

# **NYANDENI LOCAL MUNICIPALITY**



## **SUPPLY CHAIN MANAGEMENT POLICY**

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## 1. DEFINITIONS

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

“**agent**” means a person mandated by another person (“the principal”) to do business for and on behalf of, or to represent in a business transaction, the principal, and thereby acquire rights for the principal against an organ of state and incur obligations binding the principal in favour of an organ of state.

“**all applicable taxes**” includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.

“**allocation**” in relation to a municipality means –

[a] municipality's share of the local government's equitable share referred to in Section 214 (1) (a) of the Constitution;

[b] an allocation of money to a municipality in terms of Section 214 (1) (c) of the Constitution;

[c] an allocation of money to a municipality in terms of a provincial budget; or

[d] any other allocation of money to a municipality by an organ of state, including by another municipality, otherwise than in compliance with a commercial or other business transaction.

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

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

“**bid**” means a written offer or bid in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services or goods.

“**bidder**” means any person submitting a bid.

“**break-out procurement**” means the procurement of goods and services for any project of the Municipality in the smallest possible quantities without compromising the quality, coverage, cost or developmental impact of the goods and services.

“**Broad-Based Black Economic Empowerment Act**” means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).

**“closing time”** means the time and day specified in the bid documents for the receipt of bids.

**“competitive bidding process”** means a competitive bidding process referred to in section 12.1 (1) (d) to (e) of this policy;

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

**“comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilised have been taken into consideration.

**“consortium or joint venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and

**“Construction Industry Development Board Act”** means the Construction Industry Development Board Act, 2000 (Act 38 of 2000) and includes the regulations thereto.

**“Construction works”** means any work in connection with:

- [a] the erection, maintenance, alteration, renovation, repair, demolition or dismantling of or addition to a building or any similar structure;
- [b] the installation, erection, dismantling or maintenance of fixed plant;
- [c] the construction, maintenance, demolition or dismantling of any bridge, dam, canal, road, railway, sewer or water reticulation system or any similar civil engineering structure; or
- [d] the moving of earth, clearing of land, the making of an excavation, piling or any similar type of work.

**“consultant”** means a person or entity providing services requiring knowledge based expertise.

**“contingency”** means the amount varying in accordance with the nature of the contract.

**“contract”** means the agreement that results from the acceptance of a bid by the Municipality and awarded to the successful bidder.

**“contract value”** means the value of the contract.

**“control”** the possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous expertise of appropriate managerial authority and power in determining the policies and directing the operations of the business.

**“contractor”** means a person or body of persons who undertakes to execute and complete constructions works.

**“councillor”** means a member of a municipal council.

**“day(s)”** means calendar days unless the context indicates otherwise.

**“delegated authority”** means any person or committee delegated with authority by the municipality in terms of the provisions of the relevant legislation.

**“designated sector”** means a sector, sub-sector or industry that has been designated by the Department of Trade and Industry in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content.

**“district municipality”** means a municipality that has municipal executive and legislative authority in an area that includes more than one municipality and which is described in section 155(1) of the Constitution as a category “C” municipality.

**“employer”** means the Nyandeni Local Municipality.

**“end user”** means a person who initiates the process of acquisition management and also plays a very important role during the evaluation process.

**“extension of contracts”** means contracts where the scope of works or duration must be extended. The possibility of adding to the scope of works exists.

**“final award”**, in relation to bids or quotations submitted for a tender, means the final decision taken by the municipality for the award of the tender.

**“firm price”** is the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy or tax which in terms of a law or regulation is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract.

**“formal written price quotation”** means quotations referred to in this policy;



**“fruitless and wasteful expenditure”** means expenditure that was made in vain and would have been avoided had reasonable care been exercised.

**“functionality”** means the measurement according to predetermined norms, as set out in the tender documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a tenderer.

**“historically disadvantaged individual”** means a South African Citizen or any **service provider**;

[a] who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa Act, 1993 (Act No. 200 of 1993) or the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) (“the Interim Constitution”); and/or

[b] who is a female; and/or

[c] who has a disability;

provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not to be an HDI.

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

(a) a member of –

(i) any municipal council;

(ii) any provincial legislature; or

(iii) the National Assembly or the National Council of Provinces;

(b) a member of the board of directors of any municipal entity;

(c) an official of any municipality or municipal entity;

(d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);

(e) a member of the accounting authority of any national or provincial public entity; or

(f) an employee of Parliament or a provincial legislature;

**“irregular expenditure”** in relation to a municipality or municipal entity, means-

(a) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the MFMA, and which has not been condoned in terms of section 170 thereof;

(b) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act;

(c) expenditure incurred by a municipality in contravention of, or that is not in accordance with a requirement of the Remuneration of Public Office-Bearers Act, 1998 (Act No. 20 of 1998); or

(d) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or entity or any of the municipality's by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law.

**“local content”** means that portion of the tender price which is not included in the imported content, provided that local manufacture does not take place.

**“local municipality”** means a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls and which is described in section 155(1) of the Constitution as a category “B” municipality.

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

**“list of accredited prospective providers”** means the list of accredited prospective providers which a municipality or municipal entity must keep in terms of section 22 of this policy;

**“management”** in relation to an enterprise or business, means an activity inclusive of control and performed on a daily basis, by any person who is a principal executive officer of the company, by whatever name that person may be designated, and whether or not that person is a director.

