

ABAQULUSI MUNICIPALITY



SUPPLY CHAIN MANAGEMENT POLICY

2022- 2023

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

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PREAMBLE

Council resolves in terms of section 111 of the Local Government Municipal Finance Management Act (No. 56 of 2003) and the Preferential Procurement Policy Framework Act (Act 5 of 2000), to adopt the following proposal as the Supply Chain Management policy of the municipality.

PURPOSE

- (1) To ensure consistency with other applicable legislation and regulations thereto;
- (2) To give effect to the RSA Constitution Section 217, Preferential Procurement Policy Framework Act and its regulations, the Municipal Finance Management Act and its regulation..
- (3) To help the municipality achieve its strategic goals.

GENERAL PROVISIONS

- (i) Organ of state may define terms in accordance with the law and if the terms are not defined in the guiding legislation, organ of state may use common definitions
- (ii) The word "bid or tender" may be used interchangeably
- (iii) Should organ of state decide to apply local production and content, organ of state may consult with the Department of Trade, Industry and Competition for guidance
- (iv) National Treasury remains the custodian of the procurement system and processes and may be contacted as and when clarity is required
- (v) Specific goals may also be applied in a reverse formula when processing income generating tender

DEFINITIONS AND APPLICATION

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

"Amendment" must mean a change made to the value of the contract beyond the contract authority and/or the duration of the contract beyond the contract authority and/or scope changes in the contract and/or contracting arrangements beyond the contracting allowances. An amendment may be a minor amendment or a major amendment;

SUGGESTION TO ADD THE FOLLOWING DEFENITION:

"broad-based black economic empowerment" broad-based black economic empowerment" means the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies..."

"acceptable tender" "acceptable tender" means any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document.

“Highest acceptable tender” means a tender that complies with all specifications and conditions of tender and that has the highest price compare to other tenders

“Lowest acceptable tender” means a tender that complies with all specifications and conditions of tender and that has lowest price compared to other tenders;

“Owned” must means having all the customary incidents of ownership, including the right of disposition, and sharing all the risks and profits commensurate with the degree of ownership interests, as demonstrated by an examination of the substance, rather than the form of ownership arrangements;

“Previously Disadvantaged people” must mean persons or category of persons historically disadvantaged by unfair discrimination on the basis of race, gender or disability;

“Specific goals” means specific goals as contemplated in section 2(1)(d) of the PPPFA which may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender and disability including the implementation of programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994.

“Tender for income-generating contracts” means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions

“Youth” must mean South African citizens between the ages of 18 and 35; as defined by the National Youth Development Agency Act,(Act No. 54 of 2008).

“Disability” means in respect of a person, a permanent means, in respect of a person, a permanent impairment of a physical, intellectual or sensory function, which results in restricted or lack of ability to perform an activity in the manner or within the range considered normal for a human being

“People with disabilities” in terms of Code of Good Practice on the Employment of persons with disabilities: It is persons who have a long term or recurring physical or mental impairment, which substantially limits their prospects of entry into or advancement in employment

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

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

“Day” means 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.

“Emergency or Urgent case” means the duration of invitation of bids would have material impact on service delivery/community/public and early delivery is critical importance, resulted from natural disaster and immediate action is required to avoid a dangerous or life threatening situation, misery or want.

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

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

“functionality” means the measurement according to predetermined norms, as set out in the bid 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 bidder;

“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;

“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);

The Constitution of the Republic of South Africa, Act 108 (Act No. 108 of 1996)

The RDP Whitepaper of 1994

“Sole Supplier” it refers in instances where there is no competition and only one service provider exist in the market, with sole distribution rights and/or patent rights or manufacturer.

“price “price ” means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts.

“rand value “rand value ” means the total estimate value of the contract in rand, calculated at the time of the tender invitation.

“black people” black people " is a generic term which means Africans, Coloureds and Indians.

“rural area” rural area " means-

(a) sparsely populated area in which people farm or dependent on natural resources, including villages and small towns that are dispersed through the area or

(b) an area including a large settlement which depends on migratory labour and remittances and government social grants for survival, and may have a traditional land tenure system.

“SMME” SMME " means small businesses; as defined in section 1 of the National Small Business Act, 1996 (Act No 102 of 1996) a separate and distinct business entity, including co-operative enterprises and non-governmental organisations, managed by one owner or more which, including its branches or subsidiaries, if any, is predominantly carried on in any sector or sub-sector of the economy mentioned in Column 1 of the Schedule and which can be classified as a micro-, a very small, a small or a medium enterprise by satisfying the criteria 40 mentioned in columns 3; 4 and 5 of the schedule opposite the smallest relevant size or class as mentioned in column 2 of the schedule.

“HDI” HDI" (Historically Disadvantaged Individual) means a South African citizen; who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act No. 110 of 1983) or the Constitution of the Republic of South Africa, 1993, (Act No. 200 of 1993) (The Interim Constitution); and/or who is a female; and/or who has a disability; provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not to be a HDI.

“Strip & Quote” when one quote is received for repairs and maintenance on our machines, vehicles are done by one supplier and/or strip and quote, for example a municipal vehicle enters the workshop that needs repairs, however, to do repairs, the vehicle has to be stripped by the supplier in order to determine what repairs should be done.

Definition of “tender” means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisage in legislation

"Tender" means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisage in legislation.

“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;

“The Council” means the Abaqulusi Municipality

CHAPTER 1

IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

2. Supply chain management policy

- (1) All officials and other role players in the supply chain management system of the 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.
- (2) This Policy applies when Abaqulusi Municipality –
- (a) procures goods or services;
 - (b) disposes goods no longer needed;
 - (c) selects contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
 - (d) selects external mechanisms referred to in section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.
- (3) This Policy, except where provided otherwise, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –
- (a) Water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
 - (b) Electricity from Eskom or another public entity, another municipality or a municipal entity.

