or to claim any damages or loss suffered in lieu of such penalty; provided that where beneficial use of the completed portion is enjoyed, the penalty will be applied to the value of the outstanding portion only.
- (vi) No penalty or damages will be claimed in respect of any period of delay which the contractor can prove to the satisfaction of Council to be directly, due to a state of war, sanctions, strikes, lockouts, damage to machinery as a result of accidents, fire, flood or tempest or an act of God, which could not be foreseen or overcome by the contractor, or to any act of omission on the part of persons acting in any capacity on behalf of Council.
- (vii) If the delivery of the supplies or the rendering of the service is likely to be delayed or is in fact being delayed on account of any of the reasons mentioned in paragraph 15(vi), full particulars of the circumstances shall be reported forthwith in writing to Council, and at the same time the contractor shall indicate the extension of the delivery period which is desired.

16. MANDATORY PROCEDURES IN THE CASE OF ABUSE OF THE SUPPLY CHAIN MANAGEMENT SYSTEM

16.1 If Council is of the opinion that -

- (i) a tenderer in relation to the obtaining of a Council contract or in relation to the execution of a Council contract, has or has caused to be promised, offered or given to an officer or political office-bearer any bribe, commission, gift, loan, advantage or any other consideration whatsoever; or
- (ii) a tenderer or a contractor or any enterprise or person with whom a tenderer or contractor is actively associated, or where the tenderer or contractor is a company or partnership, any manager, director or any person who wholly or partly exercise or may exercise control over such a company or partnership, has acted fraudulently or in bad faith or in any improper manner in the obtaining of or in the execution of a contract with Council; or

- (iii) if the entity mentioned in paragraph 5.16(ii) in conduction of his business has contravened or neglected to comply with statutory requirements and as a result thereof has been found guilty of a criminal offence;

Council will –

- (a) in the case of a tenderer ignore any of his tenders without first advising him thereof;
- (b) in the case of a contractor cancel the contract without prejudice to any other remedies it will have; and
- (c) in the case of an official (irrespective of position or rank), political office-bearer or any person in the employment of Council, suspend him/her from duty, pending the outcome of a disciplinary hearing. In the event such a hearing produces evidence beyond any reasonable doubt that such official or political office-bearer (part-time or full time) was guilty of acceptance a tenderer of a contract, then he/she will be subjected and be charged in terms of the provisions of the Criminal Act.

17. RESTRICTION FROM TENDERING

- (i) Council will, in addition to any other legal remedies it has, resolve that no offer from the tenderer concerned should be considered during such a period as Council will stipulate if Council is of the opinion that a tenderer -
 - (a) has amended or withdrawn an offer after the closing time for receipt of offers but before he has been notified of its acceptance; or
 - (b) has failed to sign a contract or to provide security within the period stipulated in the conditions of the tender or such extended period as Council will allow, when required to do so; or
 - (c) fails or has failed to comply with any of the conditions of an agreement or performs or has performed unsatisfactorily under an agreement; or
 - (d) has failed to react to written notices sent to him by certified post; or
 - (e) who has concluded an agreement referred to in Section 4(1)(a) of the Act, has promised, offered or given a bribe, gift, hospitality, accepted secret information on a tender or has acted in respect thereof in a fraudulent manner or in bad faith or in any other improper manner.
- (ii) Council may at any time amend or rescind any restriction contemplated in paragraphs 17(i) to 17(i)(e) while also considering paragraph (iii) below.
- (iii) Any restriction imposed on any tenderer by Council will at the discretion of Council also be made applicable to any other enterprises or to any partner, manager, director or other person who wholly or partly exercised or has exercised or may exercise control over the enterprise of the tenderer and with which enterprise or person the tenderer is or was, in the opinion of Council, actively associated.
- (iv) For the purpose of paragraphs 17(i) to 17(vi) the expression "tenderer", in respect of any restriction, shall also include an employee or agent of such tenderer.

- (v) Where Council imposes a restriction regarding the consideration of offers from a tenderer or amends or rescinds such restriction, it will inform any other purchasing authority and Council of any resolution relative to such restriction or the rescission or amendment thereof, and request such authorities and Council to take similar steps.
- (vi) Whenever it comes to the attention of Council that any other purchasing authority referred to in paragraph 17(v) has taken a decision referred to in paragraph 17(i) in respect of a tenderer in respect of agreements similar to those contemplated in Section 4(1)(a) of the Act, Council will resolve that a similar restriction will be imposed by it on the tenderer concerned in respect of agreements with Council.

