

Abaqulusi Municipality

SUPPLY CHAIN MANAGEMENT POLICY

2018 -2019



MUNICIPAL SUPPLY CHAIN MANAGEMENT POLICY

LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003

Date of adoption: 24 May 2018

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

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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 **Municipal Finance Management Act, no 56 of 2003**, has the same meaning as in the Act, and –

“Accounting Officer” in relation to a Municipality means the municipal manager as described in Section 60 of the Local Government: Municipal Finance Management Act, no 56 of 2003.

“CFO” means Chief Financial Officer of the Municipality or Executive Director of finance.

“CIDB” means Construction Industry Development Board.

“Close family member” means”

- (a) Spouse or partner
- (b) Parent
- (c) Children

“Closing date” Means the time and day specified in the bid documents and/or advertisement of the receipt.

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

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

“contract” means agreement that results from the acceptance of a bid by the Municipality.

“consultants” means consulting firms, engineering firms, legal firms, construction managers, management firms, procurement agents, inspection agents, auditors, other multinational organizations, investments and merchant banks, universities, research agencies, government agencies, non-governmental (NGO’s) and individuals.

“delegation” in relation to a duty, includes an instruction a request to perform or to assist in performing the duty

“emergency” means a serious, unexpected, unforeseen and potentially dangerous and damaging situation requiring immediate action and which is not due to a lack of planning.

“exceptional case” means unusually circumstances or impossible to follow procurement processes.

“executive director” means a person in the employment of AbaQulusi Municipality who heads a directorate or who reports to the Municipal Manager.

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

“financial interest” means where a municipal staff member is a close family member of a person who is the owner, partner, principal shareholder or member, manager or who serves on the board of directors, etc of a tendering enterprise.

“formal written price quotation” means quotations referred to in paragraph 12 (1) (c) of this Policy;

“IDP” means Integrated Development Plan.

“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;

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

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

“Municipality” means the AbaQulusi Municipality

“Municipal Systems Act” means the Local Government: Municipal System Act 32 of 2000.

“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);

“treasury guidelines” means any guidelines on Supply Chain Management issued by the Minister in terms of section 168 of the Act;

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

“the regulations” means the Local Government: Municipal Finance Management Act, 2003, Municipal Supply Chain Management Regulations published by Government Notice 868 of 2005;

“validity period” means the period for which a bid is to remain valid and binding as stipulated in the relevant tender document.

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

“PPPFA” means the preferential procurement policy framework Act, no 5 of 2000.

CHAPTER 1
IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

Supply chain management policy

2. (1) All officials and other role players in the supply chain management system of the **AbaQulusi 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.
 - (g) assign responsibility for the implementation of the policy to the Accounting Officer of the Municipality.
- (2) The Municipality may not act otherwise than in accordance with this Supply Chain Management Policy when:
- (a) procures goods or services;
 - (b) disposes of 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.

Amendment of the supply chain management policy

3. (1) The accounting officer must –

- (a) at least annually review the implementation of this Policy; and
- (b) when the accounting officer considers it necessary, submit proposals for the amendment of this Policy to the **council**

(2) If the accounting officer submits proposed amendments to the **council** that differs from the model policy issued by the National Treasury, the accounting officer must –

- (a) ensure that such proposed amendments comply with the Regulations; and
- (b) report any deviation from the model policy to the National Treasury and the KZN Provincial Treasury.

(3) When amending this supply chain management policy the need for uniformity in supply chain practices, procedures and forms between organs of in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.

(4) The accounting officer must, in terms of section 62(1) (f) (i) of the Act, take all reasonable steps to ensure that the Municipality has and implements this Supply Chain Management Policy.

Delegation of supply chain management powers and duties

4. (1) The **council** hereby delegates all powers and duties to the accounting officer which are necessary to enable the accounting officer –

(a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –

- (i) Chapter 8 or 10 of the Act; and
- (ii) this Policy;

- (b) to maximise administrative and operational efficiency in the implementation of this Policy;
- (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this Policy; and
- (d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.

(2) Sections 79 and 106 of the Act apply to the sub-delegation of powers and duties delegated to an accounting officer in terms of subparagraph (1).

(3) The accounting officer may not sub-delegate any supply chain management powers or duties to a person who is not an official of **the 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.

Sub-delegations

5. (1) The accounting officer may in terms of section 79 or 106 of the Act sub-delegate any supply chain management powers and duties, including those delegated to the accounting officer in terms of this Policy, but any such sub-delegation must be consistent with subparagraph (2) of this paragraph and paragraph 4 of this Policy.

(2) The power to make a final award –

- (a) above R10 million (VAT included) may not be sub-delegated by the accounting officer;

- (b) above R200k (VAT included), but not exceeding R10 million (VAT included), may be sub-delegated but only to –
 - (i) the chief financial officer;
 - (ii) a senior manager; or
 - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or
- (c) above R30K (VAT included), but not exceeding R200 k may be sub-delegated but only to –
 - (i) the bid evaluation committee;
 - (ii) the chief financial officer;
- (3) An official or bid adjudication committee to which the power to make final awards has been sub-delegated in accordance with subparagraph
- (4) must within five days of the end of each month submit to the official referred to in subparagraph (4) a written report containing particulars of each final award made by such official or committee during that month, including–
 - (a) the amount of the award;
 - (b) the name of the person to whom the award was made; and
 - (c) the reason why the award was made to that person.
- (5) A written report referred to in subparagraph (3) must be submitted –
 - (a) to the accounting officer, in the case of an award by –
 - (i) the chief financial officer;
 - (ii) a senior manager; or
 - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or
 - (b) to the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by –
 - (i) a manager referred to in subparagraph (2)(c)(iii); or
 - (ii) a bid adjudication committee of which the chief financial officer or a senior manager is not a member.

- (4) Subparagraphs (3) and (4) of this policy do not apply to procurements out of petty cash.
- (5) 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.
- (6) No supply chain management decision-making powers may be delegated to an advisor or consultant.

Oversight role of council

- 6. (1) The **council** reserves its right to maintain oversight over the implementation of this Policy.
- (2) For the purposes of such oversight the accounting officer must –
 - (a) (i) within thirty (30) days of the end of each financial year, submit a report on the implementation of this Policy and the supply chain management policy of any municipal entity under the sole or shared control of the municipality, to the council of the municipality; and
 - (ii) whenever there are serious and material problems in the implementation of this Policy, immediately submit a report **to the council**,
- (3) The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to **the mayor**.
- (4) The reports must be made public in accordance with section 21A of the Municipal Systems Act.

Supply chain management unit

7. (1) The Accounting Officer must ensure that the supply chain management unit is established , ideally within the Budget & Treasury Office to implement this Policy.

(2) The supply chain management unit **must** operate under the direct supervision of the chief financial officer or an official to whom this duty has been delegated in terms of section 82 of the Act.

Training of supply chain management officials

8. The training of officials involved in implementing this Policy should be in accordance with any Treasury guidelines on supply chain management training, but not limited to circular provisions as outlined in MFMA Circular No. 60: Minimum Competency Level Regulations, Gazette 29967 of 15 June 2017.

CHAPTER 2

SUPPLY CHAIN MANAGEMENT SYSTEM

Format of supply chain management system

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

Part 1: Demand management

System of demand management

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

Part 2: Acquisition management

System of acquisition management

- 11.** (1) The accounting officer must implement the system of acquisition management set out in this Part in order to ensure –
- (a) that goods and services are procured by **the municipality** in accordance with authorised processes only;
 - (b) that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
 - (c) that the threshold values for the different procurement processes are complied with;
 - (d) that **the 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 on acquisition management are properly taken into account.

(2) When procuring goods or services contemplated in section 110(2) of the Act, the accounting officer must make public the fact that such goods or services are procured otherwise than through the **municipality's** supply chain management system, including -

- (a) the kind of goods or services; and
- (b) the name of the supplier.

Range of procurement processes

- 12.** (1) Goods and services may only be procured by way of –
- (a) petty cash purchases, up to a transaction value of R2 000 (VAT included) in terms of approved Petty Cash Policy ;
 - (b) written or verbal quotations for procurements of a transaction value over R2 000 up to R10 000 (VAT included);

- (c) formal written price quotations for procurements of a transaction value over R10 000 up to R200 000 (VAT included); and
- (d) a competitive bidding process for–
 - (i) procurements above a transaction value of R200 000 (VAT included); and
 - (ii) the procurement of long term contracts.

- (2) The accounting officer **may**, in writing-
 - (a) lower, but not increase, the different threshold values specified in subparagraph (1); or
 - (b) direct that –
 - (i) written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000 (over R3k up to R10K);
 - (ii) formal written price quotations be obtained for any specific procurement of a transaction value lower than (R30k) (VAT Incl.); or
 - (iii) a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000 (VAT Incl.)

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

General preconditions for consideration of written quotations or bids

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

- (iii) tax reference number and VAT registration number, if any;
- (b) has authorised the **municipality** to obtain a tax clearance from the South African Revenue Services that the provider's tax matters are in order; and
 - (i) In the case of transactions exceeding R 10 000 (VAT Incl.); a valid original Tax clearance certificate must accompany the bid documents unless the bidder is registered on the accredited supplier database of the municipality and the municipality has a valid original tax clearance certificate on record. The onus is on the bidder to ensure that the municipality has an original tax clearance certificate on record. If the South African Revenue Services (SARS) cannot provide a valid original tax clearance certificate; the bidder must submit a letter from SARS on an original SARS letterhead that their tax matters are in order.
 - (ii) if the bid of the preferred bidder is not supported by a valid original tax clearance certificate, either as an attachment to the bid documents or on record in the case of suppliers registered on the supplier database of the municipality, the municipality reserves the right to obtain such document, within a time as specified by the municipality, after the closing date to verify that the bidder's tax matters are in order. If no such document can be obtained, the bid must be disqualified; and
- (c) has indicated –
 - (i) whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
 - (ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
 - (iii) whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to in subparagraph (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.

