CAPE WINELANDS DISTRICT
MUNICIPALITY • MUNISIPALITEIT • UMASIPALA

2025/2026
MUNICIPAL SUPPLY CHAIN MANAGEMENT POLICY

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Council resolved on …… (…….) in terms of section 111 of the Local Government Municipal Finance Management Act (No. 56 of 2003), to adopt the following proposal as the Supply Chain Management Policy of the Cape Winelands District Municipality

TABLE OF CONTENTS

1. Definitions

CHAPTER 1

IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

2. Supply chain management policy
3. Amendment of supply chain management policy
4. Delegation of supply chain management powers and duties
5. Sub-delegations
6. Oversight role of council
7. Supply chain management units
8. Training of supply chain management officials

CHAPTER 2

SUPPLY CHAIN MANAGEMENT SYSTEM

9. Format of supply chain management system

Part 1: Demand management

10. System of demand management

Part 2: Acquisition management

11. System of acquisition management
12. Range of procurement processes
13. General preconditions for consideration of written quotations or bids
14. Lists of accredited prospective providers
15. Petty cash purchases
16. Formal written price quotations
17. Procedures for procuring goods or services through formal written price quotations
18. Competitive bidding process
19. Process for competitive bidding
20. Bid documentation for competitive bids
21. Public invitation for competitive bids
22. Procedure for handling, opening and recording of bids
23. Negotiations with preferred bidders
24. Two-stage bidding process
25. Committee system for competitive bids
26. Bid Specifications Committees
27. Bid Evaluation Committees

DRAFT

28. Bid Adjudication Committees
29. Procurement of banking services
30. Procurement of IT related goods or services
31. Procurement of goods and services under contracts secured by other organs of state
32. Procurement of goods necessitating special safety arrangements
33. Proudly SA Campaign
34. Appointment of consultants
35. Deviation from and ratification of minor breaches of procurement processes
36. Unsolicited bids
37. Combating of abuse of supply chain management system

Part 3: Logistics, Disposal, Risk and Performance Management

38. Logistics management
39. Disposal management
40. Risk management
41. Performance management

Part 4: Other matters

42. Prohibition on awards to persons whose tax matters are not in order
43. Prohibition on awards to persons in the service of the state
44. Awards to close family members of persons in the service of the state
45. Ethical standards
46. Inducements, rewards, gifts and favours
47. Sponsorships
48. Objections and complaints
49. Resolution of disputes, objections, complaints and queries
50. Contracts providing for compensation based on turnover
51. Contract having budgetary implications beyond three years
52. Right of appeal
53. Notification of bid decisions
54. Sale and Letting of Assets
55. Framework for Infrastructure Delivery and Procurement Management
56. Protection of Personal Information
57. Short title
58. Commencement
59. Relevant sections from the MFMA
60. Adoption of National Treasury/MFMA Circulars

DRAFT

1. Definitions

1.1 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

1.1.1 **"The Act"** means the Municipal Finance Management Act, No. 56 of 2003;

1.1.2 **"Bid"** means a written offer in a prescribed or stipulated form in response to an invitation by the municipality for the provision of goods, services or construction works through price quotations, advertised competitive bidding process or proposals;

1.1.3 **"Bidder"** means any person submitting a competitive bid or a quotation;

1.1.4 **"Closing time"** means the time and day specified in the bid documents for the receipt of bids;

1.1.5 **"Competitive bidding process"** means a competitive bidding process referred to in paragraph 12(2)(b)(iii) of this Policy;

1.1.6 **"Competitive bid"** means a bid in terms of a competitive bidding process;

1.1.7 **"Contract"** means the agreement which is concluded when the municipality accepts, in writing, a competitive bid or quotation submitted by a supplier;

1.1.8 **"Contract manager"** means an official of the Municipality who is responsible for the planning for the planning and execution of a transaction involving the procurement of goods, services or works;

1.1.9 **"Contractor"** means any person or entity whose competitive bid or quotation has been accepted by the municipality;

1.1.10 **"Delegated authority"** means any person or committee delegated with authority by the municipality in terms of the provisions of the Municipal Finance Management Act;

1.1.11 **"Department"** means a section within a specific directorate in terms of the municipal organogram;

1.1.12 **"Electronic format"** means a bid submitted by a bidder via email or made available through a cloud storage services;

1.1.13 **"Emergency dispensation"** means emergency as referred to in paragraph 36(1)(a)(i) of this policy under which one or more of the following is in existence that warrants an emergency dispensation;
The possibility of human injury or death;
The prevalence of human suffering or deprivation of rights;
The possibility of damage to property, or suffering and death of livestock and animals;
The interruption of essential services, including transportation and communication facilities or support services critical to the effective functioning of the municipality as a whole;
The possibility of serious damage occurring to the natural environment;
The possibility that failure to take necessary action may result in the municipality not being able to render an essential community service;
The possibility that the security of the state could be compromised; or
The prevailing situation, or imminent danger, should be of such a scale

and nature that it could not readily be alleviated by interim measures, in order to allow time for the formal procurement process. Emergency dispensation shall not be granted in respect of circumstances other than those contemplated above.

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1.1.14 **"Final award",** in relation to bids or quotations submitted for a contract, means the final decision on which a bid or quote is accepted;

1.1.15 **"Formal written price quotation"** means quotations referred to in paragraph 12 (1)(d) of this Policy;

1.1.16 **"Green procurement"** means the procurement of environmentally friendly products and services;

1.1.17 **"in the service of the state"** means to be –

A member of –
Any municipal council;
Any provincial legislature; or
The National Assembly or the National Council of Provinces;
A member of the board of directors of any municipal entity;
An official of any municipality or municipal entity;
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);
A member of the accounting authority of any national or provincial public entity; or
An employee of Parliament or a provincial legislature;

1.1.18 **"Long term contract"** means a contract with a duration period exceeding one year

1.1.19 **"List of accredited prospective providers"** means the list of accredited prospective providers which the Cape Winelands District Municipality must keep in terms of paragraph 14 of this policy;

1.1.20 **"Other applicable legislation"** means any other legislation applicable to municipal supply chain management, including but not limited to the following –

The Preferential Procurement Policy Framework Act;
The Broad-Based Black Economic Empowerment Act; and
The Construction Industry Development Board Act;
The Local Government: Municipal Systems Act;
The Competition Act; and
The Promotion of Administrative Justice Act.

1.1.21 **"Policy"** means the Supply Chain Management Policy of the Cape Winelands District Municipality as amended from time to time;

1.1.22 **"Parent municipality"** has the meaning assigned to it in section 1 of the Municipal Systems Act;

1.1.23 **"Petty Cash"**, means the procurement of goods and services through the supply chain management requisition and order system by means of one verbal and written quotation below a determined amount in relation with the Petty Cash Policy;

1.1.24 **"Senior Manager"** – In relation to a municipality, means a manager referred to in section 56 of the Municipal Systems Act.

DRAFT

1.1.25 **"Supplier database"** means the list of accredited prospective providers which the municipality or municipal entity must keep in terms of the Regulation 14 of the supply Chain Management Regulations;

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

1.1.27 **"Trust"** means the agreement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person;

1.1.28 **"Trustee"** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person;

1.1.29 **"The Regulations"** means the Local Government: Municipal Finance Management Act, 2003, Municipal Supply Chain Management Regulations published by Government Notice 868 of 2005;

1.1.30 **"The PPPFA Regulations"** means Preferential Procurement Regulations, 2022 Published under Government Notice No. 2721 in Government Gazette 47452 of 4 November 2022; and

1.1.31 **"Material irregularity"** means any non-compliance with, or contravention of, legislation, policy prescript, fraud, theft or a breach of a fiduciary duty identified during a procurement process which may render the procurement process not fair, equitable, transparent, competitive and cost effective

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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 Cape Winelands District 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) The municipal entity must, in addition to complying with subparagraph (1), apply this Policy, to the extent determined by the parent municipality, in a way that is consistent with the supply chain management policy of the parent municipality.

(3) This Policy applies when the Cape Winelands District 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.