18. REMEDIES IN THE CASE OF DEATH, SEQUESTRATION, LIQUIDATION OR JUDICIAL MANAGEMENT

- (i) In the event of the death of a contractor or the provisional or final sequestration of his estate or of his cession or transfer of a contract without the approval of Council or of the surrender of his estate or of his reaching a compromise with his creditors or of the provisional or final liquidation of a contractor's company or the placing of its affairs under judicial management, Council will, without prejudice to any other rights it may have, exercise any of the following options:
 - (a) Cancel the contract and accept any of the tenders which were submitted originally with that of the contractor or any offer subsequently received to complete the contract. In such a case the estate of the contractor shall not be relieved from liability for any claim which has arisen or may arise against the contractor in respect of supplies not delivered or work not carried out by him under the contract, and Council will have the right to hold and retain all or any of the securities and retention moneys held by it at the date of the aforesaid occurrence until such claim has been satisfied; or
 - (b) allow the executor, trustee, liquidator or judicial manager, as the case may be, for and on behalf of and at the cost and expense of the estate of the contractor to carry on with and complete the contract; or
 - (c) for and on behalf of and at the cost and expense of the estate of the contractor, carry on itself and complete the contract and in that event Council will take over and utilise, without payment, the contractor's tools, plant and materials in whole or in part until the completion of the contract.
- (ii) Should Council elect to act in terms of paragraph 18(i)(c), it will give notice of its requirements to the executor, trustee, liquidator or judicial manager of the contractor's estate and should the said executor, trustee, liquidator or judicial manager fail within 14 days of the despatch of such notice to make provision to the satisfaction of the Council of the fulfilment of such requirements, or should no executor, trustee, liquidator or judicial manager be appointed within 14 days of the occurrence mentioned in paragraph 18(i), the Council will apply any remedy open to it in terms of the contract as if a breach thereof had taken place.
- (iii) Should Council act in terms of paragraph 18(i)(c) the contractor must leave the premises immediately and will not occupy such premises on account of retention or any other right.

19. CONTRACTOR'S LIABILITY

- (i) In the event of the contract being cancelled by Council in the exercise of its rights in terms of the Act, or regulations, or these conditions, the contractor shall be liable to pay to Council any losses sustained and/or additional costs or expenditure incurred as a result of such cancellation and Council will have the right to recover such losses, damages or additional costs by means of set-off from moneys due or which may become due in terms of the contract and, until such time as the amount of such losses, damages or additional costs has been determined, to retain such moneys or guarantee, or any deposit as security for any loss which Council will suffer or has suffered.
- (ii) The contractor will be held responsible for any consequential damages and loss sustained which will be caused by any defect, latent or otherwise, in the supply or service rendered, or if the supply or service as a result of such defect, latent or otherwise, does not conform to any condition or requirement of the contract.

20. PRICE LISTS

Price lists which are part of a contract, will not be amended without the approval of Council.

21. FIRM PRICES

If the contract is awarded on the basis of firm prices and during the contract period –

- (i) a customs or excise duty or any other duty, levy or tax (excluding any anti-dumping and countervailing duties or similar duties), is introduced in terms of any Act or regulation, or
- (ii) any such duty, levy or tax is legally changed or abolished,

the said prices shall be adjusted accordingly.

22. NON-FIRM PRICES

- (i) In respect of any factors which demonstrably have an influence on the production cost of the supplies or the rendering cost of the service for which there has been tendered on the basis of non-firm prices, price adjustments which become effective during the contract period may be allowed with effect from the date of the change in cost and founded on the actual direct change in the cost as used in the calculation of the tender price, in addition to those provided for in paragraph 21.
- (ii) Where the contractor himself is the manufacturer of the supplies or the provider of the service, or where he is the accredited agent of the manufacturer or the provider, evidence in support of the price adjustments claimed in terms of paragraph 22(i) will be produced on demand.
- (iii) As an alternative to paragraph 22(i) the tenderer must specify a formula on the tender form provided for this purpose, for the purpose of adjusting prices in accordance with published indices. However, the adjustment formula shall provide for a minimum fixed element of at least 15% of the price which shall not be subject to adjustment.