Lists of accredited prospective providers - AbaQulusi Suppliers Database

14. (1) The accounting officer must –
- (a) keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements through written or verbal quotations and formal written price quotations; and
 - (b) at least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
 - (c) specify the listing criteria for accredited prospective providers; and
 - (d) disallow the listing of any prospective provider whose name appears on the National Treasury'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. Prospective providers must be allowed to submit applications for listing at any time.
- (3) The list must be compiled per commodity and per type of service.

National Treasury's Web Based Central Supplier Database (CSD)

- (4) In addition to the requirements of the AbaQulusi Suppliers Database, it is a requirement for all Suppliers must be registered on the National Treasury Web Based Central Supplier Database (CSD) that can be accessed at <https://secure.csd.gov.za>
- (5) Prospective suppliers shall be allowed to submit applications for registration and amendments for listing on the CSD at any time and agree to the terms and conditions of the CSD.
- (6) Bidders who are not registered on the CSD are not precluded from submitting bids, but must however register when called upon to do so.

- (7) Prospective suppliers must notify the municipality immediately upon receipt of their CSD Reference Number (MAAA....) for this to be captured onto the AbaQulusi Municipality Suppliers Database
- (8) The function of implementation and management of the list of accredited prospective providers is delegated to the Head: Supply Chain Management or his/her delegate

NB: Bidders who are not registered on the Municipal Suppliers Database are not precluded from submitting bids, but must however register when called upon to do so.

Petty cash purchases

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

- (a) The Manager : Expenditure may, in writing delegate responsibility to monitor for petty cash to an official reporting to the Manager : Expenditure on the following terms on which a manager may delegate responsibility for petty cash to an official reporting to the manager; wherein:-
 - (i) only the manager must approve or authorize the petty cash voucher;
 - (ii) signed authorized petty cash voucher with the slip must be filed and recorded in a petty cash register;
 - (iii) the Petty cash box must always be locked in a secured safe when it is not in use;
 - (iv) the Manager: Expenditure must verify the petty cash reconciliation in every incident it is replenished;
 - (v) the Manager: Expenditure will make random inspections of petty cash float as he/she deems fit; at least once a month.
- (b) Cash purchases are limited to an amount of R 200.00 per transaction and the maximum amount of R 2000 per month for each manager;
- (c) no salary related expenditure may be expedited from petty cash transaction purchases; and

- (d) a monthly reconciliation report from each manager must be provided to the chief financial officer, including –
 - (i) the total amount of petty cash purchases for that month; and
 - (ii) receipts and appropriate documents for each purchase.

Written or verbal quotations

16. The conditions for the procurement of goods or services through written or verbal quotations, are as follows:

- (a) Quotations must be obtained from at least three different providers 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)(b) and (c) of this Policy;
- (b) to the extent feasible, providers must be requested to submit such quotations in writing;
- (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the accounting officer or another official designated by the accounting officer;
- (d) the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices; and
- (e) if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.

Formal written price quotations

17. (1) The conditions for the procurement of goods or services through formal written price quotations, are as follows:

- (a) quotations must be obtained in writing from at least three (3) different providers whose names appear on the list of accredited prospective providers of the **municipality**; and subject to Central Suppliers Database as issued by National Treasury

- (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.

(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.

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

18. The procedure for the procurement of goods or services through written or verbal quotations or formal written price quotations, is as follows:-

- (a) when using the list of accredited prospective providers the accounting officer i.e. in terms of relevant SCM delegation applicable to Standard Operating Procedures for sourcing of quotation through RFQ's, must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;
- (b) all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, **must be advertised for at least seven (7) days** on the council 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 through monthly SCM reporting and relevant tracking registers;

- (e) offers below R30 000 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;
- (e) acceptable offers, which are subject to the preference points system (PPPFA and associated regulations), must be awarded to the bidder who scored the highest points;
- (f) Council requirements for proper record keeping must be in line with the ffg. :-
 - (i) its own Document Management Policy (where available);
 - (ii) Process & Procedure for filing of SCM documents for audit purposes;
 - (iii) SCM Quality Assurance measures - to ensure information accuracy correctness of documents;
 - (iv) Vetting of information and documentation - prior to awards.

Competitive bids

19. (1) Goods or services above a transaction value of R200 000 (VAT included) and long term contracts may only be procured through a competitive bidding process, subject to paragraph 11(2) of this Policy.

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

Process for competitive bidding

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

- (a) Compilation of bidding documentation as detailed in paragraph 21;
- (b) Public invitation of bids as detailed in paragraph 22;
- (c) Site meetings or briefing sessions as detailed in paragraph 22;

- (d) Handling of bids submitted in response to public invitation as detailed in paragraph 23;
- (e) Evaluation of bids as detailed in paragraph 28;
- (f) Award of contracts as detailed in paragraph 29;
- (g) Administration of contracts
 - (i) ***After approval of a bid, the accounting officer and the bidder must enter into a written contract agreement.***
- (h) Proper record keeping
 - (i) ***Original / legal copies of written contract agreements should be kept in a secure place for reference purposes.***

Bid documentation for competitive bids

21. The criteria to which bid documentation for a competitive bidding process must comply, must –

- (a) take into account –
 - (i) the general conditions of contract and any special conditions of contract, if specified;
 - (ii) any Treasury guidelines on bid documentation; and
 - (iii) the requirements of the **Construction Industry Development Board**, if the bid relates to construction works as contemplated by the Construction Industry Development Board Act, but not limited to the National Treasury's Standard for Infrastructure Delivery Management System (SIPDMS) in terms of MFMA Circular No.77 to the extent adopted by Council.
- (b) include the preference points system to be used, B-BBEE goals as contemplated in the Preferential Procurement Regulations and evaluation and adjudication criteria, including any criteria required by other applicable legislation but not limited to Provincial initiatives as endorsed by the KZN Provincial Cabinet to regularize past economic imbalances;
- (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 thirty (30) days;
 - (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
 - (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.
- (f) In the absence of formal construction or technical contracts, e.g. JBCC and General Conditions of Contract, in which guarantees/sureties are contained, the following shall apply:
- (i) where surety is required it shall be in form of cash or bank guarantee from a banking institution registered in terms of the bank Act, 1990 (Act No. 94 of 1990) or from an insurer registered in terms of the insurance Act, 2002 (Act No. 30 of 2002). Where bids in the category A cannot raise the required surety of 2.5%, and it is feasible to deduct the amount from the preliminary and general payment certificate, such concessions may be granted;

Guarantees will be required as follows:

Category	Project value	Guarantee
A	<R500 000	2.5%
B	R500 001 - R1000 000	5%
C	R1000 001- R2000 000	7%
D	>R2000 000	10%

- (g) indicate the value or extent to which the execution of the contract should or should not be subcontracted;
 - (g) submit a certificate from the Department of Labour indicating compliance with the Occupational Health & Safety Act, 1993 (Act No. 85 of 1993);
 - (h) any other criteria determined by the Accounting Officer; and
 - (i) the amount and period of retention.
- (2) A non-refundable charge shall be raised for bid forms, plans, specifications, samples and any other bid documentation, depending on the nature, magnitude and value of the technical information or samples provided by the municipality for tenders in excess of R 200 000.
- (3) Bid documents may allow for bidders to bid for more than one or more items or for a part of one or more items but the municipality reserve the right to accept part of a bid or a complete bid or quotation even if it is not the lowest, provided the interests of the Municipality are the best served thereby. Bid documents must be specific as certain contracts, e.g. the construction of a bridge, may require that the whole contract is to be completed by the same contractor.
- (4) Where bidders insert prices on the price list supplied by the Municipality they shall delete items for which they do not bid or if the price has been included elsewhere in the price list. After bid/quotations have been opened bidders may not supplement their original offer if the original offer was incomplete.

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 thirty (30) days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or fourteen (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
 - (iii) **date, time and venue** of any proposed site meetings or briefing sessions;
- (2) The accounting officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.
- (3) Bids submitted must be sealed.
- (4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

Procedure for handling, opening and recording of bids

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

- (a) Bids–
- (i) must be opened only in public;
 - (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
 - (iii) received after the closing time should not be considered and returned unopened immediately.

- (a) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price;
- (b) No information, except the provisions in subparagraph (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
- (d) The accounting officer must ensure that SCM system through SCM Unit –
 - (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.
 - (iv) notify the successful and unsuccessful bidders in writing

(2) Stamping of Bid documents and recording:

- (a) Each bid must be opened and the name of the bidder and the amount shall be read out.
- (b) Each Bid must be recorded on the Bid Opening Register
- (c) Delegated SCM Official/s must date-stamp the bid document with an official Council stamp in line with the sequence of MBD documentation but not limited to Form of Offer for prices, delivery periods and special conditions etc.
- (d) Where there are omissions and incompleteness on bidding information e.g. prices have not been inserted on the form; and such items must be noted to ensure tampering with documentation.

NB: it is the policy of AqaQulusi Municipality to disclose bid prices. With regard to quotations of a value below R 200 000 (VAT included), names of bidders and prices will also be read out publicly at opening and recorded on the register which must be made available for inspection at the Supply Chain Management Unit office.

(3) Late bids:-

- (a) Bids or quotations delivered after the specified closing time will not be considered - where practicable and cost effective, must be returned to the bidder unopened, provided there is a return address visible;

- (b) Conditions of Bids must always be adhered to - no bids to be considered if delivered to the wrong bid box if venue and address have been clearly stated;
- (c) Under no circumstance must Bids be opened, wherein the late bid document envelope does not contain information of the name and address of the sender to necessitate return of the documents

(4) Amendments before the closing date:

The municipality is entitled to amend any bid condition, validity period, specification or plan, or extend the closing date of such a bid or quotation before the closing date, provided that such amendments or extensions are advertised and/or that all bidders to whom bid documents have been issued, are advised in writing per registered post or by fax of such amendments or of the extension clearly reflecting the new closing date and time. For this reason, employees and authorized service providers issuing bids shall keep a record of the names, addresses and contact numbers of the persons or enterprises to whom bid documents have been issued.