3. Amendment of the supply chain management policy

- (1) The accounting officer must –
 - (a) at least annually review the implementation of this Policy; and
 - (b) when the accounting officer considers it necessary, submit proposals for the amendment of this Policy to the Abaqulusi Municipal council.
- (2) If the accounting officer submits proposed amendments to the Abaqulusi Municipal 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 state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.

(4) The Accounting Officer of a Municipality must in terms of section 62 (1)(f)(iv) of the Act take all reasonable steps to ensure that the Municipality has and implements this supply chain management policy.

(5) All MFMA Circulars issued by National Treasury from time to time are applicable within this policy where practical.

4. Delegation of supply chain management powers and duties

- (1) The Abaqulusi Municipal 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 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 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 Abaqulusi Municipality or to a committee which is not exclusively composed of officials of Abaqulusi Municipality; except when the provisions of Government Gazette no. 43281 issued 5 May 2020 is used, that provide exemption from MSCM Regulations 4(3) and 29(2).

- (4) This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive

bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.

5. Sub delegations

- (1) The accounting officer may in terms of section 79 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 (All applicable taxes included) may not be sub delegated by the accounting officer;
 - (b) Above R2 million (All applicable taxes 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) not exceeding R2 million (All applicable taxes included) may be sub-delegated but only to –
 - (i) the chief financial officer;
 - (ii) a senior manager;
 - (iii) a manager directly accountable to the chief financial officer or a senior manager; or
 - (iv) a bid adjudication committee.
- (3) An official or bid adjudication committee to which the power to make final awards has been sub delegated in accordance with subparagraph (2) must within five days of the end of each month submit to the official referred to in subparagraph (4) a written report containing particulars of each final award made by such official or committee during that month, including–
 - (a) the amount of the award;
 - (b) the name of the person to whom the award was made; and
 - (c) the reason why the award was made to that person.
- (4) A written report referred to in subparagraph (3) must be submitted –
 - (a) to the accounting officer, in the case of an award by –
 - (i) the chief financial officer;
 - (ii) a senior manager; or
 - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or
 - (b) to the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by –
 - (i) a manager referred to in subparagraph (2)(c)(iii); or
 - (ii) a bid adjudication committee of which the chief financial officer or a senior manager is not a member.
- (5) Subparagraphs (3) and (4) of this policy do not apply to procurements out of petty cash.

- (6) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.
- (7) No supply chain management decision-making powers may be delegated to an advisor or consultant. Advisors or consultants may attend BSC and BEC meeting in their capacity and limited to consultants appointed by council as a principle agent, who were either involved with drafting of specification and technical evaluation of bids under their supervision as per their appointment.

6. Oversight role of council

- (1) **Council must maintain oversight over the implementation** of this Policy.
- (2) For the purposes of such oversight the accounting officer must –
 - (a) (i) within 30 days of the end of each financial year, submit a report on the implementation of this Policy to the council and
 - (ii) whenever there are serious and material problems in the implementation of this Policy, immediately submit a report to the council.
- (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.

7. Supply chain management unit

- (1) A supply chain management unit is hereby established to implement this Policy.
- (2) The supply chain management unit operates under the direct supervision of the chief financial officer or an official to whom this duty has been delegated in terms of section 82 of the Act.

8. Training of supply chain management officials

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

CHAPTER 2

SUPPLY CHAIN MANAGEMENT SYSTEM

9. Format of supply chain management system

This Policy provides systems for –

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

Part 1: Demand management

10. System of demand management

(1) The accounting officer must establish and implement an appropriate demand management system in order to ensure that the resources required by Abaqulusi 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 Abaqulusi 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.

(e) Compile the annual procurement plan, submit to the Accounting Officer for approval and ensure submission of approved plan to KwaZulu-Natal Provincial Treasury not later than 30 June annually. Compile quarterly progress reports on its implementation, submit to the Accounting Officer and KwaZulu-Natal Provincial Treasury quarterly on or before due dates.

Part 2: Acquisition management

11. System of acquisition management

- (1) The accounting officer must implement the system of acquisition management set out in this Part in order to ensure –
 - (a) That goods and services are procured by Abaqulusi Municipality in accordance with authorised processes only;
 - (b) That expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
 - (c) that the threshold values for the different procurement processes are complied with;
 - (d) that bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
 - (e) that any Treasury guidelines 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 Abaqulusi Municipality's supply chain management system, including -
 - (a) the kind of goods or services; and
 - (b) the name of the supplier Including-
 - (i) Water from the Department of Water Affairs or a public entity, another municipality, or a municipal entity; and
 - (ii) Electricity from Eskom or another public entity, another municipality or a municipal entity.

12. Range of procurement processes

- (1) Goods and services may only be procured by way of –
 - (a) Petty Cash purchases, up to a transaction value of R200.00 (All applicable taxes included)
 - (b) One written quotation for procurement of a transaction value over R200.00 up to R2000.00 (all applicable taxes included) with compliance of PPP Regulation 22
 - (c) Three written quotations for procurement of a transaction value over R2 000.00 up to R30 000.00 (all applicable taxes included); with compliance of PPP Regulation 22