**“municipal council”** means a municipal council referred to in section 157(1) of the Constitution, 1996, and **“council”** shall have a corresponding meaning.

**“municipal entity”** means an entity as defined in the Municipal Systems Act.

**“Municipal Finance Management Act”** means the Local Government: Municipal Finance Management, 56 of 2003 and includes the regulations thereto, and **“MFMA”** shall have a corresponding meaning.

**“municipality”** when referred to as –

[a] an entity, means a municipality as described in section 2 of the Municipal Systems Act, and

[b] a geographic area, means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998)

**“municipal manager”** means a person appointed by the municipality in terms of section 82 of the Municipal Structures Act and who is the head of administration and also the accounting officer for the Municipality.

**“Municipal Structures Act”** means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).

**“Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

**“non-firm prices”** means all prices other than “firm prices”.

**“organ of state”** means an organ of state as defined in section 239 of the Constitution.

**Original Equipment Manufacturer (OEM)** means machinery or any equipment needing original parts for repairs and maintenance.

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

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

**“own”** having all the customary incidents of ownership, including the right of disposition, and sharing in all the risks and profits commensurate with the degree of ownership interest, as demonstrated by an examination of the substance, rather than the form of ownership arrangements.

**“person”** includes reference to a juristic person.

**“policy”** means this Supply Chain Management Policy as amended from time to time.

**“Preferential Procurement Policy Framework Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and includes the regulations thereto.

**“privileged or confidential information”** means any information:

- (a) determined by the bid specification, evaluation or adjudication committee to be privileged or confidential;

- (b) discussed in close sessions by any of the bid committees;
- (c) disclosure of which would violate a person's right to privacy;
- (d) declared to be privileged, confidential or secret in terms of any legislative framework.

**“quotation or quote”** means a written or electronic offer made to the municipality in response to an invitation to submit a quotation.

**“rand value”** means the total estimated value of a contract in Rand denomination which is calculated at the time of bid invitations and includes all applicable taxes and excise duties.

**“regulation”** means any clause contained in the Municipal Supply Chain Management Regulations published in terms of Section 168 of the MFMA.

**“renewal of contracts”** means contracts such as rental agreements, software licences, etc. that are to be renewed on a periodic basis.

**“republic”** means the Republic of South Africa, and **"RSA"** shall have a corresponding meaning.

**“SARS”** means the South African Revenue Services.

**“service providers” means**

(a) **“Professional Service Provider”:**

Any person or body corporate that is under contract to the Employer for the provision of Professional Services.

b) **“General Service Provider”:**

Any person or body that is under contract to the Employer for the provision of any type of service.

**“SMMs”** means a separate and distinct business entity, including cooperative enterprises and non-governmental organizations, managed by one owner or more which, including its branches or subsidiaries, if any, is predominantly carried on in any sector or sub-sector of the economy.

**“sponsorship”** means paying for or contributing towards the cost of an event.

**“stipulated minimum threshold”** means that portion of local production and content as determined by the Department of Trade and Industry.

**“sub-contracting”** means the primary contractor's assigning or leasing or making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract.

**“supply chain manager”** means an official appointed by the Nyandeni Local Municipality to fulfill a vital role in the implementation, the monitoring and the continued application of this Policy.

**“Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

**“tender”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive tendering processes or proposals.

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

**“the constitution”** means the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996).

**“the Regulations”** means the Local Government : Municipal Financial Management Act, 2003, Municipal Supply Chain Management Regulations published by Government Notice 868 of 2005.

**“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the Government Gazette on 9 February 2007.

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

**“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person.

**“trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

**“unauthorised expenditure”** in relation to a municipality, means any expenditure incurred by a municipality otherwise than in accordance with Section 15 or 11(3) of the Act.

- (a) overspending of the total amount appropriated in the municipality’s approved budget;
- (b) overspending of the total amount appropriated for a vote in approved budget;
- (c) expenditure from a vote unrelated to the department of functional area covered by the vote;
- (d) expenditure of money appropriated for a specific purpose, otherwise than for that specific purpose;

- (e) spending of an allocation referred to in paragraph (b), (c) or (d) of the definition of “allocation” otherwise than in accordance with any condition of the allocation; or
- (f) a grant by the Municipality otherwise than in accordance with the MFMA.

“**unsolicited bid**” means an offer submitted by any person on his, her or its own initiative without having been invited by the municipality to do so.

“**variation order**” means unforeseen costs pertaining to uncertain circumstances that are part of infrastructure projects (all projects implemented by NLM).

“**written or verbal quotations**” means quotations referred to in this policy

Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include females and words importing persons shall include companies, closed corporations and firms, unless the context clearly indicates otherwise.

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

## CHAPTER 1

### **IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY**

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

- (1) All officials and other role players in the supply chain management system of the municipality must implement this Policy in a way that –
  - (a) gives effect to –
    - (i) section 217 of the Constitution; and
    - (ii) Part 1 of Chapter 11 and other applicable provisions of the Act;
  - (b) is fair, equitable, transparent, competitive and cost effective;
  - (c) complies with –
    - (i) the Regulations; and
    - (ii) any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
  - (d) is consistent with other applicable legislation;
  - (e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
  - (f) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.
- (2) This Policy applies when the municipality–
  - (a) procures goods or services;
  - (b) disposes goods no longer needed;
  - (c) selects contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act

applies; or

- (d) selects external mechanisms referred to in section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.
- (3) This Policy, except where provided otherwise, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including:
  - (a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
  - (b) electricity from Eskom or another public entity, another municipality or a Municipal entity.