(4) This Policy, except where provided otherwise, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –

(a) Water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
(b) Electricity from Eskom or another public entity, another municipality or a municipal entity.

3. AMENDMENT OF THE SUPPLY CHAIN MANAGEMENT POLICY

(1) The Accounting Officer must –

(a) At least annually review the implementation of this Policy; and
(b) When the Accounting Officer considers it necessary, submit proposals for the amendment of this Policy to the Council of Cape Winelands District Municipality.

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(2) If the Accounting Officer submits proposed amendments to the Council of Cape Winelands District Municipality that differs from the model policy issued by the National Treasury, the Accounting Officer must –

(a) Ensure that such proposed amendments comply with the Regulations; and
(b) Report any deviation from the model policy to the National Treasury and the relevant provincial treasury.

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

4. DELEGATION OF SUPPLY CHAIN MANAGEMENT POWERS AND DUTIES

(1) The Council of Cape Winelands District Municipality hereby delegates all powers and duties to the Accounting Officer, which are necessary to enable the Accounting Officer –

(a) To discharge the supply chain management responsibilities conferred on Accounting Officers in terms of –
    (i) Chapter 8 or 10 of the Act; and
    (ii) This Policy;

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

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

(3) The Accounting Officer may not sub-delegate any supply chain management powers or duties to a person who is not an official of Cape Winelands District Municipality or to a committee, which is not exclusively composed of officials of the Cape Winelands District Municipality.

(4) This paragraph may not be read as permitting an official, to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.

5. SUB-DELEGATIONS

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

(2) The power to make a final award –

(a) Above R 10 million (VAT included) may not be sub-delegated by the Accounting Officer;

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(b) Above R 200 000.00 (VAT included), but not exceeding R 10 million (VAT included), may be sub-delegated but only to –

(i) The Bid Adjudication Committee of which the Chief Financial Officer or senior manager is a member; or
(ii) Accounting Officer of the municipality, after due consideration of all facts was done; and

(c) Below R 200,000 (VAT included) to delegated official(s) in accordance with approved delegations issued by the Accounting Officer as follows:

(i) Above R 80 000.00 (VAT included), but not exceeding R 200 000.00 (VAT included) to any of the following three (3) but not more than one per Department:

- CFO /Executive Directors / Directors / Dep. Directors

(ii) Above R 30 000.00 (VAT included), but not exceeding R 80 000.00 (VAT included) to the following:

- Deputy Director: Supply Chain Management
- Senior Manager: Acquisitions Management

(iii) Below R 30 000 (VAT included) to be disposed by delegated official in terms of approved delegatory power and function.

(3) The 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 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) The 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.

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(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

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6. OVERSIGHT ROLE OF COUNCIL

(1) The Cape Winelands District Municipality's Council reserves its right to maintain oversight over the implementation of this Policy.

(2) For the purposes of such oversight the Accounting Officer must –

(a) Within 30 days of the end of each financial year, submit a report on the implementation of this Policy and the supply chain management policy of any municipal entity under the sole or shared control of the municipality, to the council of the municipality; and

(b) Whenever there are serious and material problems in the implementation of this Policy, immediately submit a report to 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 Executive 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

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

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CHAPTER 2

SUPPLY CHAIN MANAGEMENT SYSTEM

9. FORMAT OF SUPPLY CHAIN MANAGEMENT SYSTEM

(1) This Policy provides systems for –

(i) Demand management;

(ii) Acquisition management;

(iii) Logistics management;

(iv) Disposal management;

(v) Risk management; and

(vi) Performance management

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PART 1: DEMAND MANAGEMENT

10. SYSTEM OF DEMAND MANAGEMENT

An effective system of demand management will be achieved through the successful implementation of the strategic operational commitments of the municipality, as identified in the Integrated Development Plan (IDP). Council's Performance Management System (PMS) must give the necessary support to ensure that the resources required to support the strategic and operational commitments of the municipality are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy the needs of the municipality or municipal entity.

(1) The Accounting Officer must establish and implement an appropriate demand management system in order to ensure that the resources required by Cape Winelands District 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 Cape Winelands District Municipality are quantified, budgeted for and timely and effectively delivered at the right locations and at the critical delivery dates, and are of the appropriate quality and quantity at a fair cost;
(b) Take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature;
(c) Provide for the compilation of the required specifications to ensure that its needs are met; and
(d) To undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized

(3) Green procurement must be incorporated as far as reasonably possible for all specifications of goods, services and construction works.

(4) In the development of bid specifications, innovative mechanisms should be explored to render the service or product more resource and energy efficient

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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 Cape Winelands District 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) This Policy, except where provided otherwise in the Policy, 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) When procuring goods or services though another organ of state as contemplated in section 110(2) of the Act, the municipality must make public the fact that such goods or services are procured otherwise than through the Cape Winelands District Municipality supply chain management system, including –

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

(4) If the procurement is for a capital project, Section 19 of the MFMA regarding budgeting and costing of capital projects must also be complied with.

(5) Unless otherwise indicated in the bid documents, the Municipality shall not be liable for any expenses incurred by prospective bidders in the preparation and / or submission of a bid or quotation.

12. RANGE OF PROCUREMENT PROCESSES

(1) Goods and / or services may only be procured by way of –

(a) Cash purchases up to a transaction value as defined in Council's Petty Cash Policy

(b) Petty cash purchases through one verbal or written quotation for the procurement of goods and services up to a transaction value of R 2,000 (VAT included), including ad-hoc fuel replenishment by means of bank/fleet card.

(c) Formal written price quotations for the procurement of a transaction value over –

(i) R 2000 up to R 200 000 (VAT included), and

DRAFT

(d) a competitive bidding process for –

(i) procurement above a transaction value of R 200 000 (VAT included)

(2) The Accounting Officer may, in writing-

(a) Lower, but not increase, the different threshold values specified in subparagraph (1); or

(b) Direct that –

(i) Formal written price quotations be obtained for any specific procurement of a transaction value lower than R 10,000; or
(ii) A competitive bidding process be followed for any specific procurement of a transaction value lower than R 200 000.

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(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) Transferring of municipal funds to an organisation or body outside any sphere of government otherwise than in compliance with a commercial or other business transaction must comply with Sec.67 of the MFMA (Act No.56 of 2003). In terms of Sec.67 (4), Council approved a limit during the IDP Budget process.

13. GENERAL PRECONDITIONS FOR CONSIDERATION OF WRITTEN QUOTATIONS OR BIDS

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

(a) Has furnished that provider's –
(i) Full name;
(ii) Identification number or company or other registration number; and
(iii) Tax reference number and VAT registration number, if any;

(b) Has authorised the Cape Winelands District Municipality to obtain a tax clearance, if applicable 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 sub-paragraph (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.

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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 formal written price quotations;
(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 as stated within the database registration forms; and
(d) Disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.

(2) The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.

(3) The list must be compiled per commodity and per type of service.

(4) Suppliers who intend to do business with this municipality MUST provide its Central Supplier Database (CSD) Registration Number "MAAA……"

15. PETTY CASH PURCHASES

(1) The Accounting Officer must establish the conditions for the procurement of goods by means of petty cash purchases referred to in paragraph 12(1)(a) of this Policy, which must include conditions –

(a) determining the terms on which a manager may delegate responsibility for cash purchases and petty cash purchases to an official reporting to the manager;
(b) limiting the maximum number of cash purchases and petty cash purchases or the maximum amounts per month for each manager;
(c) excluding any types of expenditure from cash purchases and petty cash purchases, where this is considered necessary;

(i) requiring a monthly reconciliation report from each manager to the Chief Financial Officer, including –
- the total amount of petty cash purchases for that month; and
- receipts and appropriate documents for each purchase; and

(d) any other conditions determined by the Chief Financial Officer.

(2) Cash purchases up to a transaction value as defined in Council's Petty Cash Policy

(3) Petty cash purchases with a value up to R 2000.00 including ad-hoc fuel replenishment by means of bank/fleet card will be dealt with in terms of the Supply Chain Management Policy .