(5) Dealing with bids and quotations if the closing date thereof has been extended:-

Where the closing date of a bid or quotation is extended, the notice which makes known such extensions shall also mention the bids or quotations already received, will be retained unopened in the bidding box and be duly considered after the expiry of the extended period, unless the bidder requests that such bid or quotation to be returned to the bidder or unless the bidder cancels it by submitting a later dated bid or quotation before the extended closing date.

(6) No amendments after the closing date allowed.

- (a) The Municipality is not entitled to amend any bid condition, specification or plan, after the closing date of the bid and before the acceptance of a bid or quotation has been notified.

- (b) No person may amend or tamper with any tenders, quotations, contracts or bids after submission.

Negotiations with preferred bidders

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

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

(2) Minutes of such negotiations must be kept for record purposes

Two-stage bidding process

25. (1) A two-stage bidding process is allowed for –

- (a) large complex projects;
- (b) projects where it may be undesirable to prepare complete detailed technical specifications; or
- (c) long term projects with a duration period exceeding three years.

(2) In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.

(3) In the second stage final technical proposals and priced bids should be invited.

Committee system for competitive bids

26. (1) A committee system for competitive bids is hereby established, consisting of the following committees for each procurement or cluster of procurements as the

accounting officer may determine and relevant considerations to implement SIPDM be made in terms of SCM Infrastructure Policy

- (a) a bid specification committee;
- (b) a bid evaluation committee; and
- (c) a bid adjudication committee;

(2) The accounting officer appoints the members of each committee, taking into account section 117 of the Act; and

(3) A neutral or independent observer, appointed by the accounting officer, must attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.

(4) The committee system must be consistent with –

- (a) paragraph 27, 28 and 29 of this Policy; and
- (b) any other applicable legislation to consider SIPDM for infrastructure procurement ;

(5) The accounting officer may apply the committee system to formal written price quotations, subject to sub-delegation and justifiable grounds to ensure transparency.

Bid specification committees

27. (1) A bid specification committee must compile the specifications for each procurement of goods or services by the **municipality**.

(2) Specifications –

- (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
- (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation (ISO), or an authority

- accredited or recognized by the South African National Accreditation System with which the equipment or material or workmanship should comply;
- (c) must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
 - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labeling of conformity certification;
 - (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word “equivalent”;
 - (f) must indicate each specific B-BBEE goals for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2001; and
 - (g) must be approved by the accounting officer , subject to report submission from Bid Specifications Committee Chairperson, prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.

(3) A bid specification committee must be composed of one or more officials of the **municipality** preferably the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.

(4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.

Bid evaluation committees

- 28.** (1) A bid evaluation committee must –
- (a) evaluate bids in accordance with –
 - (i) the specifications for a specific procurement; and
 - (ii) the points system set out in terms of paragraph 27(2)(f).
 - (iii) the general criteria to evaluate technical and financial ability
 - (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, signed by the BEC Chairperson, and recommendations regarding the award of the bid or any other related matter.

(2) A bid evaluation committee must as far as possible be composed of-

- (a) officials from departments requiring the goods or services; and
- (b) at least one supply chain management practitioner of the **municipality**.
- (c) any other Council officials that may be appointed by the Accounting Officer

(3) The Accounting Officer must appoint one Senior Manager as the Chairperson of the Bid Evaluation Committee.

(4) Each meeting of the Bid Evaluation Committee must meet a quorum of 50% + 1, and at least one Senior Supply Chain Practitioner and a representative of the relevant directorate.

Bid adjudication committees

29. (1) A bid adjudication committee must –

- (a) consider the report and recommendations of the bid evaluation committee; and
- (b) either –
 - (i) depending on its delegations, if below R10 m ,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 (4) senior managers of the **municipality** which must include –

- (a) the chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer; and
- (b) at least one senior supply chain management practitioner who is an official of the **municipality**; and
- (c) a technical expert in the relevant field who is an official, if such an expert exists.

(3) The accounting officer must appoint the chairperson of the committee, ideally the Chief Financial Officer. 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 ten (10) working days

Procurement of banking services

30. (1) A contract for banking services –
- (a) must be procured through competitive bids;
 - (b) must be consistent with section 7 or 85 of the Act; and
 - (c) may not be for a period of more than five years at a time.
- (2) The process for procuring a contract for banking services must commence at least nine (9) months before the end of an existing contract.
- (3) The closure date for the submission of bids may not be less than sixty (60) days from the date on which the advertisement is placed in a newspaper in terms of paragraph 22(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

Procurement of IT related goods or services

31. (1) The accounting officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.
- (2) Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.
- (3) The accounting officer must notify SITA together with a motivation of the IT needs if –
- (a) the transaction value of IT related goods or services required in any financial year will exceed R50 million (VAT included); or

(b) the transaction value of a contract to be procured whether for one or more years exceeds R50 million (VAT included).

(4) If SITA comments on the submission and the **municipality** disagrees with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the KZN Provincial Treasury and the Auditor General.

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

32. (1) The accounting officer may procure goods or services under a contract secured by another organ of state, but only if –

- (a) the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
- (b) there is no reason to believe that such contract was not validly procured;
- (c) there are **demonstrable discounts or benefits** to do so; and
- (d) that other organ of state and the provider have consented to such procurement in writing.

(2) Subparagraphs (1)(c) and (d) do not apply if –

- (a) a municipal entity procures goods or services through a contract secured by its parent municipality; or
- (b) a municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.

(3) The compliance provisions for use must be dealt with in terms of KZN Municipal Circular no. 01A/2016 , in terms of approval by KZN Provincial Treasury once merits of Subparagraph (1) (a) to (d) have been vetted on the submission for AqaQulusi to dispense with procurement under this regulatory parameter.

Procurement of goods necessitating special safety arrangements

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

(2) Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership, cost advantages and environmental impact and must be approved by the accounting officer.

Proudly SA Campaign

34. The municipality supports the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services. The rationale is to set aside minimum local content thresholds as determined by the Department of Trade and Industry in respect of designated sectors, in line with Preferential Procurement targets from:-

- Firstly - suppliers and businesses within AbaQulusi municipality and/or Zululand district;
- Secondly - suppliers and businesses within the KZN province;
- Thirdly - suppliers and businesses within the Republic of South Africa.

Appointment of consultants

35. (1) The accounting officer may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.

(2) Consultancy services must be procured through competitive bids if

- (a) the value of the contract exceeds R200 000 (VAT included); or
- (b) the duration period of the contract exceeds one year.

(3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of –

- (a) all consultancy services provided to an organ of state in the last five years; and
- (b) any similar consultancy services provided to an organ of state in the last five years.

(4) The accounting officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the **municipality**.

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

36. (1) The accounting officer may –

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

(i) in an emergency;

(ii) if such goods or services are produced or available from a single provider only;

(iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;

(iv) acquisition of animals for zoos and/or nature and game reserves; or

(v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and

(b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.

(2) The accounting officer must record the reasons for any deviations in terms of subparagraphs (1)(a) and (b) of this policy and report them to the next meeting of the council and include as a note to the annual financial statements.

(3) Subparagraph (2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this policy.

Unsolicited bids

37. (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.

(2) The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if –

- (a) the product or service offered in terms of the bid is a **demonstrably or proven unique innovative concept;**
- (b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
- (c) the person who made the bid is the sole provider of the product or service; and
- (d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.

(3) If the accounting officer decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with –

- (a) reasons as to why the bid should not be open to other competitors;
- (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
- (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.

(4) The accounting officer must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, to the National Treasury and the KZN 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 KZN Provincial Treasury.
- (8) If any recommendations of the National Treasury or the KZN Provincial Treasury are rejected or not followed, the accounting officer must submit to the Auditor General, the KZN Provincial Treasury and the National Treasury the reasons for rejecting or not following those recommendations.
- (9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the **municipality** to the bid may be entered into or signed within 30 days of the submission.

Combating of abuse of supply chain management system

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

- (e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
 - (f) cancel a contract awarded to a person if –
 - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
 - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
 - (g) reject the bid of any bidder if that bidder or any of its directors –
 - (i) has abused the supply chain management system of the **municipality** or has committed any improper conduct in relation to such system;
 - (ii) has been convicted for fraud or corruption during the past five years;
 - (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 (No 12 of 2004).
- (2) The accounting officer must inform the National Treasury and the KZN Provincial Treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) of this policy.

Part 3: Logistics, Disposal, Risk and Performance Management

Logistics management

39. The accounting officer must establish and implement an effective system of logistics management, which must include -

- (a) the monitoring of spending patterns on types or classes of goods and services incorporating, where practical, the coding of items to ensure that each item has a unique number;

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

Disposal management

40. (1) The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act, but not limited to the Municipal Assets Transfer Regulations ;

(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.

(4) The accounting officer must ensure that :–

- (a) immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
- (b) movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
- (c) firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;
- (d) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;
- (e) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;
- (f) where assets are traded in for other assets, the highest possible trade-in price is negotiated; and
- (g) in the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment
- (h) immovable assets may only be rented/let out if the property zoning and usage in terms of Town Planning Scheme of the municipality established in terms of the Kwazulu-Natal Planning and Development Act no.66 of 2008; allows that, or any municipality's relevant regulations and policies provided for the renting/letting of properties.
- (i) movable assets must only be rented/leased to another party in terms of the AbaQulusi municipality's Rental and Lease policy.

Risk management

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

(a) the overall risk strategy for the municipality as per internal audit plan in line with policy directive

(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.

Performance management

42. 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

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

43. (1) No award above R10 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) If SARS does not respond within seven (7) days such person's tax matters may for purposes of subparagraph (1) be presumed to be in order.