- (d) Formal written quotation with 7 days advert for procurement of a transaction value over R30 000.00 up to R200 000.00 (all applicable taxes included); with compliance of PPP Regulation 22 , **The invitation for quotation must include the preference point system plus special goals for which point can be claimed and proof required from the supplier to substantiate the claim** and
- (e) A formal competitive bidding process for–
- i. Procurement above a transaction value of R200 000-01 (All applicable taxes included); and
 - ii. the procurement of long-term contracts.
- (a) The preferential points as per the requirements of the Preferential Procurement Policy Framework Act 2000; Preferential Procurement Regulations, 2022 will be applied as follows to the competitive bidding process in (d) and (e) above:
- a. the 80/20 points system shall apply for procurement to the value of R50 000 000.00 (all applicable taxes included), and
 - b. the 90/10 points system shall apply for procurement to the value in excess of R50 000 000.00(all applicable taxes included).
- (2) The accounting officer may, in writing-
- (a) lower, but not increase, the different threshold values specified in subparagraph (1)(a) to (c); or
 - (b) direct that –
- (i) written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000;
 - (ii) formal written price quotations be obtained for any specific procurement of a transaction value lower than R30 000; or
 - (iii) a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000.
- (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.
- (4) **Variation Order:** In cases where the estimated value of the envisaged changes in purchase does not vary more than 15% of the total value of the original contract, the contractor may be instructed to deliver the goods or render the services as such, in compliance with the MFMA Circular no 62.
- (5) **ROTATION OF SERVICE PROVIDERS FROM THE PANEL**
- (i) Quotation should be requested from the panel of service providers on a rotation basis depending on the nature and size of the project.
 - (ii) For construction, all CIDB requirement and CIDB Grading should be followed.

(6) SUNDRY PAYMENTS

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

The end user must submit the sundry documents with the original invoice to the finance signed by the Head of Department or by a delegated person:

- **AG & INTERNAL Audit fees;**
- **Accommodation**
- **Bank Charges;**
- Bursaries and student practical work;
- **Compensation for injuries and diseases;**
- Legal expenses (outside the formal bid process – limited to ad hoc services)
- License fees;
- Donations/grants by Council;
- Entertainment (Music, dancers, isigekle, indlamu, etc);
- Refreshments
- Mayoral donations;
- Medical expenses;
- Membership fees;
- Telecommunications (Telkom, Vodacom, MTN, CELL C)
- Transport (Taxi and bus's Associations, flight)
- Reference books, news papers and magazines;
- Eskom,
- Debit orders;
- Contractual obligations appointed through bids

13. General preconditions for consideration of written quotations or bids

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

- (a) has furnished that provider's –
 - (i) full name;
 - (ii) identification number or company or other registration number; and
 - (iii) tax reference number and VAT registration number , SARS Pin and CSD number
- (b) has authorised Abaqulusi Municipality to obtain a tax clearance from the South African Revenue Services that the provider's tax matters are in order; and
- (c) has indicated –
 - (i) whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
 - (ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or

- (iii) whether a spouse, child, or parent of the provider or of a director, manager, shareholder, or stakeholder referred to in subparagraph (ii) is in the service of the state or has been in the service of the state in the previous twelve months.
- (iv) Declaration of interest (MBD 4)
- (v) Declaration for procurement above R10 million (All applicable taxes included) (MBD5)
- (vi) Preference points claim, the revised (MBD 6.1) that aligned with the PPRegulations of 2022.
- (vii) Declaration of bidder's past supply chain management practices (MBD 8)
- (viii) Certificate of independent bid determination (MBD 9)
- (ix) Declaration of municipal fees
- (x) Tax certificate requirements / tax compliant (MBD 2 & CSD REPORT)
- (xi) Supply SARS PIN number and a copy of CSD report not older than 30 days from the day of request for quotation/advertisement of bid.

14. Lists of accredited prospective providers

- (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 verbal (petty cash , written and formal written price quotations; and are in keeping with the National Treasury Centralized Supplier Database.
 - (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 and must in the first instance be registered with the Centralized National Treasury Database
- (3) The list must be compiled per commodity and per type of service. Prospective providers are allowed to amend the list of commodity and type of service at any given point in time.
- (4) Service providers must be registered on both Abaqulusi Municipal Database and Central Suppliers Database.

- (5) No quotation may be solicited from any supplier/ service provider / contractor who is not registered and verified by the National Treasury Central Supplier Database that is compliant .

The National Treasury have established a web based Central Supplier Database (CSD) for the registration of prospective suppliers.

With effect from 1 July 2016, Municipalities and Municipal Entities must use the CSD supplier number starting with (MAAA) which is auto generated by the Central Database System after successful registration and validation of the prospective provider as mandatory requirement as part of listing criteria for accrediting prospective provider in line with Section 14(1)(b) of the Municipal Supply Chain Management Regulations.

The CSD will automatically validate the following registration documents for Municipalities and Municipalities;

- I. Confirmation and status of Business Registration Documents
- II. Proof of Bank Account Registration
- III. Tax compliance status
- IV. Employee in the service of state as defined in the Municipal SCM Regulations with information only available in the PERSAL system at this time, namely National and Provincial officials
- V. Identity Documentation

UNSATISFACTORY PERFORMANCE AND CONTRACT TERMINATION:

The municipality should continuously communicate unsatisfactory performance to contractors in writing compelling the contractor to perform according to the contract and thus to rectify or to restrain from unacceptable actions. It must be in accordance of Instrument Note no. 3 of 2021/22

15. Petty cash purchases

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

- (a) The Manager : Expenditure may, in writing delegate responsibility to monitor for petty cash to an official reporting to the Manager : Expenditure on the following terms may be delegated to the 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 (all applicable taxes included) 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
 receipts and appropriate documents for each purchase

15. Verbal quotation for procurement of a transaction value over R200.00 up to R2000.00 (all applicable taxes included) with compliance of PPP Regulation 22

17. Written quotations (R2000.00 – R3000.00)

The conditions for the procurement of goods or services through written quotations are as follows (*read with section 12.3 of this policy*)

- a) Quotations must be obtained from at least one service provider preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the municipality, provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria in the supply chain management policy required by 14(1) (b) and (c) of this policy;
- b) Only one quote be sourced for strip and quote and must be obtained from supplier available in the area or dealerships
- c) Building material quotations be obtained from suppliers available in the area

18. Formal written price quotations (R30000.01 – R200 000.00)

- (1) The conditions for the procurement of goods or services through formal written price quotations, are as follows (*read with section 12.3 of this policy*):
 - (a) quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of Abaqulusi Municipality and Central Supplies Database;
 - (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.