### **3. Amendment of the supply chain management policy**

- (1) The accounting officer must –
  - (a) at least annually review the implementation of this Policy; and
  - (b) when the accounting officer considers it necessary, submit proposals for the amendment of this Policy to the council
- (2) If the accounting officer submits proposed amendments to the council that differ from the model policy issued by the National Treasury, the accounting officer must –
  - (a) ensure that such proposed amendments comply with the Regulations; and
  - (b) report any deviation from the model policy to the National Treasury and the relevant provincial treasury.
- (3) When amending this supply chain management policy the need for uniformity in supply chain practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.

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

- (1) The council hereby delegates all powers and duties to the accounting officer which are



necessary to enable the accounting officer –

- (a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
    - (i) Chapter 8 or 10 of the Act; and
    - (ii) this Policy;
  - (b) to maximise administrative and operational efficiency in the implementation of this Policy;
  - (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this Policy; and
  - (d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- (2) Sections 79 and 106 of the Act apply to the sub-delegation of powers and duties delegated to an accounting officer in terms of subparagraph (1).
- (3) The accounting officer may not sub-delegate any supply chain management powers or duties to a person who is not an official of the municipality or to a committee which is not exclusively composed of officials of the municipality;
- (4) This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.

## **5. Sub-delegations**

- (1) The accounting officer may in terms of section 79 or 106 of the Act sub-delegate any supply chain management powers and duties, including those delegated to the accounting officer in terms of this Policy, but any such sub-delegation must be consistent with subparagraph (2) of this paragraph, paragraph 4 of this Policy and as set out in the Systems of Delegations of CFO.
- (2) The power to make a final award –
  - (a) above R10 million (VAT included) may not be sub-delegated by the accounting officer;

- (b) above R200 000-00 (VAT included), but not exceeding R10 million (VAT included), may be sub-delegated to –
  - (i) The Chief Financial Officer;
  - (ii) The bid adjudication committee (as comprised in 2(c)(iii) below) of which the chief financial officer or a senior manager is a member; or
- (c) not exceeding R200 000-00 (VAT included) may be sub-delegated to –
  - (i) Chief Financial Officer;
  - (ii) A manager directly accountable to the chief financial officer as sub-delegated by the CFO; or
  - (iii) the bid adjudication committee consisting of at least 4 Senior Managers or persons acting in their stead:
- (3) The person or bid adjudication committee to which the power to make the final award has been sub delegated in accordance with subparagraph (2) must within five days of the end of each month submit to the official referred to in subparagraph (4) a written report containing particulars of each final award made by such committee during that month, including:
  - (a) the amount of the award;
  - (b) the name of the person to whom the award was made; and
  - (c) the reason why the award was made to that person.
- (4) A written report referred to in subparagraph (3) must be submitted –
  - (a) to the accounting officer, in the case of an award by –
    - (i) the chief financial officer;
    - (ii) a senior manager (reporting to the accounting officer); or
    - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or
  - (b) to the chief financial officer or the senior manager responsible for the relevant bid,

in the case of an award by –

- (i) a manager referred to in subparagraph (2)(c)(iii); or
- (ii) a bid adjudication committee of which the chief financial officer or

a senior manager is not a member.

- (5) Subparagraphs (3) and (4) of this policy do not apply to procurements out of petty cash.
- (6) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub-delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.
- (7) No supply chain management decision-making powers may be delegated to an advisor or consultant.

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

- (1) The Municipal Finance Management Act 56 of 2003 prohibits a councillor from being a member of a bid committee or any other committee evaluating or approving quotations or bids nor may a councillor attend any such meeting as an observer.
- (2) The council must maintain oversight over the implementation of this Policy.
- (3) For the purposes of such oversight the accounting officer of the municipality must:
  - (a) (i) Within 30 days of the end of each financial year, submit a report on the implementation of this Policy and the supply chain management policy of the municipality, to the council; and
  - (ii) whenever there are serious and material problems in the implementation of this Policy, immediately submit a report to the council.
- (4) The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the mayor.
- (5) The reports must be made public in accordance with section 21A of the Municipal Systems Act.

## **7. Supply Chain Management Unit**

- (1) A supply chain management unit is hereby established to implement this Policy.
- (2) The supply chain management unit operates under the direct supervision of the Chief

Financial Officer or an official to whom this duty has been delegated in terms of section 82 of the Act.

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

The training of officials involved in implementing this Policy should be in accordance with national Treasury: Local Government: Municipal Finance Management Act: Municipal Regulations on Minimum Competency Levels dated 15/06/2007 and any other Treasury guidelines on supply chain management training.

**CHAPTER 2**

**SUPPLY CHAIN MANAGEMENT SYSTEM**

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

This Policy provides systems for –

- (i) demand management;
- (ii) acquisition management;
- (ii) logistics management;
- (iv) disposal management;
- (v) risk management; and
- (vi) performance management.