Prohibition on awards to persons in the service of the state

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

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

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

45. The accounting officer must ensure that the notes to the annual financial statements disclose particulars of any award of more than R2000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –

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

Ethical standards

46. (1) A code of ethical standards as set out in **the subparagraph (2)** is hereby established for officials and other role players in the supply chain management system of the **AbaQulusi 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.
- (c) Contain measures to ensure that appropriate action is taken against any official or other role player who commits a breach of the code of conduct of ethical standards

(2) An official or other role player involved in the implementation of this Policy –

- (a) must treat all providers and potential providers equitably;
- (b) may not use his or her position for private gain or to improperly benefit another person;

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

(3) Declarations in terms of subparagraphs (2)(d) and (e) -

- (a) must be recorded in a register which the accounting officer must keep for this purpose;
- (b) by the accounting officer must be made to **the mayor of the municipality** who must ensure that such declarations are recorded in the register.

(4) The National Treasury's code of conduct must also be taken into account by supply chain management practitioners and other role players involved in supply chain management.

- (5) 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.
- (6) A breach of the code of conduct adopted by the Municipality must be dealt with in accordance with Schedule 1 (code of Conduct for Councillors) and Schedule 2 (Code of Conduct for Municipal Staff Members) of the Municipal Systems Act, No 32 of 2000.

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

47. (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
- (a) any inducement or reward to the **municipality** for or in connection with the award of a contract; or
 - (b) any reward, gift, favour or hospitality to –
 - (i) any official; or
 - (ii) any other role player involved in the implementation of this Policy.
- (2) The accounting officer must promptly report any alleged contravention of subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.

- (3) Subparagraph (1) does not apply to **gifts less than R350** in value.

Sponsorships

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

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

Objections and complaints

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

- (a) if the objection or complaint is against the procurement process, submit a written objection or complaint against the decision or action to the accounting officer if the municipality who shall, in turn, within twenty (24) hours refer the written objection or complaint to the independent and impartial person referred to in paragraph 50 for resolution; or
- (b) if such complaint or objection is against the award of a bid, lodge a written appeal with the Municipal Bid Appeals Tribunal in accordance with the provisions of paragraph 50A.

Resolution of disputes, objections, complaints and queries

50. (1) The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes –

- (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 KZN 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 KZN 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.

50 A. Municipal Bid Appeals Tribunal

(1) The council shall establish a Municipal Bid Appeals Tribunal for its area of jurisdiction to hear and determine an appeal against the award of a bid.

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

Contracts providing for compensation based on turnover

51. If a service provider acts on behalf of 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
- (c) that such compensation must be performance based.

Commencement

52. This Policy takes effect on **31 May 2018**.

SUPPLY CHAIN MANAGEMENT POLICY

PART B

PREFERENTIAL PROCUREMENT POLICY adopted in terms of section 2 of the Preferential Procurement Policy Framework Act, No. 5 of 2000 and the Preferential Procurement Regulations, 2017

PREAMBLE

WHEREAS the Abaqulusi Municipality aims to improve the quality of life of the local community and to free the potential of each person within a framework of facilitating service delivery, through effective governance and the Council takes into account the need for transparent procedures that give the effect to the principle of preferential procurement;

AND WHEREAS local economic development plays a crucial role in creating a prosperous, equitable, stable and democratic society and the overall national vision of economic development is one of decent work and living standards for all in the context of qualitative improved equality in ownership, skills and access to opportunities;

NOW THEREFORE the Council of the Abaqulusi Municipality resolves in terms of section 2 of the Preferential Procurement Policy Framework Act, No. 5 of 2000 that the principles embodied in the Preferential Procurement Regulations, 2011 are herewith integrated into the Abaqulusi Municipality's Supply Chain Management Policy to form the basis of the evaluation criteria for quotations and competitive Bid's.

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SUPPLY CHAIN MANAGEMENT POLICY – PART B

PART ONE

DEFINITIONS AND APPLICATION

Definitions

1. In this policy, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:
 - (a) "**Act**" means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
 - (b) "**all applicable taxes**" includes Value-Added Tax, Pay-as-you-Earn, Income Tax, Unemployment Insurance Fund Contributions and Skills Development Levies;
 - (c) "**B-BBEE**" means Broad-Based Black Economic Empowerment as defined in Section 1 of the Broad-Based Black Economic Empowerment Act;
 - (d) "**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;
 - (e) "**Broad-Based Black Economic Empowerment Act**" (**B-BBEEA**) means the Broad-Based Black Economic Empowerment Act, 2003 (Act No.53 of 2003);
 - (f) "**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;
 - (g) "**Consortium or Joint Venture**" means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
 - (h) "**Contract**" means the agreement that results from the acceptance of a bid by the Abaqulusi Municipality;
 - (i) "**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

- (j) **"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;
- (k) **"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;
- (l) **"imported content"** means that portion of the tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad, plus freight and direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry;
- (m) **"local content"** means that portion of the tender price which is not included in the imported content, provided that local manufacture does take place;
- (n) **"Micro-Enterprise"** means a very small business, often involving only the owner, some family members and at the most one or two paid employees. They usually lack `formality` in terms of business licences, value-added tax (VAT) registration, formal business premises, operating permits, operating permits and accounting procedures. Most of them have a limited capital base and only rudimentary technical or business skills among their operators. However, many micro-enterprises advance into viable small businesses. Earning levels of micro-enterprises differ widely, depending on the particular sector, the growth phase of the business and access to relevant support.
- (o) **"Non-firm prices"** means all prices other than "firm" prices;
- (p) **"Person"** includes reference to a juristic person;
- (q) **"Rand value"** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations and includes all applicable taxes and excise duties;
- (r) **"stipulated minimum threshold"** means that portion of local production and content as determined by the Department of Trade and Industry;

- (s) **"Sub-Contract"** 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;
- (t) **"Survivalist Enterprise"** means a business set up by people unable to find a paid job or get into an economic sector of their choice. Income generated from these activities usually falls far short of even a minimum income standard, with little capital invested, virtually no skills training in the particular field and only limited opportunities for growth into a viable business. This category is characterised by poverty and the attempt to survive.
- (u) **"Tender"** means a written offer in a prescribed or stipulated form in response to an invitation by the Abaqulusi Municipality for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- (v) **"Total revenue"** bears the same meaning assigned to this expression as 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, 2003 and promulgated in the **Government Gazette** on 9 February 2007;
- (w) **"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; and
- (x) **"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.

2. Application, Objectives & General Requirements

2.1 Application

The Abaqulusi Municipality must, unless the Minister of Finance has directed otherwise,

only apply a preferential procurement system which is in accordance with the Regulations.

2.2 Objectives

The objectives of Councils' policy are to:

- (1) Provide clarity on the municipality's approach to procurement, particularly with regards to requirements of preferential procurement;
- (2) Provide access to contracts for historical disadvantaged individuals;
- (3) Promote participation by SMMEs as defined in Annexure D and as amended from time to time;
- (4) Promote capacity development and skills transfer; (5) Promote Local Economic Development.

2.3 General requirements

- (1) Any specific goal required for consideration in the bidding process must be clearly determined by the Bid Specification Committee and be defined in the bid documentation, taking into account prescriptions of the Construction Industry Development Board [CIDB] in respect of construction related contracts.
- (2) Outputs required will be quantified and will form part of the contractual arrangement upon awarding of the contract.

PART TWO

PREFERENCE POINT SYSTEM AND BROAD-BASED BLACK ECONOMIC EMPOWERMENT STATUS, EVALUATION OF BID'S ON FUNCTIONALITY, AWARD OF CONTRACTS TO BIDDERS NOT SCORING THE HIGHEST NUMBER OF POINTS AND THE CANCELLATION AND RE-INVITATION OF BID'S

3. Planning and stipulation of preference point system to be utilized

The Abaqulusi Municipality must, prior to making an invitation for BID's-

- (a) properly plan for, and, as far as possible, accurately estimate the costs of the provision of services, works or goods for which an invitation for BID's is to be made; and
- (b) determine and stipulate the appropriate preference point system to be utilized in the evaluation and adjudication of the BID's.
- (c) determine whether the services, works or goods for which an invitation is to be made has been designated for local production and content in terms of Paragraph 9.

4. Evaluation of BID's based on functionality

- (1) The Abaqulusi Municipality must in the bid documents indicate if, in respect of a particular bid invitation, BID's will also be evaluated on functionality;
- (2) The evaluation criteria for measuring functionality must be objective.
- (3) When evaluating BID's on functionality, the-
 - (a) evaluation criteria for measuring functionality,
 - (b) the weight of each criterion,
 - (c) the applicable values; as well as
 - (d) the minimum qualifying score for functionality, must be clearly indicated in the bid documents.
- (4) A bid must be disqualified if it fails to achieve the minimum qualifying score for functionality as indicated in the bid documents; and
- (5) BID's that have achieved the minimum qualification score for functionality must be evaluated further in terms of the preference point systems prescribed in Paragraph 5 and 6.

5. The 80/20 preference point system for acquisition of goods, works and / or services up to a Rand value of R 50 million

80/20 preference point system for acquisition of goods or services for Rand value equal to or above R30 000 and up to R50 million

- (1)(a) The following formula must be used to calculate the points for price in respect of competitive BID's / price quotations with a Rand value equal to, or above R 30 000 and up to a

Rand value of R50 000 000 (all applicable taxes included):

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

Where

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

P_t = Comparative price of bid / offer under consideration

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

(1)(b) The Abaqulusi Municipality may, however, apply this formula for price quotations with a value less than R 30 000, if and when appropriate.

(2) A maximum of 20 points must be awarded to a bidder for attaining the B-BBEE status level contemplated in the B-BBEE Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, 2003 and promulgated in the **Government Gazette** on 9 February 2007.