18. Procedures for procuring goods or services through formal written price quotations

The procedure for the procurement of goods or services through formal written price quotations is as follows (*read with section 12.3 of this policy*):

- (a) When using the list of accredited prospective providers, the accounting officer must promote on going competition amongst providers by inviting providers to submit quotations on a rotation basis; i.e., if the service provider has been recently awarded for the same service/work/good, the rotation process must be followed for the awarding of quotations.
- (b) all requirements in excess of R30 000 (All applicable taxes included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, be advertised for at least seven days on the website and an official notice board of Abaqulusi 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 formal written price quotations accepted by an official acting in terms of a sub delegation;
- (e) Offers below R30 000 (All applicable taxes included) must be awarded based on compliance to
Specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;
- (f) Acceptable offers, which are subject to the preference points system (PPPFA and associated regulations), must be awarded to the bidder who scored the highest points;
- (g) Original documents are to be kept in a safe and secure place by SCM Unit.

19. Competitive bids

19. (a) *(Read with section 12.3 of this policy)*

- (1) Goods or services above a transaction value of R200 000.01 (All applicable taxes 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 000.01 (All applicable taxes 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.
19. (a) In an effort to promote empowerment of local contractors and emerging service providers an empowerment partnership arrangement between big and emerging service providers within Abaqulusi jurisdiction, a mandatory 30% of the awarded construction project must be sub contracted to local suppliers limited to CIDB 1 and 2 subject to CIDB 1 and 2 as guided by CIDB regulations.
- 19 (b) In the case of Abaqulusi local will be defined as a supplier within the Abaqulusi jurisdiction will be obliged to have statement of municipal rates or proof of residence being verified and certified by the ward councillor concerned.

20. Process for competitive bidding

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

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

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

21. Bid documentation for competitive bids

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

- (a) take into account –
 - (i) the general conditions of contract and any special conditions of contract, if specified;
 - (ii) any Treasury guidelines on bid documentation; and
 - (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
- (b) include the preference points system to be used , goals as contemplated in the Preferential Procurement Regulations and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (d) if the value of the transaction is expected to exceed R10 million (All applicable taxes included), require bidders to furnish–
 - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
 - (aa) for the past three years; or
 - (bb) since their establishment if established during the past three years;
 - (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;

(iii) REQUIREMENTS OF MFMA CIRCULAR 62:

- A senior manager for the Vote to provide proof to the CFO and specifications committee that budgetary provision has been made before public advertisement is approved,

- All ancillary budget implications related to the bid has been taken into account,
- Multi-year budgetary implications has been considered,
- CFO verified in writing availability of budget,
- CFO will verify budget availability before award is finalised,
- Accounting Officer may during competitive bidding process and adjudication verify compliance with all required processes.

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;
- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

22. Public invitation for competitive bids

- (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 on E-tender Portal and /or newspapers commonly circulating
Locally, the website of the municipality or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and
 - (b) The information contained in a public advertisement, must include –
 - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (~~VAT included~~All applicable taxes included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper and on the E-Tender / i-tender Portal, subject to subparagraph (2) of this policy;
 - (ii) a statement that bids may only be submitted on the bid documentation provided by Abaqulusi Municipality; and be completed in hand writing in a black ink
 - (iii) date, time, and venue of any proposed site meetings or briefing sessions; and
 - (iv) that the bid will be evaluated on functionality, if applicable.
 - (v) A statement stating that no late bid/proposal will be accepted.
 - (vi) Or any other applicable criteria such of the Preferential Procurement Regulations of 2022 and or CIDB
 - (c) Where the bid will be evaluated on functionality-
 - (i) the evaluating criteria must be objective
 - (ii) the following must be clearly specified in the invitation to submit a bid-
 - (a) evaluation criteria for measuring functionality;
 - (b) weight of each criterion;
 - (c) applicable values; and
 - (d) minimum qualifying score

- (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, marked clearly with bid number and description.
- (4) No electronic copies may be sent to bidders unless bid advertised on e-tender portal
- 5) Publication of notices of the bid awards, cancellation must be advertised on Municipal website

23. Procedure for handling, opening and recording of bids

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

- (a) Bids–
 - (i) must be opened only in public by at least one SCM representative help with the intern and two records officials and / or if possible, the official from the end user department
 - (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
 - (iii) received after the closing time should not be considered and returned unopened immediately.
 - (iv) Should the bidder who submitted a late bid not be at the opening or the envelope not have a return address, such bid will be filed un-opened for the duration of the bid process and thereafter be opened to obtain the postal address and the re- sealed envelope returned to the bidder.
- (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also, each bidder's total bidding price;
- (c) No information, except the provisions in subparagraph (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
- (d) The accounting officer must –
 - (i) record in a register all bids received in time;
 - (ii) make the register available for public inspection; and
 - (iii) publish the entries in the register and the bid results on the website

24. Negotiations with preferred bidders

- (1) The accounting officer may negotiate the final terms of a contract with bidders Identified through a competitive bidding process as preferred bidders, provided that such negotiation –
 - (a) does not allow any preferred bidder a second or unfair opportunity;

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

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

25. Two-stage bidding process

- (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.

26. Committee system for competitive bids

- (1) A committee system for competitive bids is hereby established, consisting of the following committees for each procurement or cluster of procurements as the accounting officer may determine:
 - (a) a bid specification committee;
 - (b) a bid evaluation committee; and
 - (c) a bid adjudication committee;
- (2) **The accounting officer appoints the members of each committee** in writing for a specific period of time and the chairpersons 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.
- (6) The accounting officer may apply the committee system to formal written price quotations.

27. Bid specification committees

- (1) A bid specification committee must compile the specifications for each procurement of goods or services by Abaqulusi Municipality.