- (iv) Where the contractor is not the manufacturer of the supplies or the provider of the service, or where he is not the accredited agent of the manufacturer or the provider, any price adjustment shall be based on the increase or reduction to the contractor in the net cost of the supplies on which the tender price was based. When any such increase or reduction in costs occurs, the contractor will submit copies of the quotation or price list with reference to which he calculated his tender prices, as well as the revised quotation or price list on which his claim is based.

23. RATES OF EXCHANGE

- (i) Where the whole or a portion of the tendered price may be affected by the revaluation of currencies or any fluctuation in the rate of exchange, the tenderer shall, in accordance with the tender requirements, state in his tender the amount to be paid in foreign currencies or to be remitted abroad, as well as the rate of exchange applied in the conversion of that amount into South African currency in calculating the tender price, and if the contract is completed within the contract period, any increase or reduction in the relevant amount as a result of any fluctuation in the rate of exchange or revaluation of currencies shall, irrespective of whether the price is firm or not, be for the account of Council, subject to the conditions below.
- (ii) Where payment to the contractor is to be made in the Republic of South Africa and he is required to remit part or all of the amount abroad, the contract amount in South African currency will be paid to the contractor less, or plus, an amount, as specified on the contractor's invoice and supported by the necessary proof, representing any change in the exchange rate;
 - (a) which may have occurred between the date of conversion to South African currency as reflected in the tender documents and the date of the invoice, provided that the invoice date is within 10 days of the date of delivery or shipment; and
 - (b) any further fluctuation in the rate of exchange between the invoice date and the actual date of remittance abroad shall be paid by Council only if the further fluctuation in the exchange rate is more than 1,0% and if the remittance is made within 10 days of the date of the warrant voucher issued in payment.
- (iii) Where it is required of the contractor to remit part or all of the amount abroad before he can invoice Council and this is indicated in his tender and subsequently substantiated, the date of such remittance will be regarded as the date in respect of which the adjustments in terms of paragraph 23(ii)(a) are to be made.
- (iv) All rate of exchange claims shall be accompanied by the following documentary evidence (failure to comply with this condition may delay or invalidate claims):
 - (a) In the case of paragraph 23(ii)(a), a copy of the relevant invoice from the foreign supplier.
 - (b) In the case of paragraph 23(ii)(b), a copy of the relevant invoice from the foreign supplier for reconciliation with the bank remittance voucher.
 - (c) If amounts that are not proper to a specific order are included in the remittance abroad, documentary proof or a certificate of audit that substantiates the inclusion of the amount.

- (v) No adjustment shall be done in respect of any amount or percentage of the tender price which was remitted abroad and which exceeds the amount which, as contemplated in paragraph 23(i), is in the tender for that purpose.
- (vi) When the amount remitted abroad constitutes a larger or smaller amount or percentage of the tender price than that indicated for that purpose in the tender in accordance with paragraph 23(i) and the contractor, as a result thereof obtains a financial benefit, such benefit shall devolve upon Council and shall, where applicable, be brought into consideration in computing any claim for compensation.
- (vii) If it is not a condition of tender that the amount which the contractor will have to pay abroad and the relevant rate of exchange at which the amount was converted to South African currency should be indicated in the tender, price adjustments in respect of fluctuations in the rate of exchange shall be effected only when a devaluation or a revaluation of currencies occurs and satisfactory documentary proof is submitted; provided that Council may in such cases cancel the contract and make other arrangements for obtaining the supplies.
- (viii) In the case of period contracts, the tender price referred to in paragraphs 23(i) and 23(vii) shall refer to the relevant contracted prices for each consignment separately.

24. PRICE ADJUSTMENTS: DOCUMENTARY PROOF AND PERIOD FOR CLAIMS

- (i) The adjustment in price as contemplated in paragraphs 21, 22(i) to 22(iv) and 23(i) to 23(viii) shall cover only the period between the closing date of a tender and the final delivery date in terms of the contract.
- (ii) Documentary proof or a certificate of audit, issued and signed by a registered chartered accountant external to the business of the contractor, in substantiation of the price adjustments claimed as contemplated in paragraphs 21, 22(i) to 22(iv) and 23(i) to 23(viii) and the effect thereof on the contract price, shall be submitted by the contractor together with his claim, to the satisfaction of Council.
- (iii) Claims against Council shall, unless otherwise authorised by the Municipal Manager and/or the Tender Adjudication Committee, be approved to the satisfaction of the Municipal Manager and/or the Tender Adjudication Committee as soon as possible, but not later than the following:
 - (a) In the case of period contracts, 30 days after the change in cost or the date of advice of acceptance of the tender, whichever date is the later, in which case the prices may be backdated only to the date on which the claim was proved to the satisfaction of Council.
 - (b) In the case of non-period contracts, 30 days from the date on which the firm contractual delivery period expired, if the contractual delivery period was adhered to. If he does not claim within 90 days, the contractor shall forfeit his claim to a price adjustment, unless otherwise decided by Council.