(3) Points must be awarded to a bidder on the following basis:

B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

(4) The points scored by a bidder in respect of B-BBEE contribution contemplated in sub-regulation (3) must be added to the points scored for price.

(5) Only the bid with the highest number of points scored may be selected.

6. **The 90/10 preference point system for acquisition of goods, works and / or services with a Rand value above 90/10 preference point system for acquisition of goods or services with Rand value above R50 million**

- (1) The following formula must be used to calculate the points for price in respect of BID's with a Rand value above R 50 000 000 (all applicable taxes included):

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

Where

P_s = Points scored for comparative price of tender or offer under consideration; P_t = Comparative price of tender or offer under consideration; and
 P_{min} = Comparative price of lowest acceptable tender or offer.

- (2) Subject to sub-paragraph (3), points must be awarded to a tenderer for attaining their B-BBEE status level of contributor in accordance with the table below:

B-BBEE Status Level of Contributor	Number of Points
1	10
2	9
3	6
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

- (3) A maximum of 10 points be allocated in accordance with sub-paragraph (2).
- (4) The points scored by a tenderer in respect of the level of B-BBEE contribution contemplated in sub-paragraph (2) must be added to the points scored for price as calculated in accordance with sub-paragraph (1).
- (5) Subject to regulation 7, the contract must be awarded to the tenderer who scores the highest total number of points.

7. Award of contract to BID's not scoring the highest number of points

A contract may be awarded to a tenderer that did not score the highest total number of points if objective criteria in addition to specific goals justify the award to another tenderer.

8. Cancellation and re-invitation of BID's

- (1) (a) In the event that, in the application of the 80/20 preference point system as stipulated in the tender documents, all tenders received exceed the estimated Rand value of R50 000 000,00 the tender invitation must be cancelled.
- (b) If one or more of the acceptable tenders received are within the prescribed threshold of R50 000 000,00 all tenders received must be evaluated on the 80/20 preference point system.
- (2) (a) In the event that, in the application of the 90/10 preference point system as stipulated in the tender documents, all tenders received are equal to, or below R50 000 000,00 the tender must be cancelled.
- (b) If one or more of the acceptable tenders received are above the prescribed threshold of R 50 000 000,00 all tenders received must be evaluated on the 90/10 preference point system.
- (3) In the event that the Abaqulusi Municipality has cancelled a tender invitation as contemplated in sub-paragraph (1)(a) and 2(a), tenders must be re-invited and the tender documents must stipulate the correct preference point system to be applied.
- (4) The Abaqulusi Municipality may, prior to the award of a tender, cancel a tender if:
 - (a) due to changed circumstances, there is no longer a need for the services, works or goods requested, or
 - (b) funds are no longer available to cover the total envisaged expenditure; or
 - (c) no acceptable tenders are received.
- (5) The decision to cancel a tender in terms of sub-paragraph (4) must be published in the media in which the original tender invitation was advertised.

PART THREE

LOCAL PRODUCTION AND CONTENT, B-BBEE STATUS LEVEL CERTIFICATES, CONDITIONS, DECLARATIONS, REMEDIES AND TAX CLEARANCE

9. Local production and content

- (1) The Abaqulusi Municipality must, in the case of designated sectors, where in the award of tenders local production and content is of critical importance, advertise such tenders with a specific tendering condition that only locally produced goods, services or works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- (2) The National Treasury will issue instructions, circulars and guidelines to all organs of state, with specific report mechanisms to ensure compliance with sub-paragraph (1).
- (3) Where there is no designated sector, the Abaqulusi Municipality may include, as a specific tendering condition, that only locally produced services, works or goods or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered, on condition that such prescript and threshold(s) are in accordance with the specific directives issued for this purpose by the National Treasury in consultation with the Department of Trade and Industry.
- (4) Every tender issued in terms of Paragraph 9 must be measurable and audited.
- (5) Where necessary, tenders referred to in sub-paragraph (1) and (3), a two-stage tendering process may be followed, where the first stage involves functionality and minimum threshold for local production and content and the second price and B-BBEE with the possibility of price negotiations only with the short listed tenderer/s.

10. Broad –Based Black Economic Empowerment Status Level Certificates

- (1) Tenders with annual total revenue of R5 million or less qualify as Exempted Micro Enterprises (EMEs) in terms of the Broad-Based Black Economic Empowerment Act, and must submit a certificate issued by a registered auditor, accounting officer (as contemplated in section 60(4) of the Close Corporation Act, 1984 (Act No.69 of 1984) or an accredited verification agency.
- (2) Tenders other than exempted Micro-Enterprises (EMEs) must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating.
- (3) The Submission of such certificates must comply with the requirements of instructions and guidelines issued by the National Treasury and be in accordance with notices published by the Department of Trade and Industry in the *Government Gazette*.
- (4) The B-BBEE status level attained by the tenderer must be used to determine the

number of points contemplated in regulations 5(2) and 6(2).

11. Conditions

- (1) Only a tenderer who has completed and signed the declaration part of the tender documentation may be considered.
- (2) The Abaqulusi Municipality must, when calculating comparative prices, take into account any discounts which have been offered unconditionally.
- (3) A discount which has been offered conditionally must, despite not being taken into account for evaluation purposes, be implemented when payment is processed.
- (4) Points scored must be rounded off to the nearest 2 decimal places.
- (5)
 - (a) In the event that two or more tenders have scored equal total points, the successful tender must be the one scoring the highest number of preference points for B-BBEE.
 - (b) However, when functionality is part of the evaluation process and two or more tenders have scored equal points including equal preference points for B-BBEE, the successful tender must be the one scoring the highest score for functionality.
 - (c) Should two or more tenders be equal in all respects, the award shall be decided by the drawing of lots.
- (6) A trust, consortium or joint venture will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- (7) A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate tender.
- (8) A person must not be awarded points for B-BBEE status level if it is indicated in the tender documents that such a tenderer intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a tenderer qualifies for, unless the intended sub-contractor is an exempted micro enterprise that has the capability and ability to execute the sub-contract.
- (9) A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an exempted micro enterprise that has the capability and ability to execute the sub-contract.
- (10) A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

- (11) When the Abaqulusi Municipality is in need of a service provided by only tertiary institutions, such services must be procured through a tendering process from the identified tertiary institutions.
- (12) Tertiary institutions referred to in sub-paragraph (11) will be required to submit their B-BBEE status in terms of the specialized scorecard contained in the B-BBEE Codes of Good practice.
- (13) (a) Should the Abaqulusi Municipality require a service that can be provided by one or more tertiary institutions or public sector, the appointment of a contractor must be done by means of a tendering process;
- (b) Public entities will be required to submit their B-BBEE status in terms of the specialised scorecard contained in the B-BBEE Codes of Good Practice.

12. Declarations

- (1) A tender must, in the manner stipulated in the document, 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 Abaqulusi Municipality.

13. Remedies

- (1) The Abaqulusi Municipality must, upon detecting that-
 - (a) The B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis; or
 - (b) any of the conditions of the contract have not been fulfilled, act against the tenderer or person awarded the contract.
- (2) The Abaqulusi Municipality may, in addition to any other remedy it may have against the person contemplated in sub-paragraph (1)-
 - (a) Disqualify the person from the tendering process;
 - (b) Recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) Cancel the contract and claim any damages it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) Restrict the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
 - (e) Forward the matter for criminal prosecution.

14. Tax clearance

No tender may be awarded to any person whose tax matters have not been declared by the South African Revenue Services to be in order.

15. Mechanisms to support preferential procurement

- (1) Determination of bid requirements in relation to bid value

The municipality will set targets for the supply of goods and services, and link specific requirements relating to enterprise with HDI ownership and/or SMME status.

- (2) Establishment/maintain a database of SMME service providers

The municipality will establish a database of HDI, SMME and other service providers in order to track their records of services to the municipality.

- (3) Identification of Business Opportunities.

- (a) Joint venture opportunities between HDI owned enterprises and SMMEs, and other business entities, will be identified and be described in the bid requirements.
- (b) Sub-contracting opportunities for HDI owned enterprises will be supported. (4) Creation of an enabling environment. The municipality will create an enabling

environment to enable SMMEs to become part of the Supply Chain Management process. Steps to be taken include, but are not limited to:

- (a) Surety Requirements - See the SCM Policy, paragraph 21(1)(f) regarding the lesser extent that sureties are called for.
- (b) Access to Bidding Information

Bidding and related information will, where possible and practical, be made available in a simplified and uncomplicated format to assist new and emerging enterprises and any business or organisation bidding for municipal business.

(c) Bidding Advice Centre

Assistance will, where practically possible, be provided by the SCM Unit to increase SMME awareness and share in the supply chain and procurement process.

(d) **Sub-Contracting**

The procurement of goods and services for any project or other requirement of the municipality should cater for the engagement of sub-contractors. This will provide opportunities for smaller businesses to increase their share in public sector procurement.

i) 30% sub-contracting to local contractors in all tenders where sub-contracting is applicable.

(e) Proposed Process

i) BID's shall be packaged into suitably sized segments of subcontractors to target SMMEs wherever possible.

ii) A review of all term (period) contracts shall be undertaken to assess the viability of packaging these into smaller sub-contracts. These BID's should be issued in smaller manageable sub-contracts so that preference can be given to local SMMEs.

iii) Appropriate standards, specifications, delivery dates and related contractual obligations shall be employed to help smaller businesses to cope and compete.