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16. FORMAL WRITTEN PRICE QUOTATIONS

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

(a) Quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the Cape Winelands District Municipality. Quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria set out in paragraph 14(1)(c) and (d) of this Policy;

(b) 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;

(c) The Accounting Officer must record the names of the potential providers and their written quotations; and

(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.

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17. PROCEDURES FOR PROCURING GOODS OR SERVICES THROUGH FORMAL WRITTEN PRICE QUOTATIONS

(1) The procedure for the procurement of goods or services through formal written price quotations is as follows –

(a) All requirements in excess of R 30,000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, will be advertised for at least seven days on the website and an official notice board of the Cape Winelands District Municipality;

(b) 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;

(c) The Accounting Officer must take all reasonable steps to ensure that the procurement of goods and services through formal written price quotations is not abused; and

(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 R 30,000 (VAT included) must be awarded based on compliance to specification and conditions of contract, ability and capability to deliver the goods and services, and price and preferential points where applicable;

(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; and

(g) Cape Winelands District Municipality will maintain a proper record keeping system.

18. COMPETITIVE BIDS

(1) Goods or services above a transaction value of R 200 000 (VAT included), may be procured by the municipality only through a competitive bidding process, subject to regulation 11(2); and

(2) No requirement for goods or services above an estimated transaction value of R 200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

19. PROCESS FOR COMPETITIVE BIDDING

(1) The procedures for the following stages of a competitive bidding process are as follows:-

(a) Compilation of bidding documentation as detailed in paragraph 21; Public invitation of bids as detailed in paragraph 22;
(b) Site meetings or briefing sessions as detailed in paragraph 23;
(c) Handling of bids submitted in response to public invitation as detailed in paragraph 23;
(d) Evaluation of bids as detailed in paragraph 28;

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(e) Award of contracts as detailed in paragraph 29;
(f) Administration of contracts;
(g) After approval of a bid, the Accounting Officer and the bidder must enter into a written agreement;
(h) Proper record keeping; and
(i) Original / legal copies of written contracts agreements must be kept in a secure place for reference purposes.

20. BID DOCUMENTATION FOR COMPETITIVE BIDS

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

(a) Take into account –
  (i) The general conditions of contract **(ANNEXURE "C")** and anyspecial 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 R 10 million (VAT included), require bidders to furnish –

  (i) If the bidder is required by law to prepare annual financial statements (AFS) for auditing, their audited AFS –
  (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;
  (iv) 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;
  (v) A statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
(e) Stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law;
(f) The period for which bids are to remain valid and binding must be indicated in the bid documents

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21. 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 in a newspaper commonly circulating locally, the website of the Cape Winelands District 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 at least include -

(i) The closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2) of this policy; and

(ii) A statement that bids may only be submitted on the bid documentation provided by the Cape Winelands District Municipality

(iii) Contact details for further enquiries.

(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 and must clearly indicate the bid number on the outside of the envelope for which the bid is being submitted.

(4) For a bid to be considered it must comply with all the requirements of the bid documentation and be placed in the official tender box of the Cape Winelands District Municipality.

(5) The council may charge a non-refundable deposit for provision of bid documents. This is subject to annual review. Values of the deposits will be determined annually and included in the official lists of tariffs.

(6) The Chief Financial Officer or delegated official will ensure that tender boxes are sealed until the time of their official opening and ensure that they are properly secured.

(7) Where bids are requested by the Municipality in electronic format, such bids must be supplemented by sealed hard copies.

DRAFT

22. PROCEDURE FOR HANDLING, OPENING AND RECORDING OF BIDS

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

(a) Bids –

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

(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;

(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.

(e) Opening of bid procedures –

(i) At the specified closing time on the closing date the applicable bid box shall be closed;
(ii) The bid box shall be opened in public as soon as possible after the closing time by at least one official from the Supply Chain Management Unit and one official from Administrative Support Services;
(iii) It is the responsibility of the bidder to ensure that their bid is placed in the correct bid box. The municipality will not on its own initiative redirect any bid if it is placed in an incorrect bid box before the closing time of submissions.
(iv) Immediately after the opening of the bid box all bids shall be opened in public. Unmarked or incorrectly marked tenders will not be opened.
(v) At the official opening of the bids, the bids shall in all cases be read out in terms of the name of the bidder and, if practical, the amount of the bid;
(vi) As soon as a bid or technical proposal has been opened the bid / proposal shall be stamped with the official stamps, and endorsed with the opening officials' signatures;
(vii) The name of the bidder, and where possible, the bid sum shall be recorded in a bid opening record kept for that purpose; and The responsible officials who opened the bidding documentation received shall forthwith place their signatures on the bid opening record (register)
(viii) The bid opening record, indicating at least the bid price of each bidder be published on the municipality's website.

(g) Site Inspections / clarification meeting –

(i) Site inspections / clarifications meeting, where applicable, may either be compulsory or non-compulsory.
(ii) If site inspections / clarification meeting is to be held, full details must be included in the bid notice.

DRAFT

Bid validity periods

(iii) The validity period is calculated from the bid closure date and bids shall remain in force and binding for a period as indicated in the invitation to bid and the bid documents, subject to any other applicable legislation and instructions from the National Treasury for specific types of procurement.

(iv) The period of validity may be extended by the SCM Department, provided that the original bid validity period has not expired and that all bidders are given an opportunity to extend such period.

(v) Any such extension shall be agreed to by a bidder in writing. Bidders who fail to respond to such a request before the validity of their bid expires, or who decline such a request shall not be considered further in the bid evaluation process.

(vi) All bidders who indicated the acceptance of the extension of the bid validity period, bids will be considered for evaluation purposes.

(vii) If the validity of all bids expired without it being awarded within the bid validity period, including any extensions thereof allowable in terms of applicable legislation, the bid must be cancelled and published in the same media in which the original bid invitation appeared.

(viii) All bidders must be notified in writing of the cancellation of a bid.

(h) Bid Sum

(i) A bid will not necessarily be invalidated if the amount in words and the amount in figures do not correspond, in which case the amount in words shall be read out at the bid opening.

23. 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.

24. 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.

DRAFT

25. 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 as issued within the directive and stating the terms of reference of each bid committee –

(a) A Bid Specifications Committee;
(b) A Bid Evaluation Committee; and
(c) A Bid Adjudication Committee.

(2) The Accounting Officer appoints the members and secundus of each committee, taking into account section 117 of the Act; and

(3) The committee system must be consistent with –

(a) Paragraph 27, 28 and 29 of this Policy;
(b) Any other applicable legislation; and
(c) The Accounting Officer may apply the committee system to formal written price quotations.

(4) Secundus referred to in sub-paragraph (2) represents a specific standing member of that specific committee in the event that the standing member is not available. Secundus has the same powers and duties of the standing member.

26. BID SPECIFICATIONS COMMITTEES

(1) A Bid Specifications Committee must compile the specifications for each procurement of goods or services by the Cape Winelands District Municipality.

(2) Specifications –

(a) Must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
(b) Must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;
(c) Must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
(d) May not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification;
(e) May not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word “equivalent”;
(f) Must indicate the preference points system set out in the Preferential Procurement Regulations 2022 **(ANNEXURE “B”)**.
(g) Must be approved by the Accounting Officer prior to publication of the invitation for bids in terms of paragraph 22 of this Policy; and

(3) A Bid Specifications Committee must be composed of one or more officials of the Cape Winelands District Municipality preferably the manager responsible for the

DRAFT

function involved, and may, when appropriate, include external and / or internal specialist advisors.

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

27. BID EVALUATION COMMITTEES

(1) A Bid Evaluation Committee must –

(a) Evaluate bids in accordance with –
  (i) The specifications for a specific procurement; and
  (ii) The points system set out in terms of paragraph 27(2)(f);

(b) Evaluate each bidder's ability to execute the contract;
(c) Check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears; and
(d) Submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.

(2) A Bid Evaluation Committee must as far as possible be composed of

(a) Officials from departments requiring the goods or services; and
(b) At least one supply chain management practitioner of the Cape Winelands District Municipality.

(3) The relevant user department's official shall carry out a preliminary evaluation of all valid bids received and shall submit a technical evaluation report to the Supply Chain Management unit to be included in the draft report for consideration by the Bid Evaluation Committee.