- (iv) In the case where a price adjustment is in favour of Council, such favourable difference shall on demand be paid forthwith by the contractor to Council or the Council will deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.
- (v) If delivery takes place within the contracted delivery period, the contract price ruling at date of delivery shall apply. Deliveries shall not be withheld for the purpose of benefiting from price increases.

25. PAYMENT OF DUTIES, LEVIES AND TAXES

A contractor for projects in the Republic of South Africa who is not based in the Republic of South Africa or who is based in the Republic of South Africa but makes purchases for the contract outside the Republic of South Africa, is responsible for paying all relevant duties, levies and taxes which may be due on the importation of the purchases into the Republic of South Africa and he indemnifies Council against any liability for the payment of such duties, levies and taxes. If so required by the Council, a contractor must indicate the gross value of the relevant purchases and also furnish the necessary proof that all such duties, levies and taxes have been paid.

26. STAMP DUTY, BANK CHARGES, ETC.

The contractor is responsible for stamp duty, bank charges, bank interest and other like charges in respect of a contract.

26.1 Royalties and patent rights

- (i) The contractor is responsible for all expenses and other liabilities in regard to royalties, patent rights, trade marks or other protected rights in respect of goods supplied by him to Council and he indemnifies Council against any claims which may arise in connection with such rights.
- (ii) The contractor shall at any time furnish on request adequate security to the satisfaction of Council for the payment of all costs, including attorney and client costs in cases where proceedings are instituted against Council and/or its officers or employees in respect of alleged breach of patent rights, trade marks or any other protected rights.

26.2 Municipal property in possession of a contractor

- (i) Municipal property supplied to a contractor for the execution of a contract remains the property of Council and shall at any time be available for inspection by Council or its representatives. Any such property in the possession of the contractor on completion of the contract shall, at the contractor's expense, be returned to Council forthwith.
- (ii) The contractor shall be responsible at all times for any loss or damage to Municipal property in his possession and if required, he shall furnish such security for the payment of any such loss or damage as the Council may require.

27. STATEMENTS OF SUPPLIES AND SERVICES

27.1 The contractor shall, when requested to do so, furnish particulars of supplies delivered or services executed. If he fails to do so, Council will, without prejudice to any other rights which it may have, institute inquiries at the expense of the contractor to obtain the required particulars.

27.2 Security

- (i) Where security is required, particulars thereof are indicated in the tender documents. Unless otherwise stated, security covering the following amounts is required from contractors:
 - (a) Where payment is to be made to Council: The estimated amount which is to be paid.
 - (b) Where Municipal property is to be handed to contractors: The value of municipal property which may be in the possession of the contractor at any time.
 - (c) Where Council so decides prior to the invitation of tenders: 10 percent of the value of the contract.
- (ii) Where approval has been granted for advance or progress payments to a contractor, the security to be provided by the contractor is determined by Council.
- (iii) The security required consists of –
 - (a) a guarantee by a banking institution registered in terms of the Banks Act, 1965 (Act 23 of 1965) or an insurer registered in terms of the Insurance Act, 1943 (Act 27 of 1943) to do insurance business, or the Small Business Development Corporation, or cash, negotiable government stock, negotiable approved municipal stock, a security bond or in the case of service contracts, two or more acceptable sureties; or
 - (b) such other form of security as Council approves.

28. TRANSFER OF CONTRACTS

The contractor shall not abandon, transfer, assign or sublet a contract or part thereof without the written permission of Council.

29. NOTIFICATION OF CONTRACTS AWARDED

After firm agreement has been reached with the preferred supplier and a contract has been signed, the Supply Chain Management Unit will publish the award of the contract in the municipality's website.