- (2) Specifications –
- (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
 - (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;
 - (c) must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
 - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking, or labelling of conformity certification;
 - (e) may not make reference to any particular trademark, 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 goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2022
 - (g) must be approved by the accounting officer prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.
- (3) A bid specification committee must be composed of -
- i. Three or more officials of the Abaqulusi Municipality who serve as standing members, with one from finance and may, when appropriate include external specialist advisors or invite the user department, which members will be appointed by the Accounting Officer in writing.
 - ii. At least technically experienced officially to be co-opted on an adhoc basis from end – user department
 - iii. The quorum must be equal to 50% of the number of permanent (as opposed to co-opted) committee members, plus one
- (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.
- (5) Each tender document will have a specific goal with the points required determined by the Bid Specification Committee in their meeting.

28. Bid evaluation committees

- (1) A bid evaluation committee must –
- (a) evaluate bids in accordance with –
 - (i) functionality criteria, if applicable, and no bid must be regarded as an acceptable bid if it fails to achieve the minimum qualifying score for functionality as indicated in the bid invitation ;
 - (i) the specifications for a specific procurement; and

- (ii) the points system set out in terms of paragraph 27(2)(f).
- (b) evaluate each bidder's ability to execute the contract;
- (c) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears as per SCM Regulation 38 (d)(i), and;
- (d) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.

(e) Ensure in respect of the recommended bidder, that their

tax compliance status on CSD or through SARS e-filing system, verify the status of its CIDB registration and certificate,

(f) In bids where Consortia / Joint Ventures are involved, each party must submit a separate SARS Pin or tax compliance status with a CSD Number.

(g) In instances where a tax clearance certificate or tax compliance status with CSD number is valid at the time of tender, but expire during the evaluation period, the preferred bidder must furnish the municipality within 7 working days in terms of MFMA Circular 90 with tax compliant status with CSD number.

- (2) A bid evaluation committee must as far as possible be composed of-
 - i. Three or more middle management officials of the municipality who serve as standing members, one from the Supply Chain Management Unit which members will be appointed by the Accounting Officer in writing
 - ii. An official to be co-opted from end user department preferably a manager and a knowledgeable official responsible for the function involved.
 - iii. The quorum must be equal to 50% of the number of permanent (as opposed to co-opted) committee members, plus one member

3) MANAGEMENT OF EXPANSION OR VARIATION ORDERS AGAINST ORIGINAL CONTRACT

i. The contract may be expanded, or variation order applied against the original contract but by no more than 20% of the original value of the contract as awarded or R20m (all taxes included) for construction related goods, services or infrastructure projects whichever the lowest.

- ii. For other goods and services expansion or variation orders may be applied to contract provided it does not exceed 15% of the original value of the contract as awarded or R15m (all taxes included) whichever is the lowest

CRITERIA FOR BREAKING DEADLOCK IN SCORING

- i. If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest points in special goal/s.
- ii. If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

AWARDING THE CONTRACT TO A TENDERER NOT SCORED THE HIGHEST POINTS

- i. A contract may be awarded to a tenderer that did not score the highest points only in accordance with section 2 (1)(f) of the Preferential Procurement Policy Framework Act, 5 of 2000.

29. Bid adjudication committees

- (1) A bid adjudication committee must –
 - (a) Study and consider the report and recommendations of the bid evaluation committee; and
 - (b) either –
 - (i) depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or
 - (ii) make another recommendation to the accounting officer how to proceed with the relevant procurement.

- (2) A bid adjudication committee must consist of four senior managers of Abaqulusi Municipality which must as far as possible include:
 - (a) the Chief Financial Officer as chairperson or, if the Chief Financial Officer is not available, another manager in 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;
 - (c) A technical expert in the relevant field who is an official, if such an expert exists or an external service provider/expert for clarity reasons may be invited to clarify any queries raised by the Bid Adjudication Committee members, if such an expert exists and have been involved in the specifications and or evaluation process.
 - (d) The quorum must be equal to 50% of the number of permanent (as opposed to co-opted) committee members, plus one member

- (3) The accounting officer must appoint the chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.

- (4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.

- (5)
 - (a) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –
 - (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;
 - (ii) notify the accounting officer.
 - (b) The accounting officer may –
 - (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
 - (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.

- (6) The accounting officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.

- (7) The SCM practitioner of the municipality is expected to make all means possible to notify the bidder as soon as the award is made to furnish the municipality with required documents within the suspense period of seven (7) working days as per required by MFMA circular 90 with tax compliant status with CSD number
- (8) The Accounting Officer must publish the intention to award on Municipal Website for the period of 14 days from the date of placing the intention to award on Website.
- (9) The accounting officer must comply with section 114 of the Act within 10 working days

30. Procurement of banking services

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

31. Procurement of IT related goods or services

- (1) The accounting officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.
- (2) All IT related purchases must be approved by IT Office prior following the procurement process.
- (3) Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.
- (4) 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 (All applicable taxes included);
 - or
 - (b) the transaction value of a contract to be procured whether for one or more years exceeds R50 million (All applicable taxes included).
- (5) If SITA comments on the submission and Abaqulusi Municipality disagree 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.

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

- (1) The accounting officer may procure goods or services under a contract secured by another organ of state, but only if –
- (a) the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
 - (b) there is no reason to believe that such contract was not validly procured;
 - (c) there are demonstrable discounts or benefits to do so; and
 - (d) that other organ of state and the provider have consented to such procurement in writing.
- (2) The provisions of MFMA Circular 96 on additional requirements to met when procuring through MSCM Regulation 32.
- (3) Subparagraphs (1)(c) and (d) do not apply if –
- (a) a municipal entity procures goods or services through a contract secured by its parent municipality; or
 - (b) a municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.