(4) Any evaluation of a bid shall be in accordance with the evaluation criteria stipulated in the bidding documents and shall note for inclusion in the evaluation report, a bidder –
(a) Whose bid does not comply with the provisions of paragraph 38 of this Policy;
(b) Whose bid does not comply with the provisions of paragraph 13 of this Policy;
(c) Whose bid is not in compliance with the specifications;
(d) Whose bid is not in compliance with the terms and conditions of the bid documentation;
(e) Who is not registered, verified and accredited on the municipality's supplier database within a reasonable time- frame after closing time for bids. In this regard bid documentation shall state that the responsibility for registration and verification rests solely with the bidder;
(f) Whose tax status are non-compliant and cannot be verified with the South African Revenue Services (SARS) certifying that the taxes of the bidder are in order; and
(g) Who fails to comply with any applicable Bargaining Council agreement.

(5) Bids shall be evaluated according to the following as applicable –
(a) Bid price (corrected if applicable and brought to a comparative level where necessary);
(b) The unit rates and prices;
(c) The bidder's ability to fulfil its obligations in terms of the bid documents;
(d) Any qualifications to the bid;
(e) Preference points systems; and

(f) Any other criteria specified in the bid documents.

(6) The Bid Evaluation Committee shall check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears.

(7) Clarification in terms of uncertainties/ambiguities contained in bids submitted may be required from bidders.

(8) If a bidder requests in writing, after the closing of bids, that his/her bid be withdrawn, then such a request may be considered and reported in the bid evaluation report.

(9) All disclosures of conflict of interest shall be considered by the Bid Evaluation Committee

(10) The relevant user department in conjunction with the SCM Unit may, before the bid is considered by the Bid Evaluation Committee, provide a reasonable opportunity to a bidder who made an innocent error and / or omission in their bid document, to correct the innocent error and / or omission, provided that such opportunity will not unduly prejudice any of the other bidders.

(11) In an event as described in sub-paragraph 14, bidders shall be afforded a minimum of two (2) working days up to a maximum of five (5) working days (on discretion of the relevant user department in conjunction with Supply Chain Management Unit) from time of notification to correct such innocent errors and / or omissions. If no response is received from such bidders at the deadline the bid may be deemed to be non-responsive.

(12) Tenders to be evaluated on functionality

(a) An organ of state must state in the tender documents if the tender will be evaluated on functionality.
(b) The evaluation criteria for measuring functionality must be objective.
(c) The tender documents must specify-
  (i) the evaluation criteria for measuring functionality;
  (ii) the points for each criteria and, if any, each sub-criterion; and
  (iii) the minimum qualifying score for functionality.
(d) The minimum qualifying score for functionality for a tender to be considered further-
  (i) must be determined separately for each tender; and
  (ii) may not be so-
    - low that it may jeopardise the quality of the required goods or services; or
    - high that it is unreasonably restrictive.

(e) Points scored for functionality must be rounded off to the nearest two decimal places.
(f) The evaluation of tenders must be conducted in the following stages:
  (i) Firstly, assessment against conditions or requirements as stated in the tender document;
  (ii) Secondly, where functionality is part of the tender, evaluation must be done in terms of functionality and the minimum qualifying score referred to above. A tender must be disqualified if it fails to meet the minimum threshold for functionality as per the bid invitation;

DRAFT

(g) Thereafter, only qualifying tenders may be evaluated in terms of the 80/20 or 90/10 preference points systems, where the 80 or 90 points must be used for price only and the 20 or 10 points must be allocated for specific goals.

(h) A tender that fails to comply with the conditions or requirements and to obtain the minimum qualifying score for functionality, where applicable, as indicated in the tender documents is not an acceptable tender and should not be evaluated further.

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

(14) Negotiation of fair market price prior to award

(a) The accounting officer must award the tender to the tenderer who scores the highest points in terms of the PPPFA.

(b) In the case where the price offered by a tenderer is not market-related, the accounting officer may

(i) negotiate a market-related price with the tenderer scoring the highest points;

(ii) if the negotiations with the highest scoring tenderer fail, the accounting officer may negotiate a market-related price with the tenderer scoring the second highest points provided that tenderer meets all the requirements of the tender;

(iii) if the negotiations with the tenderer scoring the second highest points fail, the accounting officer may negotiate with the tenderer scoring the third highest points provided the tenderer meets all the requirements of the tender; and

(iv) if the negotiations with the tenderer scoring the third highest points fail, the accounting officer may cancel the tender.

(15) Negotiations shall not be conducted-

(a) to substantially change the specification or details of the requirement, including tasks or responsibilities of the tenderer;

(b) to materially alter the terms and conditions of contract stated in the tender document;

(16) An accounting officer must ensure that negotiations are undertaken in an ethical manner and in accordance with the government's procurement principles of value for money, economy, integrity, efficiency, transparency and fairness.

(17) In terms of conducting a negotiation, all bidders invited to the negotiation must be treated equally, and specifically:

(a) Information must not be provided in a discriminatory manner so as not to confer advantage to one bidder over another;

(b) Confidential information such as another tenderer's solution, any commercially confidential information and intellectual property of any tenderer must not be shared with another tenderer without their express agreement in writing; and

(c) Information from bidders must not be shared to enhance the tender/proposal of another to improve the technical solution or merge two or more technical solutions into a single optimum solution.

DRAFT

(18) Cancellation of tenders

(a) An organ of state may, before the award of a tender, cancel a tender invitation if-
  (i) due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;
  (ii) funds are no longer available to cover the total envisaged expenditure;
  (iii) no acceptable tender is received;
  (iv) negotiating a fair market price has failed; or
  (v) there is a material irregularity in the tender process.

(b) The decision to cancel a tender invitation in terms of subsection (a) must be published in the same manner in which the original tender invitation was advertised.

28. BID ADJUDICATION COMMITTEES

(1) A Bid Adjudication Committee must –

(a) Consider the report and recommendations of the Bid Evaluation Committee; and
(b) Either –

  (i) Depending on its delegations, make a final award or a recommendation to the Accounting Officer to make the final award; or
  (ii) Make another recommendation to the Accounting Officer how to proceed with the relevant procurement.

(2) A Bid Adjudication Committee must consist of at least ~~three~~ four senior managers of the Cape Winelands District Municipality, which must include –

(a) The Chief Financial Officer or, if the Chief Financial Officer is not available, another manager in the budget and treasury office reporting directly to the Chief Financial Officer and designated by the Chief Financial Officer;
(b) At least one senior supply chain management practitioner who is an official of the Cape Winelands District Municipality; and
(c) A technical expert in the relevant field who is an official, if such an expert exists.

(3) The Municipality are exempted in terms of Government Gazette Notice: 43281 from compliance with regulations 4(3) and 29(2) of the Local Government Supply Chain Management Regulations insofar as the regulations –

(a) prohibit the delegation or sub-delegation of any supply chain management powers or duties to a person who is not an official of the municipality or municipal entity or to a committee which is not exclusively composed of officials of the municipality or municipal entity; and
(b) require a bid adjudication committee to consist of four senior managers,

Subject to the implementation of conditions as per paragraph 2 of the exemption in terms of Government Gazette Notice: 43281.

(4) 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.

(5) 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.

DRAFT

(6) Members of the Bid Evaluation Committee may present their reports to the Bid Adjudication Committee and clarify any uncertainties. However, such members will not have any voting power on the Bid Adjudication Committee.

(7) 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–

(a) Check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears; and
(b) Notify the Accounting Officer.

(8) The Accounting Officer may –

(a) 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
(b) If the decision of the Bid Adjudication Committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.

(9) 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.

(10) The Accounting Officer must comply with section 114 of the Act within 10 working days

29. PROCUREMENT OF BANKING SERVICES

(1) A contract for banking services –

(a) Must be procured through competitive bids;
(b) Must be consistent with section 7 or 85 of the Act; and
(c) May not be for a period of more than five years at a time.

(2) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.

(3) The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of paragraph 22(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

30. PROCUREMENT OF IT RELATED GOODS OR SERVICES

(1) The Accounting Officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.
(2) Both parties must enter into a written agreement to regulate the services rendered by and the payments to be made to SITA.