**PART 1: DEMAND MANAGEMENT**

**10. System of Demand Management**

- (1) The accounting officer must establish and implement an appropriate demand management system in order to ensure that the resources required by the municipality support its operational commitments and its strategic goals outlined in the Integrated Development Plan. NLM has purchased the SCM module, and its procedures through the SCM unit must be adhered to at all time for the duration that it is implemented by the municipality.

- (2) The demand management system must –
- (a) include timely planning and management processes to ensure that all goods and services required by the municipality are quantified, budgeted for and timely and effectively delivered at the right locations and at the critical delivery dates, and are of the appropriate quality and quantity at a fair cost;
  - (b) take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature (such as long term contracts); and
  - (c) provide for the compilation of the required specifications to ensure that its needs are met.
  - (d) undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximised to the extent appropriate and within the available resources.

## **PART 2: ACQUISITION MANAGEMENT**

### **11. System of Acquisition Management**

- (1) The accounting officer must implement the system of acquisition management set out in this Part in order to ensure –
- (a) that goods and services are procured by the municipality in accordance with authorised processes only;
  - (b) that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
  - (c) that the threshold values for the different procurement processes are complied with;
  - (d) that bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
  - (e) that any Treasury guidelines (as per the circulars issued) on acquisition management are properly taken into account.

- (2) When procuring goods or services contemplated in section 110(2) of the Act, the accounting officer must make public on the website the fact that such goods or services are procured otherwise than through the municipality's supply chain management system, including –
- (a) the kind of goods or services; and
  - (b) the name of the supplier.

## 12. Range of Procurement Processes

### 12.1 Goods and services may only be procured by way of –

- (a) One written quotation for petty cash purchases, up to a transaction value of R 1000-00 (vat inclusive) per case. A valid tax invoice or cash slip must be handed in within 2 (two) days.
- (b) One written quotation for procurement of a transaction value over R1 000-01 up to R2 000-00 (vat inclusive);
- (c) 3 written quotations for procurement of a transaction value over R2 000-01 up to R30 000-00 (vat inclusive);
- (d) Competitive 7 – day bidding process for procurement of a transaction value over R30 000-00 up to R200 000-00 (vat inclusive); and
- (e) A formal competitive bidding process for–
  - (i) procurement above a transaction value of R200 000-00 (VAT included); and
  - (ii) the procurement of long term contracts.
- (f) One written quotation for catering expenses for normal functions, due to a fixed standard price of R90 per meal subject to the size attendees.
- (g) One written quotation for catering expenses for VIP functions, due to a fixed standard price of R110 per meal subject to the size attendees.
- (h) One written quotation for tea expenses for normal functions and VIP functions, due to a fixed standard price of R50 per meal subject to the size attendees.

- (i) One written quotation for still water expenses for normal functions and VIP functions, due to a fixed standard price of R15 per meal subject to the size attendees.

Clause to cater for transport to areas outside the municipal premises.

## **12.2 The accounting officer may, in writing-**

- (a) Lower, but not increase, the different threshold values specified in subparagraph (12.1);  
or
- (b) Direct that –
  - (i) Written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000;
  - (ii) Formal written price quotations be obtained for any specific procurement of a transaction value lower than R30 000; or
  - (iii) A competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000.

## **12.3 Sundry Payments**

The following line items are not required to be procured through the SCM process.

The end user to complete and submit the sundry documents with the original invoice to the SCM unit to check for legal compliancy:

- |   |                       |
|---|-----------------------|
| - Audit fees;   | - BankCharges;        |
| - Bursariesandstudentpracticalwork;   | - Election Activities |
| - Compensation for injuries and diseases;   | - Legal expenses      |
| - Congresses/Prof meetings (S & T);   | - License fees        |
| - Donations/grants by Council;  | - Postage;            |
| - Entertainment; Finance – cash collection;   | - Mayoral donations;  |
| - Medical expenses not on contract;   | - Membership fees;    |
| - Telecommunications(Telkom)  | - Nutritionalcare;    |
| - Reference books and magazines;  | - Insurance claims;   |
| - Wardcommitteeallowances;  | - water services,     |
| - Inter-departmentalcharges   | - Eskom,              |
| - All employee/Councillors related costs;   | - Debit orders;       |
| - Purchase of specialised Legislation documents & books;  | - Government printing |
| - Fixed term service contracts appointed through the formal bid process where it is difficult to identify |                       |

beforehand what the total quantity of work will be done on sundry payments (e.g. maintenance of tarred roads, vacuum tank services, Maintenance of sewer pipelines, etc.) clearly marked with the bid number. (e.g. Travel agent)

- Purchases less than R2 000-00 (vat inclusive) for emergency situations may be sourced directly from vendors listed in Nyandeni Local Municipality's accredited list of service providers and paid by Sundry payment with the approval of the HOD and CFO.

#### **12.4 Splitting of Works/Services**

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

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

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

- (a) has furnished that provider's –
  - (i) full name;
  - (ii) identification number or company or other registration number; and
  - (iii) tax reference number and VAT registration number, if any;
- (b) has authorised the municipality to confirm with the South African Revenue Services that the provider's tax matters are in order; and
- (c) has indicated–
  - (i) whether he or she is in the service of the state, or has been in the service of the



- state in the previous twelve months;
- (ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months;
- (iii) whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to in subparagraph (ii) is in the service of the state, or has been in the service of the state in the previous twelve months; and
- (iv) that the bidders rates and taxes are not outstanding longer than 90 days.