33. Procurement of goods necessitating special safety arrangements

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

34. Proudly SA Campaign

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

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

35. Appointment of consultants

- (1) The accounting officer may procure consulting services provided that any

Treasury guidelines in respect of consulting services are taken into account when such procurements are made.

- (2) Consultancy services must be procured through competitive bids if
 - (a) the value of the contract exceeds R200 000 (All applicable taxes 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 Abaqulusi Municipality.

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

- (1) The accounting officer may –
 - (a) dispense with the official procurement processes established by this Policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only –
 - (i) in an emergency (breakages after hours, situations that may lead to health, safety hazards or death, serious hampering of official service delivery to the community);
 - (ii) if such goods or services are produced or available from a single provider only (e.g. agents/manufacturer/patent holder or items under guarantee);
 - (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 (such as strip and quote on rotation basis, appointment of specialized service providers);
 - (vi) ad-hoc repairs to machinery, plant and equipment where it is not possible to ascertain the nature or extent of the work required in order to call for bids; and

- (vii) Workshop strip and quote (as per definition).
- (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.
- (4) Where possible, in an emergency situation, quote, in accordance with general acquisition management principles, should be obtained and a report submitted to the Municipal Manager for approval.
- 5 Where however, time is of the essence, the emergency must be immediately addressed, and the process formalized in a report to the Municipal Manager as soon as possible thereafter
- (7) The prospective service provider must submit a valid tax certificate/ SARS Pin before being appointed in terms of SCM regulation 36

37. Unsolicited bids

- (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- (2) The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if –
 - (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
 - (b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
 - (c) the person who made the bid is the sole provider of the product or service; and
 - (d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
- (3) If the accounting officer decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with –

- (a) reasons as to why the bid should not be open to other competitors;
 - (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
 - (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) The accounting officer must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, to the National Treasury and the 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 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 Abaqulusi Municipality to the bid may be entered into or signed within 30 days of the submission.

38. Combating of abuse of supply chain management system

- (1) The accounting officer must–
- (a) take all reasonable steps to prevent abuse of the supply chain management system;
 - (b) investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this Policy, and when justified –
 - (i) take appropriate steps against such official or other role player; or
 - (ii) report any alleged criminal conduct to the South African Police Service;

- (c) check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited 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 Abaqulusi 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 Abaqulusi 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 Abaqulusi Municipality or has committed any improper conduct in relation to such system;
 - (ii) has been convicted for fraud or corruption during the past five years;
 - (iii) has wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - (iv) has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- (2) The accounting officer must inform the National Treasury and 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

39. Logistics management

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.

40. Disposal management

- 1) The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets are subject to sections 14 of the Act.
- 2) Assets may be disposed of by –
 - (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
 - (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
 - (iii) selling the asset; or
 - (iv) destroying the asset.
- 3) The accounting officer must ensure that –
 - a) immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
 - b) movable assets are sold 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.
- 4) Bids for disposal or letting of assets will be evaluated in accordance with the 80/20 or 90/10 preference point system for tenders for income-generating contracts. The tender document will stipulate the applicable points system as envisaged in PPRegulations of 2022, regulation 6 or 7; the specific goal/s in the invitation to submit the tender for which points may be awarded, and the number of points that will be awarded to each goal, and proof of the claim for such goal.
- 5) The Accounting Officer to appoint a disposal committee in writing when needed to make recommendations on assets identified for disposal.

41. Risk management

- (1) The criteria for the identification, consideration and avoidance of potential risks in the supply chain management system, are as follows:
- (a) insolvency; non-payment of rates and service charges; liquidation; unable to supply certificate from SARS.

When an application for an assignment or cession of a contract is received from a supplier, the Accounting Officer must be taken of the content of MFMA Circular no. 120:

- Contracts may not be assigned in whole or in part from one bidder to another bidder if it contravenes the principles of section 217 of the Constitution, and
- The cession of contracts that refers to the transfer of the rights of a service to a third party only includes the right to be paid for services it renders. The appointed bidder remains the service provider while the municipality pays for services rendered to a third party instead, for example a financial institution.

- (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;
- (a) the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
 - (b) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

42. Performance management

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

Part 4: Other matters

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

MFMA CIRCULAR 90 - TAX COMPLIANCE STATUS-

(1) In order to comply with the new TCS system and the condition of bids successful bidders tax matters must be in order. Tax compliance status must be verified either using SARS e-Filing system or CSD and should be done prior to the finalisation of the award of the bid or price quotation. When the recommended bidder is not tax compliant, the bidder should be notified of their non-compliant status and the bidder requested to submit to the municipality within 7 working days, written proof from SARS of their tax compliance status or proof from SARS that they have made arrangements to meet their outstanding tax obligations. The tax compliance status of the bidder must be re-confirmed through SARS e-Filing system or CSD. A non compliant bidder or bidder that does not comply with the timeframe, bid will be rejected.

- (2) Prior to award the accounting officer must confirm that bidders Tax compliant.
- (3) No award will be made to a service provider whose tax status is found non-compliant prior or on award.

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

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

- (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 Abaqulusi municipality.
- (d) Before any award is finalised the surname, initials and RSA ID number of the owner/s and directors/shareholders/trustees of a company/enterprise should be verified against the municipality's payroll to ensure that no employees are appointed to render goods/services to the municipality. (MFMA Circular 62).

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

The accounting officer must ensure that the notes to the annual financial statements disclose particulars of any award of more than 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.

46. Ethical standards

(1) A code of ethical standards as set out in “**National Treasury’s code of conduct for supply chain management practitioners and other role players involved in supply chain management**” is hereby established

for officials and other role players in the supply chain management system of 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.

(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, Abaqulusi 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 Abaqulusi 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 Abaqulusi 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 in accordance with schedule 2 of the Systems Act and as follows -
 - (a) in the case of an employee, in terms of the disciplinary procedures of Abaqulusi 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.