(3) The Accounting Officer must notify SITA together with a motivation of the IT needs if –

DRAFT

(a) The transaction value of IT related goods or services required in any financial year will exceed R 50 million (VAT included); or
(b) The transaction value of a contract to be procured whether for one or more years exceeds R 50 million (VAT included).

(4) If SITA's comments on the submission and the Cape Winelands District 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 relevant provincial treasury and the Auditor General.

31. 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 has consented to such procurement in writing.

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

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

32. 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.

33. PROUDLY SA CAMPAIGN

(1) Cape Winelands District Municipality supports the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services from –

(a) Firstly: Suppliers and businesses within the municipality or district;
(b) Secondly: Suppliers and businesses within the relevant province; and
(c) Thirdly: Suppliers and businesses within the Republic.

DRAFT

34. 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 R 200,000 (VAT included); or
(b) The period of the contract exceeds one year.

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

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

(4) The Accounting Officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the Cape Winelands District Municipality.

(5) Where the estimated value of fees is less than R 200,000 and the duration of the appointment is less than one year, any Treasury guidelines in respect of consulting services, Construction Industry Development Board guidelines and Council's Cost Containment Policy will be applicable.

(6) No advisor will take any part in the final decision-making process regarding the award of bids

(7) No decision-making authority can be delegated to an advisor.

DRAFT

35. 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 (as per definition);
   (ii) If such goods or services are produced or available from a single source or sole provider only (as per definition);
   (iii) For the acquisition of special works of art or historical objects where specifications are difficult to compile;
   (iv) Acquisition of animals for zoos and/or nature and game reserves; or
   (v) In any other exceptional case where it is impractical or impossible to follow the official procurement processes; and

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

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

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

36. UNSOLICITED BIDS

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

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

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

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

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

(4) The Accounting Officer must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, to the National Treasury and the relevant provincial treasury for comment.

DRAFT

(5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the Accounting Officer, depending on its delegations.

(6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.

(7) When considering the matter, the adjudication committee must take into account –

(a) Any comments submitted by the public; and
(b) Any written comments and recommendations of the National Treasury or the relevant provincial treasury.

(8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the Accounting Officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.

(9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the Cape Winelands District Municipality to the bid may be entered into or signed within 30 days of the submission.

37. 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 the Cape Winelands District Municipality or to any other municipality or municipal entity, are in arrears for more than three months; or
(ii) Who during the last five years has failed to perform satisfactorily on a previous contract with the Cape Winelands District 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, or trust or its trustees 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

DRAFT

(ii) An official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and

(g) Reject the bid of any bidder if that bidder or any of its directors –

(i) Has abused the supply chain management system of the Cape Winelands District 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 relevant provincial treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) of this Policy.

DRAFT

PART 3: LOGISTICS, DISPOSAL, RISK AND PERFORMANCE MANAGEMENT

38. LOGISTICS MANAGEMENT

(1) 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.

39. DISPOSAL MANAGEMENT

(1) A supply chain management policy must provide for an effective system of disposal management for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act

(2) A supply chain management policy must specify the ways in which assets may be disposed of, including –

(a) Transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
(b) Transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
(c) Selling the asset; and
(d) 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) 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.
(d) 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;

DRAFT

(e) Immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;
(f) All fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;
(g) Where assets are traded in for other assets, the highest possible trade-in price is negotiated.

40. RISK MANAGEMENT

(1) The criteria for an effective risk management strategy within supply chain management system, should include the identification, consideration and avoidance of potential risks.

(2) Risk management should include –

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

41. PERFORMANCE MANAGEMENT

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

PART 4: OTHER MATTERS

42. PROHIBITION ON AWARDS TO PERSONS WHOSE TAX MATTERS ARE NOT IN ORDER

(1) No award above R30 000 (including VAT) may be made in terms of this Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order. (NT Circular No.90 shall apply)

(2) Before finalising an award to a person the accounting officer must first check with SARS whether that person's tax matters are in order. The municipality may apply the "eFiling-System" of SARS.

(3) Where the recommended bidder is not tax compliant, the bidder should be notified of the non-compliant status and be requested to submit written proof of tax compliance from SARS within 7 working days from the date of award. The proof of tax compliance submitted by the bidder must be verified by the Municipality. The Municipality will reject a bid submitted by the bidder if such bidder fails to provide proof of tax compliance within the timeframe as set out in this sub-paragraph.

(4) If SARS does not respond within 7 days such person's tax matters may for purposes of subparagraph (1) be presumed to be in order.

(5) The Cape Winelands District Municipality will process transactions per supplier on the proviso that the accumulative amounts per supplier does not exceed R30,000 (including VAT) per financial year, without the required tax clearance compliance as per paragraph 43(1) above

43. PROHIBITION ON AWARDS TO PERSONS IN THE SERVICE OF THE STATE

(1) 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 Cape Winelands District Municipality.

44. AWARDS TO CLOSE FAMILY MEMBERS OF PERSONS IN THE SERVICE OF THE STATE

(1) The Accounting Officer must ensure that the notes to the annual financial statements disclose particulars of any award of more than R 2,000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –

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

45. ETHICAL STANDARDS

(1) A code of ethical standards as set out in [subparagraph (2) / the ["National Treasury's code of conduct for supply chain management practitioners and other role players"] is hereby established for municipal officials and other role players in the supply chain management system of the Cape Winelands District Municipality in order to promote-

(a) Mutual trust and respect; and
(b) An environment where business can be conducted with integrity and in a fair and reasonable manner.

(2) A municipal 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 R 350;
(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,

DRAFT

may have in any proposed procurement or disposal process of, or in any award of a contract by, the Cape Winelands District 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 Cape Winelands District 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; and

(b) By the Accounting Officer must be made to the Executive Mayor of the municipality who must ensure that such declarations are recorded in the register.

(4) The National Treasury's code of conduct and Schedule 2 of the Systems Act must be adhered to by supply chain management practitioners and other role players involved in supply chain management.

(5) A breach of the code of ethics must be dealt with as follows –

(a) In the case of an employee, in terms of the disciplinary procedures of the Cape Winelands District 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; and

(d) All cases of non-compliance to this Policy should be reported to the Accounting Officer.

46. INDUCEMENTS, REWARDS, GIFTS AND FAVOURS TOMUNICIPALITIES, OFFICIALS AND OTHER ROLE PLAYERS

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

(a) Any inducement or reward to the Cape Winelands District Municipality for or in connection with the award of a contract; or

(b) Any reward, gift, favour or hospitality to –

(i) Any official; or

DRAFT

(ii) Any other role player involved in the implementation of this Policy.

(2) The Accounting Officer must promptly report any alleged contravention of subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.

(3) Subparagraph (1) does not apply to gifts less than R 350 in value.

47. SPONSORSHIPS

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

(i) A provider or prospective provider of goods or services; or
(ii) A recipient or prospective recipient of goods disposed or to be disposed.

48. OBJECTIONS AND COMPLAINTS

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

49. RESOLUTION OF DISPUTES, OBJECTIONS, COMPLAINTS AND QUERIES

(1) The Accounting Officer may, if deem so, appoint an independent and impartial person, not directly involved in the supply chain management processes –

(a) To assist in the resolution of disputes between the Cape Winelands District Municipality and other persons regarding –

(i) Any decisions or actions taken in the implementation of the supply chain management system; or
(ii) Any matter arising from a contract awarded in the course of the supply chain management system; or

(b) To deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.

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

(3) The person appointed should, if appointed –

(a) Strive to resolve promptly all disputes, objections, complaints or queries received; and
(b) Submit monthly reports to the Accounting Officer on all disputes, objections, complaints or queries received, attended to or resolved.

DRAFT

(4) A dispute, objection, complaint or query may be referred to the relevant provincial treasury if –

(a) The dispute, objection, complaint or query is not resolved within 60 days; or
(b) No response is forthcoming within 60 days.

(5) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.

(6) This paragraph must not be read as affecting a person's rights to approach a court at any time.