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

The accounting officer must –

- (a) keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements through written or verbal quotations and formal written price quotations; and
- (b) at least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
- (c) specify the listing criteria for accredited prospective providers;
- (d) 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;
- (e) The vendor list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.
- (f) Disallow the listing of any prospective provider who has not submitted a valid billing clearance

- (g) The vendor list must be compiled per commodity and per type of service.
- (h) All registration and acceptance of applications for registration on the vendor list be in line with the provisions of MFMA Circular 82 and all Database Registration Forms to be accompanied by proof of registration on CSD by the prospective providers.

## 15. Petty cash purchases

The conditions for the procurement of goods by means of petty cash purchases referred to in paragraph 12 (1) (a) of this Policy, are as follows –

- (a) The Accounting Officer hereby delegates the responsibility to the CFO to issue petty cash to the various departments.
- (b) Petty cash requests not exceeding R500-00 vat included, per transaction may be issued by the approved officials.

The following departments are approved to be issued petty cash floats are restricted as follows:

- Mayor's Office: R1 000-00 per month – approval by the Senior Manager: Operations or delegated official.
  - Budget and Treasury: R1 000-00 per month – approval by the Senior Manager: Community Services or delegated official.
  - Other Departments: R1 000-00 per month – Approval by the CFO or delegated official.
- (c) Petty cash purchases are restricted to emergency cases where the necessity is required within 1 day to a maximum of R1 000-00 vat inclusive that could not have been foreseen.
  - (d) in a case where petty cash is allocated to a department, monthly reconciliations are

required to be submitted to the chief financial officer; and they should include:

- (i) the total amount of petty cash purchases for that month; and
- (ii) receipts and appropriate documents for each purchase.

**16. Written or verbal quotations (R0-01 to R2 000-00)**

The conditions for the procurement of goods or services through written or verbal quotations are as follows *(read with section 12.1 of this policy)*:

- (a) Quotations must be obtained from at least one provider preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the municipality provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria set out in paragraph 14(1)(c) and (d) of this Policy;
- (b) providers must be requested to submit such quotations in writing;
- (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the accounting officer or another official designated by the accounting officer;
- (d) if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.

**17. Formal written price quotations (R2 000-01 to R30 000-00)**

17.1 The conditions for the procurement of goods or services through formal written price quotations, are as follows *(read with section 12.1 of this policy)*:

- (a) quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the

municipality;

- (b) quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria set out in paragraph 14(1)(b) and (c) of this Policy;
- (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer, and
- (d) the accounting officer must record the names of the potential providers and their written quotations.

17.2 A designated official referred to in subparagraph (1) (c) must within three days of the end of each month report to the chief financial officer on any approvals given during that month by that official in terms of that subparagraph.

**18. Procedures for procuring goods or services through written or verbal quotations and formal written price quotations (R30 000-01 to R200 000-00)**

The procedure for the procurement of goods or services through written or verbal quotations or formal written price quotations is as follows (*read with section 12.1 of this policy*):

- (a) When using the list of accredited prospective providers the accounting officer must promote on-going competition amongst providers by inviting providers to submit quotations on a rotation basis;
- (b) all requirements in excess of R30 000-00 (VAT included) that are to be procured by means of competitive 7-day bidding process must, in addition to the requirements of paragraph 17, be advertised for at least seven days on the website and an official notice board of the municipality;
- (c) Offers received must be evaluated on a comparative basis taking into account

- unconditional discounts;
- (d) the accounting officer or chief financial officer must on a monthly basis be notified in writing of all written or verbal quotations and formal written price quotations accepted by an official acting in terms of a sub-delegation;
  - (e) Offers below R30 000-00 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;
  - (f) Acceptable offers, which are subject to the preference points system (PPPFA and associated regulations), must be awarded to the bidder who scored the highest points;
  - (g) Record of approved specifications, minutes of the evaluation committees and approval memos must be kept on file for audit purposes.

## **19. Competitive bids (Above R200 000-00)**

*(Read with section 12.1 of this policy)*

- 19.1 Goods or services above a transaction value of R200 000-00 (VAT included) and long term contracts may only be procured through a competitive bidding process, subject to paragraph 11(2) of this Policy.
- 19.2 No requirement for goods or services above an estimated transaction value of R200 000-00 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

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

The procedures for the following stages of a competitive bidding process are as follows:

- (a) Compilation of bidding documentation as detailed in Section 21;
- (b) Public invitation of bids as detailed in Section 22.1 – 22.6;
- (c) Site meetings or briefing sessions as detailed in Section 22 (iii);
- (d) Handling of bids submitted in response to public invitation as detailed in Section 23;
- (e) Evaluation of bids as detailed in Section 25 & 28;
- (f) Award of contracts as detailed in Section 29;
- (g) Administration of contracts
  - (i) After approval of a bid, the accounting officer and the bidder must enter into a written agreement.
- (h) Proper recordkeeping
  - (i) Original / legal copies of written contracts agreements should be kept in a secure place for reference purposes.