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

- (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
 - (a) any inducement or reward to Abaqulusi 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 and KZN Provincial 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.

48. Sponsorships

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.

49. Objections and complaints

Persons aggrieved by decisions or actions taken in the implementation of this supply chain management system, may lodge within 14 calendar days of the decision or action –

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

50. Resolution of objections and complaints against procurement process

(1) The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes to assist in the resolution of objections and complaints between the Abaqulusi municipality and any other person regarding -

- (a) any decision or actions taken in the implementation of the procurement process in terms of the supply chain management system; or
- (b) any matter arising from a contract awarded in the course of the supply chain management system.

(2) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.

- (3) The person appointed must –

- (a) strive to resolve promptly all objections and complaints received; and
 - (b) submit monthly reports to the accounting officer on all such objections and complaints received, attended to or resolved.
- (4) If the independent and impartial person referred to in paragraph 50.1, is of the view that a matter which should be dealt with in terms of paragraph 50A, he or she shall forthwith refer the matter to the Municipal Bid Tribunals and that Tribunal shall then hear and determine the matter in accordance with the provisions of paragraph 50A.
- (5) An objection or complaint may be referred to the KwaZulu-Natal Provincial Treasury and Municipal Bid Appeals Tribunal if:
- (a) the objection or complaint is not resolved within 60 days; or
 - (b) no response is forthcoming within 60 days.
- (6) If KZN Provincial Treasury does not or cannot resolve the matter, the objection or complaint may be referred to the National Treasury for resolution.

50A. Municipal Bid Appeals Tribunal

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

51. Contracts providing for compensation based on turnover

If a service provider acts on behalf of Abaqulusi 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 Abaqulusi Municipality must stipulate –

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

52. PREFERENTIAL PROCUREMENT

Provision of this section takes effect ad from the 16th of January 2023

- (1) All procurement of goods, services and works are to be in compliance with this policy.
- (2) The unit responsible for the management of this policy is the Supply Chain Management Unit.
- (3) All Unit Heads and managers responsible for the procurement of goods, services and/or works are, however, responsible for compliance with this policy within their areas of control, and will be held accountable where transgressions to policy are encountered.

(4) Identification of preference point system

- (1) The Municipality must in its tender documents, stipulate—
 - (a) the applicable preference point system as envisaged in regulations 4, 5, 6 and 7 below;
 - (b) The specific goal in the invitation to submit the tender for which a point may be awarded, and the number of points that will be awarded to each goal, and proof of the claim for such goal.
- (2) If it is unclear whether the 80/20 or 90/10 preference point system applies, the Municipality must in its tender documents, stipulate in the case of—
 - (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
 - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system.

(5)

The formulae for the acquisition of goods or services using either 80/20 and 90/10 preference points system are as follows:

- (a) the price in respect of bids (including quotations) with an estimated Rand value of greater than R30 000 and up to a Rand value of R50 000 000 (all applicable taxes included):

$$Ps = 80 \left[1 - \frac{(Pt - Pmin)}{Pmin} \right]$$

- (b) the price in respect of bids (including price quotations) with an estimated Rand value of greater than R50 000 000 (all applicable taxes included):

$$Ps = 90 \left[1 - \frac{(Pt - Pmin)}{Pmin} \right]$$

Where:

Ps = Points scored for comparative price of the bid under consideration;

Pt = Comparative price the bid under consideration; and
Pmin = Comparative price of the lowest responsive bid.

(6) The formulae for the 80/20 preference points system for income generating contract are as follows:

- (6)
 (a) The following formula must be used to calculate the points for price in respect of an invitation for tender for income-generating contracts, with a Rand value equal to or below R50 million, inclusive of all applicable taxes:

$$Ps = 80 \left[1 + \frac{(Pt - Pmax)}{Pmax} \right]$$

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of highest acceptable tender.

(b) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.

(c) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

(d) Subject to section 2(1)(f) of the PPPFA, the contract must be awarded to the tenderer scoring the highest points.

(7) ~~(7)~~ 90/10 preference point system for tenders for income-generating contracts with Rand value above R50 million are as follows:

- (a) The following formula must be used to calculate the points for price in respect of a tender for income-generating contracts, with a Rand value above R50 million, inclusive of all applicable taxes

$$Ps = 90 \left[1 + \frac{(Pt - Pmax)}{Pmax} \right]$$

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of highest acceptable tender.

(b) A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.

(c) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

(d) Subject to section 2(1)(f) of the PPPFA, the contract must be awarded to the tenderer scoring the highest points.

(8) The Basket of Preference Goals

(a.) The basket of preference goals as contained in the relevant legislation are listed hereunder and the Municipality is at liberty to apply specific goals in any combination format depending on their preference targets. Municipality may include in their policy specific goals as part of their tendering conditions.

(b) Each tender document will have a specific goal with the points required determined by the Bid Specification Committee in their meeting.

(9) Preference Goal 1

Ownership as specific goal

A maximum of 20 points (80/20 preference points system) or 10 (90/10 preference points system), may be allocated. Bidder may score preference points based on company ownership.

If the Municipality applies ownership as specific goal, the Municipality must advertise the tender with a specific tendering preferential procurement requirement that in order for a tenderer to claim 10 / 20 points for specific goals, a tendering company must have the following ownership:

- race, (Historically Disadvantaged Persons) or
- gender (Historically Disadvantaged Persons) or;
- disability (Historically Disadvantaged Persons).

Ownership verification may be conducted through the Companies and Intellectual Property Commission (CIPC), CSD or B-BBEE.