50. CONTRACTS PROVIDING FOR COMPENSATION BASED ON TURNOVER

(1) If a service provider acts on behalf of a Cape Winelands District 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 Cape Winelands District Municipality must stipulate

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

51. CONTRACTS HAVING BUDGETARY IMPLICATIONS BEYOND THREE FINANCIAL YEARS

(1) The Cape Winelands District Municipality may not enter into any contract that will impose financial obligations beyond the three years covered in the annual budget for that financial year, unless the requirements of Section 33 of Act have been fully complied with.

52. RIGHT OF APPEAL

(1) In terms of Section 62 of the Municipal Systems Act (Act 32 of 2000 as amended), a person whose rights are affected by a decision taken by the Municipality, in terms of a delegated authority, in the implementation of its supply chain management system, may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of the notification of the decision.

(2) Notification of the decision in terms of sub-paragraph 55(1) of this policy must state that any appeal must be submitted in writing to the Municipal Manager and must at least contain the following information:

(a) The reasons and / or grounds for the appeal;
(b) The way in which the appellants rights have been affected; and
(c) The remedy sought by the appellant.

(3) No award, where a competitive bidding process was followed, shall be formally implemented until a ruling has been made on any appeal/s received. The Municipal Manager may however grant approval for the implementation of bid awards prior to the conclusion of the appeal process in respect of bids which in his / her opinion are deemed as urgent.

DRAFT

(4) The Appeal Authority will provide the service provider with copies of the Bid Committee minutes applicable to the specific tender on request within the 21 days period of the service provider to enable him/her to motivate his/her appeal. Should the service provider request other documentation a PAIA application should be submitted.

(5) The appeal authority must consider the appeal and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

53. NOTIFICATION OF BID DECISIONS

(1) The successful and unsuccessful bidders shall be notified in writing by the Supply Chain Management once a bid has been accepted.

(2) The bidders shall, in addition, be advised of the 21-day appeal period in terms of section 62 of the Municipal Systems Act and be notified that no rights will accrue to him / her until the bid is formally accepted in writing.

(3) Once the 21-day appeal period has lapsed and a decision has been made by the appeal authority, the appellant and the service provider who the tender was initially awarded to will be notified in writing of the outcome thereof by Supply Chain Management.

(4) Every notification of decision shall be ~~faxed or~~ sent via electronic mail ~~and ordinary mail to the address chosen by the bidder, with a copy of proof of transmission kept for record purposes, or shall be delivered by hand, in which case acknowledgement of receipt must be signed and dated on a copy of such notification to be kept for record purposes~~.

54. SALE AND LETTING OF ASSETS

(1) The following preference point systems are applicable to all bids:

(a) the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
(b) the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

(c) The Municipality will use the following formula to calculate the points for price in respect of a tender for the disposal or leasing of state assets or another income generating procurement:

A maximum of 80 or 90 points is allocated for price on the following basis:

80/20 or **90/10**

$$Ps = 80\left(1 + \frac{Pt - Pmax}{Pmax}\right) \qquad Ps = 90\left(1 + \frac{Pt - Pmax}{Pmax}\right)$$

Where

Ps = Points scored for price of tender under consideration;
Pt = Price of tender under consideration; and
Pmax = Price of highest acceptable tender

DRAFT

55. FRAMEWORK FOR INFRASTRUCTURE DELIVERY AND PROCUREMENT MANAGEMENT

(1) The Framework for Infrastructure Delivery and Procurement Management and relevant Circular is attached as **Annexure "A"**. The Cape Winelands District Municipality will during the course of the ~~2023/2024~~ 2025/2026 financial year determine its ability to implement those parts of the Framework that are practically implementable.

56. PROTECTION OF PERSONAL INFORMATION

(1) In event that a bidder submits information during any supply chain management process, or any other information that may be requested pursuant to the process, bidders are consenting to the processing of personal information by the Cape Winelands District Municipality or its stakeholders and all other personal information contained within documentation, as contemplated in the Protection of Personal Information Act, 2013 (Act No 4 of 2013) and Regulations promulgated thereunder ("POPI Act"). Further-more, bidders declare that they have obtained all consents required by the POPI Act or any other law applicable. Thus, bidders indemnify the Cape Winelands District Municipality against any civil or criminal action, administrative fine or other penalty or loss that may arise as a result of the processing of any personal information submitted.

57. SHORT TITLE

(1) This policy is called the Cape Winelands District Municipality Supply Chain Management Policy.

58. COMMENCEMENT

(1) This Policy takes effect on ~~26 April 2024~~ 01 July 2025

59. RELEVANT SECTIONS FROM THE MFMA

(1) The following sections form part of this policy and must be applied directly from the Act.

(a) SECTION 33: CONTRACTS HAVING FUTURE BUDGETARY IMPLICATIONS
(b) SECTION 116: CONTRACTS AND CONTRACT MANAGEMENT

60. ADOPTION OF NATIONAL TREASURY / MFMA CIRCULARS

(1) By adopting this policy, Council acknowledges the adoption of the following Circulars:
(a) MFMA Circular No. 90 - Tax compliance status
(b) MFMA Circular No. 62 - SCM: Enhancing Compliance and Accountability
(c) MFMA Circular No. 81 - Web Based Central Supplier Database (CSD)

ANNEXURES:

Annexure "A"	FRAMEWORK FOR INFRASTRUCTURE DELIVERY AND PROCUREMENT MANAGEMENT
Annexure "B"	PREFERENTIAL PROCUREMENT REGULATIONS, 2022
Annexure "C"	NATIONAL TREASURY: GENERAL CONDITIONS OF CONTRACT, 2005

DRAFT

Annexure A

Local Government Framework for Infrastructure Delivery and Procurement Management

Date of issue: 01 October 2020

Effective Date: 01 July 2021



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Table of Contents

FOREWORD ..... **II**

INTRODUCTION ..... **III**

1. SCOPE ..... **III**

2. TERMS AND DEFINITIONS ..... **IV**

3. ABBREVIATIONS ..... **V**

4. NORMATIVE REFERENCES **1**

4.1 ACTS OF PARLIAMENT 1
4.2 REGULATIONS ISSUED IN TERMS OF THE MFMA AND MFMA CIRCULARS 1
4.3 STANDARDS 1
4.4 MANAGEMENT SYSTEM 1
4.5 NATIONAL TREASURY GUIDELINES 1
4.6 DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS GUIDELINES 1

5. FRAMEWORK FOR INFRASTRUCTURE DELIVERY **2**

5.1 THE INFRASTRUCTURE DELIVERY MANAGEMENT PROJECT PROCESSES 2
5.2 GATEWAY REVIEWS 5
5.2.1 Gateway reviews for mega capital projects 5

6. FRAMEWORK FOR INFRASTRUCTURE PROCUREMENT **7**

6.1 INTRODUCTION 7
6.2 MINIMUM REQUIREMENT FOR INFRASTRUCTURE PROCUREMENT 7
6.3 INFRASTRUCTURE PROCUREMENT GATES 8

7. CONCLUSION **11**

Foreword

In 2012, the Infrastructure Delivery Management System (IDMS) was adopted as the chosen government wide system for infrastructure delivery in South Africa. In the same year (2012), the National Treasury, together with the eight metropolitan municipalities, initiated the customisations of the IDMS for implementation by municipalities. The product of that engagement became the Cities Infrastructure Delivery Management Toolkit (CIDMT), focusing mainly on cities or metros.

In order to establish a common approach to infrastructure delivery across all organs of state, the Standard for Infrastructure Procurement and Delivery Management (SIPDM) was issued for adaptation and adoption by municipalities in terms of Circular 77.

In the process of implementing and institutionalising the SIPDM, institutions expressed concerns regarding the operational challenges imposed by aspects of the SIPDM. This constraint was further compounded when the Preferential Procurement Regulations, 2017 were promulgated and effected, resulting in conflict between the SIPDM and the Regulations.

The National Treasury, in consultation with relevant stakeholders, initiated the SIPDM review process, which resulted in the development of the Local Government Framework for Infrastructure Delivery and Procurement Management (LGFIDPM). The LGFIDPM provides for minimum requirements for effective governance of infrastructure delivery and procurement management. It also recognises the different capacities in the various categories of municipalities and therefore requests municipalities to review their institutional and capacities before adapting and adopting this model.