**21. Bid documentation for competitive bids**

The criteria to which bid documentation for a competitive bidding process must comply, and in addition to section 13 of this policy, the bid documentation must

- (a) take into account –
  - (i) the general conditions of contract and any special conditions of contract, if specified;
  - (ii) any Treasury guidelines on bid documentation; and
  - (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
- (b) include the BEE levels as contemplated in the Preferential Procurement Policy Framework Act, Regulations and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;

- (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish–
  - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
    - (aa) for the past three years; or
    - (bb) since their establishment if established during the past three years;
  - (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
  - (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
  - (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

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

22.1 The procedure for the invitation of competitive bids, is as follows:

- (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the municipality or any other appropriate ways (which may include an advertisement in

the Government Tender Bulletin); and

- (b) the information contained in a public advertisement, must include –
  - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2) of this policy;
  - (ii) a statement that bids may only be submitted on the bid documentation provided by the municipality and be completed in hand writing. Bid documents may not be re-typed. Any corrections are to be crossed out and initialled.
  - (iii) date, time and venue of any proposed site meetings or briefing sessions are applicable. All briefing/site meetings are compulsory in NLM to ensure clarity and that all bidders are treated fair and equal. As these are compulsory site inspections, no bids will be accepted if the contractor (who is considered to be a technical representative) has not attended this session and documents will only be accepted from contractors whose names appear on the attendance register.

22.2 The accounting officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.

22.3 Bids submitted must be sealed and marked clearly with the bid number and description.

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

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

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



a) Bids–

- (i) must be opened in public by an SCM official;
- (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
- (iii) received after the closing time should not be considered and returned unopened immediately.
- (iv) Should the bidder who submitted a late bid not be at the opening or the envelope not have a return address, such bid will be filed un-opened for the duration of the bid process and thereafter be opened to obtain the postal address and the re-sealed envelope returned to the bidder.

b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price and BBEE level;

c) No information, except the provisions in subparagraph (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and

d) The accounting officer must –

- (i) record in a register all bids received in time;
- (ii) make the register available for public inspection; and
- (iii) publish the entries in the register and the bid results on the website.

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

(1) The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation :–

- (a) does not allow any preferred bidder a second or unfair opportunity;
- (b) is not to the detriment of any other bidder; and
- (c) does not lead to a higher price than the bid as submitted.

(2) Minutes of such negotiations must be kept for record purposes and are minuted by the relevant HOD and forwarded to the SCM unit for filing.

## **25. Various bidding process**

### **25.1 Two Stage bidding process:**

A two-stage bidding process is allowed for –

- (a) large or complex projects;
- (b) projects where it may be undesirable/impractical to prepare complete detailed technical specifications; or
- (c) long term projects with a duration period exceeding three years (e.g valuations, bank services
- (d) this stage must not include prices.

#### **Process of two stages:**

- a) In the first stage technical proposals on conceptual design or performance specifications are invited, subject to technical as well as commercial clarifications and adjustments.
- b) On receipt of such proposals, a suitable design is accepted and formal specifications are drafted and approved at the formal bid specifications committee.
- c) In the second stage final technical proposals and priced bids are invited from the bidders who submitted proposals only following a closed bid process.

### **25.2 Functionality qualifying bidding process**

- (1) NLM must indicate in the invitation to submit a tender if that tender will be evaluated on functionality.
- (2) The evaluation criteria for measuring functionality must be objective.
- (3) When evaluating tenders on functionality. The
  - (a) evaluation criteria for measuring functionality;
  - (b) weight of each criterion;
  - (c) applicable values; and
  - (d) minimum qualifying score for functionality, must be clearly specified in the invitation to submit a tender.
- (4) No tender must be regarded as an acceptable tender if it fails to achieve the minimum qualifying score for functionality as indicated in the tender invitation.
- (5) Tenders that have achieved the minimum qualification score for functionality must be evaluated further in terms of the preference point systems prescribed in regulations 5 and 6.

## **26. Committee system for competitive bids**

- (1) A committee system for competitive bids is hereby established, consisting of the following committees for all procurement or cluster of procurements as the accounting officer will determine:
  - (a) a bid specification committee;
  - (b) a bid evaluation committee; and
  - (c) a bid adjudication committee;
- (2) The Accounting Officer hereby has delegated the authority to appoint different members for each bid spec and bid evaluation committee relevant to the expertise/knowledge required, to the Bid Adjudication Committee, taking into account section 117 of the Act which excludes Councillors from serving on any SCM committee; and
- (3) A neutral or independent observer (Legal/auditor?), appointed by the accounting officer, may attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.

- (4) The committee system must be consistent with –
  - (a) Paragraph 27, 28 and 29 of this Policy; and
  - (b) Any other applicable legislation.
- (5) The accounting officer may apply the committee system to formal written price quotations.

## **27. Bid specification committees**

- (1) A bid specification committee must compile the specifications for each procurement of goods or services by the municipality.
- (2) Specifications–
  - (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
  - (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;
  - (c) must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
  - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification;
  - (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word “equivalent” unless this is

impractical;

- (f) must indicate the BBEE level points that may be awarded in terms of the grading system as set out in the Preferential Procurement Regulations 2017;
  - (g) must be approved by the Accounting Officer prior to publication of the invitation for bids in terms of Section 22.1 of this Policy.
- (3) A bid specification committee must be composed of a minimum three officials of the municipality including the manager/delegate responsible for the function involved, a SCM representative, officials from other departments within NLM who may have valid input/experience relating to the specifications or end result, and may when appropriate, include internal/external specialist advisors upon approval by the Accounting Officer as set out in Section 26(2).
- (4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.