(f) Standard payment terms

i) All money owed by the municipality must be paid within 30 days of receiving the relevant invoice or statement, unless prescribed otherwise for certain categories of expenditure.

ii) Payment will be made twice in a month by the Municipality to the creditors upon receiving invoices.

iii) Payment Cycles for the first 12 months of business with the Abaqulusi Municipality to Survivalist enterprises / Micro-enterprises

(g) Simplification of Tender Documentation

- (i) Bid submission documents will be rationalised and simplified to make it easier for small businesses to deal with the paperwork involved in tendering.
 - (ii) All bid submission forms shall be regularly reviewed and the various bid/contractual documents shall be standardised as far as possible.
 - (iii) Essential information shall be consolidated and bid forms reformatted in line with the aims of this policy.
- (h) Retention
- (i) Retention on Major contracts should be limited to 5% of the tender sum. Where the value of the surety required has been reduced, or even waived, the usual 10% retention shall apply. The value of retention deducted will therefore be as follows:
 - A. **Micro and Minor:** 10% of the value of work carried out with no limit, reducing to 5% for the duration of the maintenance period.
 - B. **Major:** 10% of the value of the work carried out, up to a limit of 5% of the tender sum, with no reduction for the duration of the maintenance period.
 - (ii) Retention in respect of the procurement of goods and services will not generally be called for, but where required, will be in accordance with the limits described above.
 - (iii) For turnkey/design and construction projects, the above retention limits may be reviewed by the Municipality's Director: Technical Services.
- (2) Bid Advertising
- (a) In order to reach the largest number of HDI owned and SMME service providers possible, the Municipality will advertise invitations to bid through a range of media. An executive summary of the bid will be published in the official languages.
 - (b) The Municipality will provide an appropriate time period within which bidders can request additional clarification and will be sensitive to the issues of language in this regard.

16. Short Title

This part of the policy is the Preferential Procurement Policy of the Abaqulusi Municipality and implementation thereof is in line with the PPPFA, No. 5 of 2000 and associated regulations.

SUPPLY CHAIN MANAGEMENT POLICY

PART B

(ANNEXURE A)

GENERAL PRINCIPLES GOVERNING THE MUNICIPALITY IN ITS INTERACTION WITH BIDDERS

In dealing with bidders bidding for municipal work, the municipality will adhere to the basic principles of:

1. Efficiency

- a) The municipal officials must administer the procurement process in the most efficient manner possible, avoiding time delays and duplication of activities.
- b) Where such delays are unavoidable, the municipal officials must inform all bidders of the nature of the delay and the revised time frames.

2. Courtesy

All staff members of the Municipality will deal with bidders in a courteous and respectful manner.

3 Transparency

- a) All bid processes will be open to the legal scrutiny of the public and interested parties.
- b) The Municipality will take all reasonable steps to ensure that the processes are clearly defined and understandable to all interested parties.

4. Access to information

The Municipality will take reasonable steps to ensure that all bidders have equal access to information on the goods or services to be bid for, as well as the bid process itself.

5. Fair distribution of work

The Municipality will take reasonable steps to make sure that the procurement of goods or services is fairly distributed amongst the service providers in the event of equality of BID's. This will be done to avoid the excessive procurement of goods or services from one provider/supplier only.

6. Competition

The municipality will encourage fair competition between suppliers that provide goods and services to it.

ANNEXURE B

CRITERIA TO EVALUATE TECHNICAL AND FINANCIAL ABILITY

Regardless of the scope and value of the contracts involved, all contracts will be judged on grounds of:

1 Compliance with bid conditions:

- a) Bid's submitted on time.
- b) Bid forms signed.
- c) All essential information provided

2. Meeting technical specifications and compliance with bid conditions

- a) Where requested in bid documentation, bidders must describe how they will produce the required outputs outlined in the bid documentation in terms of either goods or services.
- b) The ability to produce the required goods or services within the stated time frame may be included as criteria for compliance.

3. Infrastructure and resources available.

Bidders must indicate their capacity i.e. the extent of infrastructure under their control and resources available to enable them to execute the contract.

4. Quality/ Durability

- a) Where requested, bidders must provide evidence that they will be able to adhere to generally accepted levels of quality in the provision of the product or services under consideration.
- b) Where bidders are so requested, they must clearly explain their mechanisms for quality assurance and review.

5. Size of enterprise and current workload

- a) Bidders must give an indication of the resources available for the contract they are bidding on.
- b) Bidders must give an indication of the number and value of other contracts being undertaken by them at the date of bid, as to enable the Municipality to ascertain their ability to execute the contract.

6 Staffing profile

- a) Bidders must indicate the number of full-time employees employed by the company in Abaqulusi and Overberg at the time of bidding. Such information must include a breakdown in terms of race and gender at top and middle management

- levels.
- b) Bidders must also indicate the experience of top and middle management staff, especially where the experience of the company as a whole is limited.
- c) Bidders must indicate the number of disabled persons employed.

7 Previous experience

- a) Bidders must indicate the number of years that they have been operating their business.
- b) Bidders must provide evidence of previous experience in providing the goods or services under consideration, by providing a minimum of three contactable and relevant references.

8 Financial ability to execute the contract

- a) Bidders must indicate the revenue generated by their company in the previous financial year.
- b) Bidders must provide an indication of their financial ability to execute the contract.

ANNEXURE C

CODE OF CONDUCT FOR SUPPLY CHAIN MANAGEMENT PRACTITIONERS AND OTHER ROLE PLAYERS

The **purpose** of this Code of Conduct is to promote mutual trust and respect and an environment where business can be conducted with integrity and in a fair and reasonable manner.

1. General Principles

- 1.1. The municipality commits itself to a policy of fair dealing and integrity in the conducting of its business. Officials and other role players involved in Supply Chain Management (SCM) are in a position of trust, implying a duty to act in the public interest. Officials and other role players should not perform their duties to unlawfully gain any form of compensation, payment or gratuities from any person, or provider/contractor for themselves, their family or their friends.
- 1.2. Officials and other role players involved in SCM should ensure that they perform their duties efficiently, effectively and with integrity, in accordance with the relevant legislation, policies and guidelines. They should ensure that public resources are administered responsibly.
- 1.3. Officials and other role players involved in SCM should be fair and impartial in the performance of their functions. They should at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual. They should not abuse the power and authority vested in them.

2. Conflict of Interest

An official or other role player involved with Supply Chain Management –

- 2.1. must treat all providers and potential providers equitably;
- 2.2. may not use his or her position for private gain or to improperly benefit another person;
- 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 R 350;
- 2.4. must declare to the Accounting Officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
- 2.5. must declare to the Accounting Officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process, or in any award of a contract by the **municipality / municipal entity** *select which is applicable* ;
- 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;
- 2.7. must declare any business, commercial and financial interests or activities

- undertaken for financial gain that may raise a possible conflict of interest;
- 2.8. should not place him/herself under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties; and
 - 2.9. should not take improper advantage of their previous office after leaving their official position.

3. **Accountability**

- 3.1. Practitioners are accountable for their decisions and actions to the public.
- 3.2. Practitioners should use public property scrupulously.
- 3.3. Only Accounting Officers or their delegates have the authority to commit the **municipality / municipal entity** *select which is applicable* to any transaction for the procurement of goods and / or services.
- 3.4. All transactions conducted by a practitioner should be recorded and accounted for in an appropriate accounting system.
- 3.5. Practitioners should not make any false or misleading entries into such a system for any reason whatsoever.
- 3.6. Practitioners must assist the Accounting Officer in combating fraud, corruption, favouritism and unfair and irregular practices in the Supply Chain Management system.
- 3.7. Practitioners must report to the Accounting Officer any alleged irregular conduct in the Supply Chain Management system which that person may become aware of, including:
 - (i) any alleged fraud, corruption, favouritism or unfair conduct;
 - (ii) any alleged contravention of the policy on inducements, rewards, gifts and favours to municipalities or municipal entities, officials or other role players; and
 - (iii) any alleged breach of this code of conduct.
- 3.8. Any declarations made must be recorded in a register which the Accounting Officer must keep for this purpose.
- 3.9. Any declarations made by the Accounting Officer must be made to the **mayor** who must ensure that such declaration is recorded in the register.

4. **Openness**

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

5. Confidentiality

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

6. Bid Specification / Evaluation / Adjudication Committees

- 6.1. Bid specification, evaluation and adjudication committees should implement Supply Chain Management on behalf of the municipality in an honest, fair, impartial, transparent, cost-effective and accountable manner.
- 6.2. Bid evaluation / adjudication committees should be familiar with and adhere to the prescribed legislation, directives and procedures in respect of Supply Chain Management in order to perform effectively and efficiently.
- 6.3. All members of bid adjudication committees should be cleared by the Accounting Officer at the level of "**CONFIDENTIAL**" and should be required to declare their financial interest annually.
- 6.4. No person should –
 - (i) interfere with the Supply Chain Management system of the **municipality**; or
 - (ii) amend or tamper with any price quotation / bid after its submission.