(10) Preference Goal 2

RDP Goals

Over and above the awarding of preference points in favour of HDPs, the following activities may be regarded as a contribution towards achieving the goals of the RDP (published in Government Gazette No. 16085 dated 23 November 1994):

- a. The promotion of South African owned enterprises;
- b. The promotion of export orientated production to create jobs;
- c. The promotion of SMMEs;
- d. The creation of new jobs or the intensification of labour absorption;
- e. The promotion of enterprises located in a specific province for work to be done or services to be rendered in that province;
- f. The promotion of enterprises located in a specific region for work to be done or services to be rendered in that region;
- g. The promotion of enterprises located in a specific municipal area for work to be done or services to be rendered;
- h. The promotion of enterprises located in rural areas;
- i. The empowerment of the work force by standardising the level of skill and knowledge of workers;
- j. The development of human resources, including by assisting in tertiary and other advanced training programmes, in line with key indicators such as percentage of wage bill spent on education and training and improvement of management skills; and
- k. The upliftment of communities through, but not limited to, housing, transport, schools, infrastructure donations, and charity organizations.

The Municipality may also use other RDP goals identified in the Government Gazette No. 16085 dated 23 November 1994;

<https://www.gov.za/sites/default/files/governmentgazetteid16085.pdf>

(11)Preference Goal 3

Combinations of any other Goals

The Municipality may also combine any specific goals above in a manner that will help them evaluate and apply preference points to tenders.

(11)(1) The Bid Specification Committee shall set appropriate Local Economic Development Targets in the form of Contract Participation Goals and or Targeted Procurement objectives which must form part of the invitation to tender, set as performance criteria within contracts, where appropriate, for the following target groups:

- (a) Priority population groups
- (b) Women
- (c) Youth
- (d) Disabled
- (e) Co-operatives
- (f) Location of a Business Enterprise

- (2) Tender(s) received need to be evaluated in terms of the preference point system first. Once the highest points scorer has been ascertained only then the targeted procurement will be applied. Targeted Procurement will justify the award of tender to a tenderer with lower preference points score.
- (3) Targeted Procurement Criteria will be applied, where feasible, on a tender-by-tender basis.
- (4) In an event where a tender with the highest number of preference points score does not meet the targeted procurement criteria set for the specific tender, then the next responsive tender with a lower preference points score and who meets targeted procurement criteria must be considered for the award of a tender.

If the tendered price of the next responsive tender who meets the targeted procurement criteria is too high than that of a tender with a highest number of preference points score, the organ of state must ensure that a cost effective price is derived through employing one of the following options through a negotiation process with the preferred bidder:

(a) That the next responsive tender who meets targeted procurement criteria accepts the lowest responsive price of a tender that did not meet the targeted procurement criteria
OR

- (b) That the next responsive tender accepts a tender price that is market related as was determined by the Municipality through the budgeting process of the tender itself.
- (5) Where negotiations fail the Municipality reserves the right to cancel the tender or consider the highest scoring bid in terms of preference points scoring.

(9) Address declared by the prospective bidder in the National Treasury Central Supplier Database (CSD) or in Abaqulusi Municipality Vendor Portal shall be used to determine the location of a business enterprise.

(12) Cancellation of tenders

- (a) An organ of state may, before the award of a tender, cancel a tender invitation if:
 - due to changed circumstances there is no longer a need for the goods or services specified in the invitation
 - Funds are no longer available to cover the total envisaged expenditure

- No acceptable tender is received
- There is material irregularity in the tender processes
 - (b) The decision to cancel a tender invitation in terms of sub regulation (a) may be published in the manner in which the original tender invitation was advertised, preferably municipal website.
 - (c) If tender proposals are below or above the threshold for evaluation prescribed through bidding documents.

COMMENCEMENT DATE: 16 January 2023

Annexure:

Appendix A: Rules for municipal bid appeals tribunal

Appendix B: Codes of conduct for SCM Practitioners

APPENDIX A
ABAQULUSI 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 Zululand District Municipality;

- 1.1.7 **“interested person”** means either –
- 1.1.7.1 a person who was awarded a bid; and
- 1.1.7.2a 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 Abaqulusi 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 4357

Telefax no.: 033 342 4238

Email address: philile.memela@kzntreasury.gov.za

4.4 **Documents**

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.

APPENDIX B: CODE OF CONDUCT FOR SCM PRACTITIONERS

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

In accordance with regulation 46(4) and 46(5) of the Local Government Municipal Finance Management Act, 2003: Municipal Supply Chain Management Regulations, the supply chain management policy of a municipality or municipal entity is required take into account the National Treasury's code of conduct for supply chain management practitioners and other role players. Alternatively a municipality or municipal entity may adopt the National Treasury code of conduct. When adopted, such code of conduct becomes binding on all officials and other role players involved in the implementation of the supply chain management policy of the municipality or municipal entity.

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

General Principles

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.

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.

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.

Conflict of interest

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

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

- proposed procurement or disposal process, or in any award of a contract by the municipality;
- (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
 - (g) must declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest;
 - (h) should not place him/herself under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties; and
 - (i) should not take improper advantage of their previous office after leaving their official position.

Accountability

Practitioners are accountable for their decisions and actions to the public.

Practitioners should use public property scrupulously.

Only accounting officers or their delegates have the authority to commit the municipality to any transaction for the procurement of goods and / or services.

All transactions conducted by a practitioner should be recorded and accounted for in an appropriate accounting system. Practitioners should not make any false or misleading entries into such a system for any reason whatsoever.

Practitioners must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system.

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.

Any declarations made must be recorded in a register which the accounting officer must keep for this purpose. Any declarations made by the accounting officer must be made to the mayor who must ensure that such declaration is recorded in the register.

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.

Confidentiality

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.

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.

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

5 Combative Practices

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

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

Acknowledgement

I, _____ **Employee No.** _____

Appointed as a **SCM Official/SCM Role player** hereby acknowledge receipt of this memorandum. I confirm that I have read the code of conduct. I accept conditions as contained in this memorandum and attachments.

[A copy of this memorandum with original signature shall be forwarded to the office of the Chief Financial Officer.]

Signature: _____

Date: _____