## **28. Bid evaluation committees**

- (1) A bid evaluation committee must –
- (a) evaluate bids in accordance with –
    - (i) the specifications for the specific procurement; and
    - (ii) the points system as set out in this policy and in terms of regulation 27(2)(f) and prescribed in terms of the PPPFA
  - (b) evaluate each bidder's ability to execute the contract
  - (c) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears; and
  - (d) submit to the adjudication committee a report and recommendations regarding the

award of the bid or any other related matter

- (2) A bid evaluation committee must as far as possible be composed of-
  - (a) the officials who compiled and approved the specifications of the bid under consideration as well as the end user requiring the goods or services; and
  - (b) at least one supply chain management practitioner of the municipality.

## **29. Bid adjudication committees**

- (1) A bid adjudication committee must –
  - (a) Study and consider the report and recommendations of the bid evaluation committee; and
  - (b) either–
    - (i) depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or
    - (ii) make another recommendation to the accounting officer how to proceed with the relevant procurement.
- (2) A bid adjudication committee must consist of at least four senior managers of the municipality which must include –
  - (a) the chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer; and
  - (b) at least one senior supply chain management practitioner who is an official of the municipality and
  - (c) a technical expert in the relevant field who is an official of the NLM, if such an expert exists in NLM.
- (3) The accounting officer must appoint the chairperson of the committee if not represented by him/herself. If the chairperson is absent from a meeting, the members of the committee who

are present must elect one of them to preside at the meeting.

- (4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.
- (5)
  - (a) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid
    - (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;
    - (ii) notify the accounting officer.
  - (b) The accounting officer may –
    - (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
    - (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (6) The accounting officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (7) The accounting officer must comply with section 114 of the Act within 10 working days

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

- (1) A contract for banking services –
  - (a) must be procured through competitive bids;
  - (b) must be consistent with section 7 or 85 of the Act; and

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

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

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

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



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

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

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

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

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

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

### **35. Appointment of Consultants\_**

- (1) The accounting officer may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.
- (2) Consultancy services must be procured through competitive bids if:
  - (a) the value of the contract exceeds R200 000 (VAT included); or
  - (b) the duration period of the contract exceeds one year.
- (3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of –
  - (a) all consultancy services provided to an organ of state in the last five years; and
  - (b) any similar consultancy services provided to an organ of state in the last five years.
- (4) The 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.

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

- (1) The accounting officer may –
  - (a) dispense with the official procurement processes established by this Policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only –

- (i) in an emergency (breakages after hours, situations that may lead to health, safety hazards or death, serious hampering of official service delivery to the community);
  - (ii) if such goods or services are produced or available from a single provider only
  - (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
  - (iv) acquisition of animals for zoos and/or nature and game reserves; or
  - (v) in any other exceptional case or case of urgency where it is impractical or impossible to follow the official procurement processes
- (b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.
- (2) The accounting officer must record the reasons for any deviations in terms of subparagraphs (1)(a) and (b) of this policy and report them to the next meeting of the council and include as a note to the annual financial statements.
- (3) Subparagraph (2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this policy.

### **37. Unsolicited Bids**

- (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- (2) The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if –
  - (a) the product or service offered in terms of the bid is a demonstrably or proven unique

- innovative concept;
- (b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
  - (c) the person who made the bid is the sole provider of the product or service; and
  - (d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
- (3) If the accounting officer decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with –
- (a) reasons as to why the bid should not be open to other competitors;
  - (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
  - (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) The accounting officer must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, to the National Treasury and the relevant provincial treasury for comment.
- (5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, depending on its delegations.
- (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (7) When considering the matter, the adjudication committee must take into account –
- (a) any comments submitted by the public; and
  - (b) any written comments and recommendations of the National Treasury or the relevant provincial treasury.

- (8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the accounting officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.
- (9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality to the bid may be entered into or signed within 30 days of the submission.

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

- (1) The accounting officer must–
  - (a) take all reasonable steps to prevent abuse of the supply chain management system;
  - (b) investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this Policy, and when justified:–
    - (i) take appropriate steps against such official or other role player; or
    - (ii) report any alleged criminal conduct to the South African Police Service;
  - (c) check the National Treasury’s database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited or restricted from doing business with the public sector;
  - (d) reject any bid from a bidder–
    - (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality, or to any other municipality or municipal entity, are in arrears for more than three months; or

- (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory (see circular 46 of the NT MFMA circular dated 17 March 2008);
- (e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
- (f) cancel a contract awarded to a person if –
  - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
  - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
- (g) reject the bid of any bidder if that bidder or any of its directors –
  - (i) has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;
  - (ii) has been convicted for fraud or corruption during the past five years;
  - (iii) has wilfully 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 (No 12 of 2004) or Data base of restricted suppliers.

- (2) The accounting officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) of this policy.