7. Combative Practices

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

- 7.1. Suggestions to fictitious lower quotations;
- 7.2. Reference to non-existent competition;
- 7.3. Exploiting errors in price Quotations/Bid's;
- 7.4. Soliciting price quotations/Bid's from bidders / contractors whose names appear on the Register for Tender Defaulters

ANNEXURE D

8 No. 25763 GOVERNMENT GAZETTE, 26 NOVEMBER 2003
Act No. 26/2003 NATIONAL SMALL BUSINESS AMENDMENT ACT, 2003

SCHEDULE

Column 1 Sector or sub-sector in accordance with the Standard Industrial Classification	Column 2 Size of class	Column 3 The total full-time equivalent of paid employees	Column 4 Total turnover	Column 5 Total gross asset value (fixed property excluded)
Agriculture	Medium	100	R5M	R5M
	Small	50	R3M	R3M
	Very small	10	R0.50M	R0.50M
	Micro	5	R0.20M	R0.10M
Mining and Quarrying	Medium	200	R39M	R23M
	Small	50	R10M	R6M
	Very small	20	R4M	R2M
	Micro	5	R0.20M	R0.10M
Manufacturing	Medium	200	R51M	R19M
	Small	50	R13M	R5M
	Very small	20	R5M	R2M
	Micro	5	R0.20M	R0.10M
Electricity, Gas & Water	Medium	200	R51M	R19M
	Small	50	R13M	R5M
	Very small	20	R5.10M	R1.90M
	Micro	5	R0.20M	R0.10M
Construction	Medium	200	R26M	R5M
	Small	50	R6M	R1M
	Very small	20	R3M	R0.50M
	Micro	5	R0.20M	R0.10M
Retail and Motor Trade and Repair Services	Medium	200	R39M	R6M
	Small	50	R19M	R3M
	Very small	20	R4M	R0.60M
	Micro	5	R0.20M	R0.10M
Wholesale Trade, Commercial Agents and Allied Services	Medium	200	R64M	R10M
	Small	50	R32M	R5M

Column 1	Column 2	Column 3	Column 4	Column 5
Sector or sub-sector in accordance with the Standard Industrial Classification	Size of class	The total full-time equivalent of paid employees	Total turnover	Total gross asset value (fixed property excluded)
	Very small	20	R6M	R0.60M
	Micro	5	R0.20M	R0.10M
	Medium	200	R13M	R3M
	Small	50	R6M	R1M
	Very small	20	R5.10M	R1.90M
Catering, Accommodation and other Trade	Micro	5	R0.20M	R0.10M
	Medium	200	R26M	R6M
	Small	50	R13M	R3M
	Very small	20	R3M	R0.60M
	Micro	5	R0.20M	R0.10M
Transport, Storage and Communications	Medium	200	R26M	R5M
	Small	50	R13M	R3M
	Very small	20	R3M	R0.50M
	Micro	5	R0.20M	R0.10M
	Medium	200	R26M	R6M
Finance and Business Services	Small	50	R13M	R3M
	Very small	20	R3M	R0.50M
	Micro	5	R0.20M	R0.10M
	Medium	200	R13M	R6M
	Small	50	R6M	R3M
Community, Social and Personal Services	Very small	20	R1M	R0.60M
	Micro	5	R0.20M	R0.10M
	Medium	200	R26M	R6M

ANNEXURE E

ACT FROM THE DELEGATION OF POWERS AND DUTIES			
	Approval of requests for requisitions for direct purchases and municipal store issues and certifying of payments.	Municipal Manager Directors	Personnel to be nominated in writing by the Municipal Manager, and Directors
			Subject to the under mentioned criteria, and further subject to the municipality's Supply Chain Management Policy, financial regulations and Council resolutions where applicable.

PURCHASES BETWEEN (VAT Incl.)	QUOTATIONS / TENDERS	LEVEL OF APPROVAL (With regard to proper segregation of duties)
R0 – R200	No quotations – direct purchases	Level of approval as delegated by Municipal Manager or, relevant director (Manager)
Over – R200 – R3 000	Three telephonic or written quotations	Level of approval as delegated by Municipal Manager or, relevant director (Manager)
Over – R3 000 – R30 000	Three formal written price quotations	Level of approval as delegated by Municipal Manager or, relevant director (Manager)
Over – R30 000 – R200 000	Formal written price quotations	Level of approval as delegated by Municipal Manager or, relevant director (Manager)
Over – R30 000 – R200 000	Formal written price quotations	Municipal Manager, relevant Director after consultation with Manager – Supply Chain Manager
Over – R200 000 – R10 000 000	Competitive Bidding	Bid Adjudication Committee
Over - R10 000 000		Municipal Manager after recommendation from the Bid Adjudication Committee

APPENDIX A

ABAQULUSI LOCAL MUNICIPALITY

RULES FOR MUNICIPAL BID APPEALS TRIBUNAL

1. CHAPTER 1: INTERPRETATION

1.1 What words mean in these rules

In these rules any word or expression which is defined in the Municipal Supply Chain Management Regulations published on 30 May 2005 in Government Gazette No 27636 under Notice No 868 of 2005 has the same meaning, unless the context indicates that the word or expression should have another meaning, and –

1.1.1 **“appeal”** means a formal objection to the award of a bid by the Municipality brought in terms of these rules by an appellant;

1.1.2 **“appellant”** means a person who initiates a formal objection to the award of a bid by the Municipality and who qualifies as an appellant in terms of chapter 5 of these rules;

1.1.3 **“bid”** means a written offer equal to or in excess of R 200 000 made by a person in response to an invitation by the Municipality for the supply of goods, services, or works to the Municipality;

1.1.4 **“day”** means a calendar day;

1.1.5 **“deliver”** means to formally provide the Secretariat with a copy of a document in the manner described in rule 9.1;

1.1.6 **“District Municipality”** means the Ilembe District Municipality;

1.1.7 **“interested person”** means either –

- 1.1.7.1 a person who was awarded a bid; and
- 1.1.7.2 a person, other than an appellant, whose bid was rejected by the Municipality;
- 1.1.8 **“Municipal Bid Appeals Tribunal”** and **“Tribunal”** means the tribunal established in terms of rule 3.1 and, in relation to a particular appeal, means the particular tribunal which has jurisdiction to hear the appeal in question;
- 1.1.9 **“Municipal Supply Management Regulations”** means the Municipal Supply Chain Management Regulations made in terms of the Local Government Municipal Finance Management Act (Act No. 56 of 2003);
- 1.1.10 **“Municipality”** means the Maphumulo Local Municipality;
- 1.1.11 **“person”** includes a company, close corporation, trust, partnership or association;
- 1.1.12 **“Provincial Treasury”** means the Provincial Treasury of the province of KwaZulu-Natal; and
- 1.1.13 **“Secretariat”** means the secretariat established in terms of chapter 4 of these rules to undertake the administration of the Tribunal and to assist with the setting down and conduct appeals.
- 1.2 **How to calculate a period of days**

When a number of days is prescribed for doing something, then that number must be calculated by excluding the first day and including the last day, unless the last day falls on a Sunday or a public holiday or on a day during the period between 16 December to 7 January, in which case that day or period must be excluded.

2. **CHAPTER 2: THE PURPOSE OF THE MUNICIPAL BID APPEALS TRIBUNALS**

2.1 The purpose of the Municipal Bid Appeals Tribunal is to receive, hear and decide appeals against the award of bids by the Municipality.

2.2 The Tribunal must act impartially and independently.

2.3 The Tribunal is intended to assist in maintaining the good repute of municipal bid processes in the Municipality by providing an accessible, transparent and speedy mechanism for resolving objections to the award of bids by the Municipality. Service delivery, necessarily delayed by an appeal, requires that the procedure of the Tribunal be efficient and speedy.

3. **CHAPTER 3: THE MUNICIPAL BID APPEALS TRIBUNALS**

3.1 **Establishment**

3.1.1 The Council shall establish a Municipal Bid Appeals Tribunal for its area of jurisdiction to hear and determine an appeal against the award of a bid.

3.1.2 The accounting officer of the Municipality, in consultation with the Provincial Treasury, shall appoint the Chairperson, Deputy Chairperson and Members of the Municipal Appeals Tribunal.

3.1.3 The Municipal Bid Appeals Tribunal has as its seat the place where the District Municipality has its seat.

3.1.4 The Chairperson of the Tribunal may determine that in respect of a particular appeal, the Tribunal should sit at a place other than the seat of the District Municipality.

4. CHAPTER 4: THE MUNICIPAL BID APPEALS TRIBUNAL SECRETARIAT

4.1 Who is the Secretariat?

The administrative and secretarial work incidental to the performance of the functions of the Municipal Bid Appeals Tribunal shall be performed by officers in the Provincial Treasury designated and assigned for such purpose by the Head of the Provincial Treasury.

4.2 Opening hours

The office of the Secretariat must be open for the filing of documents from 08:00 to 12:30 and from 14:00 to 16:00 every day other than a Saturday, Sunday or public holiday.

4.3 Contact details

The address, telephone number, fax number and e-mail address of the Secretariat is:

Physical address: 145 Chief Albert Luthuli
Pietermaritzburg
3201

Telephone no.: 033 - 897 4202

Telefax no.: 033 342 4238

Email address: dudu.ntanzi@kzntreasury.gov.za

4.4 Documents may only be filed with the Secretariat at the address, telefax number or email address given in rule 4.3 and during the hours referred to in Rule 4.2. Notwithstanding rule 4.2, documents may be faxed or e-mailed to the Secretariat at any time.

5. **CHAPTER 5: WHO MAY APPEAL?**

- 5.1 Only a person who submitted a bid in response to an invitation to bid may appeal against the award of that bid to another party.
- 5.2 An interested person may lodge an appeal where the Municipality (or any committee or person acting under delegated power) has –
 - 5.2.1 committed misconduct in relation to their duties concerning the awarding of bids;
 - 5.2.2 committed a gross irregularity;
 - 5.2.3 exceeded its or their power;
 - 5.2.4 awarded a contract in an improper manner, or
 - 5.2.5 awarded a bid in a manner which contravenes the Municipality's Supply Chain Management Policy or any applicable law.

6. **CHAPTER 6: PRELIMINARY PROCEDURES**

The Municipality must –

- 6.1 Indicate in its bid documents that appeals against the award of bids must be lodged with the Secretariat within the time period referred to in the bid documents.
- 6.2 At the time of awarding a bid –

- 6.2.1 formulate comprehensive reasons for the award of the bid to the successful bidder and the failure to award the bid to each interested party; and
- 6.2.2 prepare and retain for not less than 180 days, a comprehensive file of all documentation relevant to the award of the bid to the successful bidder and the failure to award the bid to each interested party.
- 6.3 When advertising the award of a bid, the Municipality must inform all interested parties that appeals against the award of the bid in question must be lodged with the Municipal Manager within the time period referred to in the advertisement, and that a copy should be forwarded to the Secretariat.

7.