Introduction

a) The Integrated Development Plan (IDP) is the principal strategic planning instrument for municipalities. The IDP process requires a robust process of gathering and synthesising information related to the medium to long-term management of the municipality's infrastructure needs.

b) The preparation of Roads and Storm Water Services, Water and Sanitation Services, Waste Disposal Services, Electricity Services and Community Facilities and Municipal Buildings, Infrastructure Asset Management Plans (IAMPs) enables municipalities to rank projects and determine budgets, based on a holistic view of local needs and priorities; and serves as a source of valuable information in preparing the IDP.

c) Through the Infrastructure Delivery Management System, Cities Infrastructure Delivery Management System was developed to provide a holistic system for the management of infrastructure based on the requirements of SANS 55001: Asset management tailored for application in South African metropolitan spaces and specifically in support of the country's spatial transformation agenda.

d) There is need to develop an infrastructure delivery management system tailor-made for all municipalities (excluding cities) which should integrate asset management strategy, policy to guide infrastructure planning, delivery management and decision making. The LGFIDPM introduces the initial process focusing on the project processes of the infrastructure delivery management and infrastructure procurement.

e) The Framework for Infrastructure Procurement Management should be implemented together with the project management processes, to ensure alignment, integration and efficient and effective service delivery.

1. Scope

1.1. The Local Government FIDPM applies to organs of state which are subject to the Municipal Finance Management Act (MFMA).

1.2. The Framework provides minimum requirements for the implementation of Infrastructure Delivery and Procurement Management through the:

a) Project processes for infrastructure delivery management, and
b) Infrastructure procurement gates.

1.3. The Framework specifies the allocation of responsibilities for performing activities and making decisions at project stages and procurement gates.

2. Terms and Definitions

Approved: Officially agreed and signed-off by an Accounting Officer or a delegated person / body.

Construction: Everything constructed or resulting from construction operations.

Employer: Organ of state intending to, or entering into, a contract with a contractor.

Gate: A control point at the end of a process where a decision is required before proceeding to the next process or activity.

Gateway review: An independent review of the available information at a gate upon which a decision is made whether to proceed to the next process, or not.

Infrastructure:

a) Immovable asset, which is acquired, constructed or results from construction operations; or
b) Movable asset, which cannot function independently from purpose-built immoveable asset(s).

Infrastructure delivery: The combination of all planning, technical, administrative and managerial actions associated with the construction, supply, refurbishment, rehabilitation, alteration, maintenance, operation or disposal of infrastructure.

Infrastructure procurement: The procurement of goods or services, including any combination thereof, associated with the acquisition, refurbishment, rehabilitation, alteration, maintenance, operation or disposal of infrastructure.

Organ of State: Any department of state or administration in the national, provincial and local sphere of government.

Procurement strategy: The selected packaging, contracting, pricing and targeting strategy and procurement procedure for a particular procurement.

Project: A unique set of processes consisting of coordinated and controlled activities with start and end dates, performed to achieve the project objective.

Stage: A collection of periodical and logically related activities in the Project Management Control Stages, that culminates in the completion of an end of stage deliverable.

3. ABBREVIATIONS

CIDB	Construction Industry Development Board
IDP	Integrated Development Plan
FIDPM	Framework for Infrastructure Delivery and Procurement Management
MFMA	Municipal Finance Management Act
PSP	Professional Service Provider
PPPFA	Preferential Procurement Policy Framework Act
SCM	Supply Chain Management
SDBIP	Service Delivery Budget Implementation Plan

4. NORMATIVE REFERENCES

4.1 Acts of Parliament

The following referenced Acts of Parliament are indispensable in the application of this document:

- Architectural Profession Act, 2000 (Act No. 44 of 2000)
- Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)
- Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)
- Construction Industry Development Board Act, 2000 (Act No. 38 of 2000)
- Division of Revenue Act (Annual)
- Engineering Profession Act, 2000 (Act No. 46 of 2000)
- Landscape Architectural Profession Act, 2000 (Act No. 45 of 2000)
- Municipal Finance Management Act, (No. 56 of 2003)
- Local Government: Municipal Systems Act, 2000 (Act No. 32 Of 2000)
- National Archives and Record Services of South Africa Act, 1996 (Act No. 43 of 1996)
- Occupational Health and Safety Act, 1993 (Act No. 85 of 1993)
- Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)
- Project and Construction Management Professions Act, 2000 (Act No. 48 of 2000)
- Public Finance Management Act, 1999 (Act No. 1 of 1999)
- Quantity Surveying Profession Act of 2000 (Act No. 49 of 2000)
- Other Sector Specific Acts of Parliament.

4.2 Regulations issued in terms of the MFMA and MFMA Circulars

- Regulations issued in terms of the MFMA
- Preferential Procurement Policy Framework Act Regulations (PPPFA of 2017 or as amended from time to time) and circulars.

4.3 Standards

- Applicable Construction Industry Development Board Standard for Uniformity
- Construction Sector Code.

4.4 Management System

- Infrastructure Delivery Management System (IDMS)
- Cities Infrastructure Delivery Management Toolkit (CIDMT).

4.5 National Treasury Guidelines

- Local Government Capital Asset Management Guideline and Planning Guidelines
- Budget Facility for Infrastructure (BFI).

4.6 Department of Cooperative Governance and Traditional Affairs Guidelines

- Guidelines for Infrastructure Asset Management in Local Government.

5. FRAMEWORK FOR INFRASTRUCTURE DELIVERY

5.1 The Infrastructure Delivery Management Project Processes

a) The project process of infrastructure delivery management contains control stage deliverables at the end of each stage. Table 1 outlines the stage deliverables that must be approved. The control stages are specific to project management processes; and outline and describe the stages in the life of a project from start to end. The specific stages are determined by the specific project's governance and control needs. The stages follow a logical sequence with a specified start and end. The deliverable is considered to have passed through the relevant stage when it is approved and signed off. The project then moves on to the next sequential stage. It is expected that the municipality's organisation reflects an engagement between the Budget Treasury Office, Engineers and Planners when developing and approving projects. It is also expected that there should be engagements with the National and Provincial Treasury where appropriate or where projects dictate so.

Table 1: Project stage deliverables

Stage		**Project Stage Deliverables**
No	**Name**	**End of Stage Deliverables**
1	**Initiation**	**Initiation Report or Pre-feasibility Report** (i) The Initiation Report defines project objectives, needs, acceptance criteria, organisation's priorities and aspirations, and procurement strategies, which set out the basis for the development of the Concept Report. Or (ii) A Pre-feasibility Report is required on Mega Capital Projects, to determine whether to proceed to the Feasibility Stage; where sufficient information is presented to enable a final project implementation decision to be made. Mega capital projects should be determined in the municipality's policy approved by the Municipal Council. **Stage 1 is complete when the Initiation Report or Pre-feasibility Report is approved.**
2	**Concept**	**Concept Report or Feasibility Report** (i) The Concept Stage presents an opportunity for the development of different design concepts to satisfy the project requirements developed in Stage 1. This stage presents alternative approaches and an opportunity to select a particular conceptual approach. The objective of this stage is to determine whether it is viable to proceed with the project, premised on available budget, technical solutions, time frame and other information that may be required. (ii) The Concept Report should provide the following minimum information:

Stage		Project Stage Deliverables
No	**Name**	**End of Stage Deliverables**
		a) Document the initial design criteria, cost plan, design options and the selection of the preferred design option; or the methods and procedures required to maintain the condition of infrastructure, or the project. b) Establish the detailed brief, scope, scale, form and cost plan for the project, including, where necessary, the obtaining of site studies and construction and specialist advice. c) Provide an indicative schedule for documentation and construction, or maintenance services, associated with the project. d) Include a site development plan, or other suitable schematic layouts, of the works. e) Describe the statutory permissions, funding approvals and utility approvals required to proceed with the works associated with the project. f) Include a baseline risk assessment for the project and a health and safety plan, which is a requirement of the Construction Regulations issued in terms of the Occupational Health and Safety Act. g) Contain a risk report, need for further surveys, tests, investigations, consents and approvals, if any, during subsequent stages. (iii) A Feasibility Report must provide the following minimum information: a) Details regarding the preparatory work covering: • A needs and demand analysis with output specifications. • An options analysis. b) A viability evaluation covering: • A financial analysis. • An economic analysis, if necessary. c) A risk assessment and sensitivity analysis; d) A professional analysis covering: • A technology options assessment. • An environmental impact assessment. • A regulatory due diligence. e) An implementation readiness assessment covering: • Institutional capacity. • A procurement plan. **Stage 2 is complete when the Concept Report or the Feasibility Report is approved.**
3	**Design Development**	**Design Development Report** (i) The Design Development Report must, as necessary: a) Develop, in detail, the approved concept to finalise the design and definition criteria.