ANNEXURE A**SUMMARY NOTICE 112 OF 2007 - CODES OF GOOD PRACTICE ON BLACK ECONOMIC EMPOWERMENT - GOVERNMENT GAZETTE 29617 DATED 2007-02-09****Effective date**

The Codes came into operation on the date of publication namely 9 February 2007.

Eligibility as an Exempted Micro-Enterprise

- Any enterprise with an annual total revenue of R5 million or less qualifies as an Exempted Micro-Enterprise.
- Exempted Micro-Enterprises are deemed to have B-BBEE Status of "Level Four Contributor" with B-BBEE procurement recognition of 100%.
- If black people or black women prove ownership of more than 50%, the enterprise qualifies as a "Level Three Contributor" with B-BBEE procurement recognition of 110%.
- Exempted Micro-Enterprises can be measured in terms of the QSE (qualifying small enterprise) scorecard if they wish to maximise their points/profit.
- A certificate issued by an Auditor, Accounting Officer or a verification agency.

Eligibility as a Qualifying Small Enterprise

- Any enterprise with an annual total revenue of between R5 million and R35 million qualifies as a Qualifying Small Enterprise.
- A QSE must select any four of the seven Elements of B-BBEE for measurement under QSE Scorecard or where a QSE does not make a selection, its four best element scores are to be used.

Start-up Enterprises

- Start-up Enterprises are deemed to have a B-BBEE status of "Level Four Contributor" with B-BBEE procurement recognition of 100%.
- To qualify it must provide an independent confirmation of its status.
- However when tendering for contracts between R5 million and R35 million they must submit a QSE Scorecard while for tenders in excess of R35 million a generic scorecard must be submitted. (Annualised data must be used in preparation of scorecards).

Elements of B-BBEE in terms of the Generic Scorecard

- Ownership Element - measures effective ownership of enterprises by black people as set out in Code series 100.

- Management Control Element - measures the effective control of enterprises by black people as set out in Code series 200.
- Employment Equity Element - measures initiatives to achieve equity in workplace in terms of the Employment Equity Act as set out in Code series 300.
- Skills Development Element - measures initiatives by employers designed to develop the competencies of black employees as set out in Code series 400.
- Preferential Procurement Element - measures the extent to which enterprises procure goods from suppliers with strong B-BBEE recognition levels as set out in Code series 500.
- Enterprise Development Element – measures enterprises initiatives to assist and accelerate development and sustainability of other B-BBEEs as set out in Code series 600.
- Socio-Economic Development and Sector Specific Contributions Element – measures the initiatives contributing towards Socio-Economic Development or sector specific initiatives that promote access to the economy for black people as set out in Code series 700.

The Generic Scorecard

Elements, weightings and code series references

Element	Weighting	Code Ref
Ownership	20 points	100
Management control	10 points	200
Employment equity	15 points	300
Skills development	15 points	400
Preferential procurement	20 points	500
Enterprise development	15 points	600
Socio-economic development	5 points	700

Based on the points scored the following B-BBEE Status can be received:

B-BBEE Status	Qualification	B-BBEE Recognition
Level 1 Contributor	greater or = 100 points on Generic scorecard	135%
Level 2 Contributor	> or = 85 but <100 points	125%
Level 3 Contributor	greater or = 75 but less than 85 points	110%
Level 4 Contributor	> or = 65 but <75 points	100%
Level 5 Contributor	greater or = 55 but less than 65 points	80%
Level 6 Contributor	> or = 45 but <55 points	60%
Level 7 Contributor	greater or = 40 but less than 45 points	50%
Level 8 Contributor	> or = 30 but <40 points	10%
Non-Compliant Contributor	less than 30 points on Generic scorecard	0%

B-BBEE Verification

B-BBEE verification is encouraged and the Department of Trade and Industry (dti) will issue clear guidelines in this regard from time to time.

SANAS - SA National Accreditation Body

- SANAS operates in compliance with requirements for accreditation bodies as defined in the International ISO/IEC Guide 62 and ISO 17011.
- Accreditation of B-BBEE verification agencies will be conducted by SANAS on behalf of the dti.

Transitional Period

- For the first year following 2007-02-09 an entity may elect to use either the Generic Scorecard or the transitional scorecard.

From 2008-02-09 all B-BBEE compliance measurement under the codes for Medium and Large enterprises may only use the Generic Scorecard.

B G MOUMAKWE
ACTING MUNICIPAL MANAGER

Notice 4/2010
/ww