### **PART 3: LOGISTICS, DISPOSAL, RISK AND PERFORMANCE MANAGEMENT**

#### **39. Logistics management**

The accounting officer must, where applicable, establish and implement an effective system of logistics management, which must include –

- (a) the monitoring of spending patterns on types or classes of goods and services incorporating, where practical, the coding of items to ensure that each item has a unique number;
- (b) the setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;
- (c) the placing of manual or electronic orders for all acquisitions other than those from petty cash;
- (d) before payment is approved, certification by the responsible officer that the goods and services are received or rendered on time and is in accordance with the order, the general conditions of contract and specifications where applicable and that the price charged is as quoted in terms of a contract;
- (e) appropriate standards of internal control and warehouse management to ensure that goods placed in stores are secure and only used for the purpose for which they were purchased;
- (f) regular checking to ensure that all assets including official vehicles are properly managed, appropriately maintained and only used for official purposes; and

- (g) monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for particular goods or services.

**40. Disposal management**

- (1) The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act, will be determined for each situation in collaboration with the PPPFA Act, its regulates and amendments.
- (2) Assets may be disposed of by –
- (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
  - (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
  - (iii) selling the asset; or
  - (iv) destroying the asset.
- (3) The accounting officer must ensure that –
- (a) immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise
  - (b) movable assets are sold once council has declared the items redundant, either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous and sold to the bidder who submitted the highest price.
  - (c) firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;
  - (d) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;



- (e) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;
- (f) where assets are traded in for other assets, the highest possible trade-in price is negotiated; and
- (g) in the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment.

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

- (1) The criteria for the identification, consideration and avoidance of potential risks in the supply chain management system, will be determined for each situation.
- (2) Risk management must include –
  - (a) the identification of risks on a case-by-case basis;
  - (b) the allocation of risks to the party best suited to manage such risks;
  - (c) acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
  - (d) the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
  - (e) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

#### **42. Performancemanagement**

The accounting officer must establish and implement an internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes were followed and whether the objectives of this Policy were achieved.

#### **PART 4: OTHER MATTERS**

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

- (1) No award above R15 000 may be made in terms of this Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (2) Before making an award to a person the accounting officer must first check with SARS whether that person's tax matters are in order.
- (3) All tax verifications to be done in line with the latest Tax Compliance Status system as introduced by SARS on 18 April 2016.

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

Irrespective of the procurement process followed, no award may be made to a person in terms of this Policy who is –

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

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

The accounting officer must ensure that the notes to the annual financial statements disclose particulars of any award of more than R2 000-00 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –

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

**46. Ethical standards**

- (1) A code of ethical standards as set out in ***subparagraph (2) of the “National Treasury’s code of conduct for supply chain management practitioners and other role players involved in supply chain management”*** is hereby established for officials and other role players in the supply chain management system of the municipality in order to promote –
  - (a) mutual trust and respect; and
  - (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
- (2) A breach of the code of ethics must be dealt with as follows –
  - (a) in the case of an employee, in terms of the disciplinary procedures of the municipality envisaged in section 67(1)(h) of the Municipal Systems Act;

- (b) in the case a role player who is not an employee, through other appropriate means in recognition of the severity of the breach.
  - (c) in all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act.
- (3) Nyandeni Local Municipality adopts National Treasury's code of conduct for supply chain management practitioners and other role players involved in supply chain management".

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

- (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
  - (a) any inducement or reward to the or in connection with the award of a contract; or
  - (b) any reward, gift, favour or hospitality to –
    - (i) any official; or
    - (ii) any other role player involved in the implementation of this Policy.
- (2) The accounting officer must promptly report any alleged contravention of subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
- (2) Section 47(1) does not apply to gifts less than R350 in value.

**48. Sponsorships**

The accounting officer must promptly disclose to the National Treasury and the relevant provincial treasury any sponsorship promised, offered or granted, whether directly or through a representative or intermediary, by any person who is –

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

**49. Objections and complaints**

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

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

- (1) The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes –
  - (a) to assist in the resolution of disputes between the municipality and other persons regarding –
    - (i) any decisions or actions taken in the implementation of the supply chain management system; or
    - (ii) any matter arising from a contract awarded in the course of the supply chain management system; or
  - (b) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.
- (2) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.

- (3) The person appointed must –
  - (a) strive to resolve promptly all disputes, objections, complaints or queries received; and
  - (b) submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.
- (4) A dispute, objection, complaint or query may be referred to the relevant provincial treasury if –
  - (a) the dispute, objection, complaint or query is not resolved within 60 days; or
  - (b) no response is forthcoming within 60 days.
- (5) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.
- (6) This paragraph must not be read as affecting a person's rights to approach a court at any time.

**51. 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) that such compensation must be performance based.

**52. Process for the Restriction of Suppliers from doing business with Council**

The Accounting Officer is empowered to restrict companies or persons from doing business with the public sector for a period not exceeding 10 years if such companies or persons have

obtained preferences fraudulently or failed to perform on a contract based on the specified goals.

The procedures to be followed when contemplating and imposing such restrictions are contained in MFMA Circulars No. 43, 46, 52 and 56 available on the National Treasury website. Any restriction imposed by an Accounting Officer must be forwarded to the National Treasury for loading onto the central Database of Restricted Suppliers.

#### **54. Commencement**

This Policy takes effect on 01 July 2018.

This policy should be read together with all MFMA Circulars released by National Treasury.