CHAPTER 7: PROCESSING AN APPEAL

- 7.1 The Appellant must within fourteen days of the award being advertised, file a notice of appeal containing the grounds of appeal with the Municipal Manager. A copy of the notice should be forwarded to the Secretariat.
- 7.2 The Municipal Manager must maintain a register in which all appeals, and the outcome thereof, are recorded.
- 7.3 On receiving the notice of the appeal, the Municipal Manager must, within 24 hours, send the appeal to the Secretariat.
- 7.4 On receiving the notice of the appeal, the Secretariat shall –
 - 7.4.1 issue the appeal with a unique number which must thereafter be reflected on all documents prepared by the Secretariat, the appellant, or any other party participating in the appeal; and

7.4.2 request the Municipality to, within three days:

7.4.2.1 confirm, in writing the names and contact details of all interested parties affected by the appeal;

7.4.2.2 serve on the Secretariat its reasons for awarding the bid to the successful bidder and for its failure to award the bid to the appellant; and

7.4.2.3 serve on the Secretariat all the documentation relevant to the decision relating to the award.

7.5 After receiving the information from the Municipality, the Secretariat shall:

7.5.1 notify all interested parties affected by the appeal that an appeal has been lodged, advise these persons of their right to respond to the appeal, and describe, in plain language, the next steps; and

7.5.2 provide the appellant with copies of the information supplied by the Municipality; and

7.5.3 require the appellant to provide written representations amplifying (if necessary) its grounds of appeal within a further five days.

7.6 On receiving the further representations from the appellant, or after the five days have lapsed, the Secretariat must, within two days, provide all the interested parties affected by the appeal with copies of the appellant's notice of appeal and further representations (if any) and advise them of their right to lodge, with the Secretariat, a response to the appeal within five days.

7.6.1 Any response to an appeal must include:

7.6.1.1 a concise statement of the grounds on which the matter is supported or opposed;

7.6.1.2 facts or allegations contained in the appellant's representations that the interested party affected by the appeal admits;

7.6.1.3 facts or allegations contained in the appellant's representations that the interested party affected by the appeal denies and the grounds for such denial; and

7.6.1.4 the material facts or points of law on which the interested party affected by the appeal relies.

7.7 Once the Secretariat has received representations from the interested parties affected by the appeal, or the period for doing so has lapsed, the Secretariat shall deliver all the documentation relevant to the appeal to the Chairperson.

7.8 On receiving the documents from the Secretariat, the Chairperson (or Deputy Chairperson in the Chairperson's absence) must within two days of receiving the documentation decide whether the appeal:

7.8.1 is frivolous, vexatious or without any merit; or

7.8.2 should be determined on the basis of the documents alone;
or

7.8.3 should be referred to an oral hearing.

7.9 The Secretariat, within two days of receiving the Chairperson or Deputy Chairperson's decision on whether or not to proceed with the appeal, must:

7.9.1 issue a notice of non-referral if the appeal has been deemed to be frivolous, vexatious or without any merit; or

7.9.2 notify the appellant, interested parties affected by the appeal and the Municipality that the appeal will be determined on the basis of the documents alone; or

7.9.3 notify the appellant, interested parties affected by the Appeal and the Municipality that the appeal will be determined on the basis of an oral hearing, inform these parties of the venue, date and time of the hearing, and inform them of any directives that may have been issued by the Chairperson with regard to the conduct of the appeal.

7.10 **Withdrawal of matters**

An appellant, before an application has been decided, may withdraw the application, or any part of the application, by serving a notice to this effect on the Secretariat.

8. **CHAPTER 8: HEARINGS**

8.1 **Informality**

8.1.1 Any oral hearing of an appeal must be informal and must follow the procedures determined by the Chairperson or Deputy Chairperson, as the case may be.

8.1.2 The Tribunal shall determine the admissibility of any evidence adduced and of its probative value.

8.2 Access

The hearings of the Municipal Bid Appeals Tribunal are open to the public unless otherwise determined by the Chairperson.

8.3 Witnesses

If the Tribunal requests a witness to give evidence at the hearing, the Chairperson may request the Municipal Manager to procure the presence of that witness at the hearing.

8.4 Interpreter

A party requiring the services of an interpreter must notify the Secretariat at least three days prior to the date for which the matter has been set down.

8.5 Record of hearing

The Secretariat must compile a record of the proceedings in respect of any matter that has come before the Tribunal, comprising of:

8.5.1 the application documents.

8.5.2 notices;

8.5.3 the Chairperson's record of pre-hearing procedures;

8.5.4 all documentary evidence;

8.5.5 the transcript, if any, of the oral evidence given at the hearing; and

8.5.6 a written record of the Tribunal's final decision with reasons.

8.6 Non-appearance

If a party to an appeal fails to attend any hearing, and that party is –

8.6.1 the appellant, the Tribunal may dismiss the matter by issuing a written ruling; or

8.6.2 is not the appellant, the Tribunal may –

8.6.2.1 continue with the proceedings in the absence of that party; or

8.6.2.2 adjourn the hearing to a later date

8.6.3 The Tribunal must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of this rule.

8.6.4 If a matter is dismissed, the Secretariat must send a copy of the ruling to the parties.

8.7 Hearing procedure

Subject to any directive issued by the Chairperson of the Tribunal, a hearing shall be conducted as follows:

8.7.1 Commencement

The Chairperson shall –

8.7.1.1 introduce the members of the Tribunal;

8.7.1.2 request any other parties present to introduce themselves;

8.7.1.3 explain the procedure of the hearing; and

8.7.1.4 provide a brief introduction to the subject matter of the appeal.

8.7.2 The Municipality's case

The Municipality shall –

8.7.2.1 explain the background to the bid;

8.7.2.2 provide reasons for the appointment of the successful bidder and for the failure to appoint the appellant; and

8.7.2.3 deal with the appellant's representations and any pertinent points that may have been made by any of the interested persons.

8.7.3 Questioning of the Municipality's representative

The other parties shall be given an opportunity to ask questions of the Municipality, in the following order:

8.7.3.1 the appellant;

8.7.3.2 any interested party affected by the appeal.

8.7.4 The appellant's case

The appellant shall have an opportunity to present its case, setting out its grounds for the appeal.

8.7.5 Questioning of the appellant

The other parties shall then be given an opportunity to ask questions of the appellant, in the following order:

8.7.5.1 the Municipality

8.7.5.2 any interested party affected by the appeal..

8.7.6 The case of interested parties affected by the appeal

Interested parties affected by the appeal shall then have an opportunity to each present their case.

8.7.7 Questioning of interested parties affected by the appeal

The other parties shall then be given an opportunity to ask questions of the interested parties affected by the appeal, in the following order:

8.7.7.1 the appellant;

8.7.7.2 the Municipality.

8.7.8 Closing statements

Each party shall then have an opportunity to present a brief closing statement, in the following order:

8.7.8.1 the appellant;

8.7.8.2 the Municipality;

8.7.8.3 interested parties affected by the appeal.

8.8 Powers of the Municipal Bid Appeals Tribunal

8.8.1 The Tribunal –

8.8.1.1 must hear and finalise an appeal within five days of the date of the hearing;

8.8.1.2 must make a final binding decision to confirm, vary or set aside the decision of the Bid Adjudication Committee or the Municipal Manager;

8.8.2 If the award is varied or set aside, the Tribunal must make any order it considers appropriate regarding the manner in which the matter is to be resolved.

8.8.3 The Tribunal may make a default order –

8.8.3.1 after it has considered or heard any necessary evidence; and

8.8.3.2 if it is satisfied that the notice of set down was adequately served.

9. CHAPTER 9: GENERAL RULES

9.1 Delivery of documents

9.1.1 Where a document is required to be delivered to the Secretariat, it may be delivered –

9.1.1.1 at the Secretariat's physical address;

9.1.1.2 by registered mail to the Secretariat;

9.1.1.3 by fax; or

9.1.1.4 by e-mail

9.1.2 Documents sent by fax or e-mail must include all of the following information on a cover page or cover message:

9.1.2.1 the name, address and telephone number of the sender;

9.1.2.2 the date and time of transmission;

9.1.2.3 the total number of pages sent;

9.1.2.4 the name and telephone number of the person to contact if transmission is flawed; and

9.1.2.5 the manner in which, and the person to whom, an acknowledgement of receipt should be sent.

9.2 Confidentiality

If a party alleges that any document or information required to be delivered to the Secretariat is confidential, the Chairperson of the Tribunal shall determine the matter and deal with an request in any manner that he/she deems fit.

9.3 Representation of parties

9.3.1 A party to a matter may act in person or appoint a representative.

9.3.2 A person appointed as representative must notify the Secretariat and provide it with the following particulars:

9.3.2.1 name;

9.3.2.2 postal address and address for the service of documents;

9.3.2.3 telephone and fax numbers;

9.3.2.4 e-mail address;

9.3.2.5 the unique reference number of the matter;
and

9.3.2.6 name of the person represented.

9.3.3 A party who terminates a representative's authority to act in a matter must notify the Secretariat in writing, and must provide details where the person may be contacted, both telephonically and for the purpose of serving documents.

9.3.4 A party does not need to be represented by a legal representative before the Tribunal.

9.4 Powers of the Chairperson to deviate from certain rules

9.4.1 The Chairperson may on good cause shown, and in keeping with the requirements of justice and expediency:

9.4.1.1 direct that any prescribed time period may be shortened or extended:

9.4.1.2 give directions on the manner, form, and medium in which evidence is to be led.

9.5 Expert witnesses

9.5.1 A municipal Bid Appeals Tribunal may appoint such experts or other persons as service providers as it may deem necessary with a view to assisting it in the exercise and performance of its powers, duties and functions.

9.5.2 The terms, conditions and fees applicable to any expert or person appointed under Rule 9.5.1 and the work to be performed or services to be rendered must be determined by the Provincial Treasury, and be contained in a written agreement entered into for that purpose between the Provincial Treasury and the expert or person concerned.

9.5.3 The experts or other persons appointed under Rule 9.5.1 may not vote on any decision taken by the Municipal Bid Appeals Tribunal.