Stage		Project Stage Deliverables
No	**Name**	**End of Stage Deliverables**
		b) Establish the detailed form, character, function and costings. c) Define the overall size, typical detail, performance and outline specification for all components. d) Describe how infrastructure, or elements or components thereof, are to function; and how they are to be safely constructed, be commissioned and be maintained. e) Confirm that the project scope can be completed within the budget, or propose a revision to the budget. **Stage 3 is complete when the Design Development Report is approved.**
4	**Design Documentation**	**Design Documentation** (i) Design documentation provides: a) the production information that details performance definition, specification, sizing and positioning of all systems and components that will enable construction; b) the manufacture, fabrication and construction information for specific components of the work, informed by the production information. **Stage 4 is complete when the Design Documentation Report is approved.**
5	**Works**	**Completed Works capable of being used or occupied** (i) Completion of the Works Stage requires: a) Certification of the completion of the works in accordance with the provisions of the contract; or b) Certification of the delivery of the goods and associated services in accordance with the provisions of the contract. **Stage 5 is complete when the Works Completion Report is approved.**
6	**Handover**	**Works which have been taken over by the user or owner; Completed Training; Record Information** (i) The handover stage requires the following activities to be undertaken: a) Finalise and assemble record information which accurately reflects the infrastructure that is acquired, rehabilitated, refurbished or maintained; b) Hand over the works and record information to the user organisation and, if necessary, train end user staff in the operation of the works. **Stage 6 is complete when the Handover/Record Information Report is approved.**
7	**Close-Out**	**Defects Certificate or Certificate of Final Completion; Final Account; Close-Out Report**

Stage		Project Stage Deliverables
No	**Name**	**End of Stage Deliverables**
		(i) The Close-Out Stage commences when the end user accepts liability for the works. It is complete when: a) Record information is archived; b) Defects certificates and certificates of final completion are issued in terms of the contract; c) Final amount due to the contractor is certified in terms of the contract; d) Close-Out Report is prepared by the Implementer and approved by the Municipality. **Stage 7 is complete when the Close-out Report is approved.**

b) Procurement of PSPs and Contractors can occur at different points in the project stages.

c) Additional stages may be added to the described stages above, if deemed necessary. For example, additional stages could include those necessary to ensure that project activities are appropriately carried out and stages linked. Contract activities would, in many instances, be contingent upon the requirements of the specific contract being used.

d) For project progress using the project stages, reporting must be for the deliverable achieved in the stage immediately prior to the 'in progress' stage. For example, if a project is shown as being at Stage No. 3 (Design Development), it implies that the deliverable for Stage No. 2 (i.e. the Concept Report) has been achieved; and that the deliverable for Stage 3 (i.e. the Design Development Report) is in the process of being prepared.

e) Where an organ of state engages another organ of state to provide agency services, a service delivery agreement must be developed that outlines the roles and responsibilities for each organ of state; and establishes a relationship between the client and the implementer. The development of all deliverables should be carried out in a cooperative and consultative manner between the Client and Implementer parties. All deliverables must be developed and signed off in compliance with the specific service delivery agreement.

5.2 Gateway Reviews

5.2.1 Gateway reviews for mega capital projects

(i) The MFMA (Act 56 of 2003), section 19 (2) states: "Before approving a capital project in terms of subsection (1)(b), the council of a municipality must consider the projected cost covering all financial years from the start until the project is operational; and the future operational costs and revenue on the project, including municipal tax and tariff implications."

(ii) The LGFIDPM prescribes the Gateway Review at the end of stage 2, as the minimum requirement to comply with section (i) above.

(iii) The focus of such a review must be on the quality of the documentation in the first instance, and thereafter on:

a) Deliverability: the extent to which a project is deemed likely to deliver;

b) Expected benefits: within the declared cost, time and performance area;

c) Affordability: the extent to which the project's level of expenditure and financial risk can be accepted, given the organisation's overall financial position, both singly, and when considering its other current and projected commitments; and

d) Value for money: The optimum combination of whole life costs and quality (or fitness of purpose), to meet the user's requirements.

(iv) A gateway review team must comprise of not less than three persons who are neither involved, nor associated with the project, but have a broad understanding of the subject matter.

(v) A gateway review must be led by a person who has experience in the planning of infrastructure projects and is registered as a professional with a statutory council under the built environment professions. The members of the team must, as relevant, have expertise in the key technical areas, cost estimating, scheduling and implementation of similar projects.

(vi) It is the duty of the institution's Accounting Officer or Authority to appoint a team responsible for the gateway review of his or her institution.

(vii) The gateway review team must base its findings primarily on:
   a) The information contained in the end-of-stage deliverable;
   b) Supplementary documentation, if any, provided by key staff and obtained during an interview process; and
   c) Interviews with key staff members and stakeholders.

(viii) The gateway review team must issue a report at the conclusion of a gateway review, which reflects the team's assessment of the information at the end of a stage; and provides findings or recommendations on areas where further work should be undertaken to improve such information.

(ix) The gateway review findings must be classified by the gateway review team as:
   a) Critical: Findings that pose adverse effect to the project or package. Critical findings are findings related to the stage deliverable that are wholly unacceptable.
   b) Major: Findings that pose a potentially adverse effect to the project or package. Major findings are serious findings and are in direct violation of key legislation, e.g. The Constitution of the Republic of South Africa, the MFMA or the PPPFA.
   c) Minor: Findings that do not pose any adverse effect to the project or package. Minor findings indicate the need for improvement of practices and processes.

(x) A Stage 2 deliverable must not be approved until such time that all findings have been resolved.

6. FRAMEWORK FOR INFRASTRUCTURE PROCUREMENT

6.1 INTRODUCTION

The framework for infrastructure procurement outlines the minimum infrastructure procurement policy requirements for municipal planning and implementation.
The strategic direction set in the Integrated Development Plan (IDP) informs the framework for infrastructure procurement. For example, procurement strategies must be aligned to the municipality's developmental and internal transformation needs, as specified in the IDP.

6.2 MINIMUM REQUIREMENT FOR INFRASTRUCTURE PROCUREMENT

6.2.1 Infrastructure procurement must be undertaken in accordance with all applicable Infrastructure Procurement related legislation and this Framework.

6.2.2 Infrastructure procurement must be implemented in accordance with the institutional Supply Chain Management System, which promotes differentiated procurement for infrastructure.

6.2.3 Infrastructure procurement must be implemented in accordance with the procurement gates prescribed in clause 6.3 below.

6.2.4 The Accounting Officer must ensure that a budget is available for the duration of the project, in line with MFMA provisions for capital and operating budgets.

6.2.5 The Accounting Officer must ensure that cash flow management processes are in place to meet payment obligations within the time periods specified in the contract.

6.2.6 Procurement gates provided in 6.3 below must be used, as appropriate, to:

a) Authorise commencement of activities that lead to the next control gate;
b) Confirm conformity with requirements; and/or
c) Provide information to eliminate any cause of non-conformity and to prevent reoccurrence.

6.2.7 The authorisation to proceed to the next procurement gate must be given by a delegated person or body. The delegated person or body must be able to apply relevant built environment knowledge and skill to achieve the intended results required at the relevant procurement gate. The level of detail contained in the documentation on which a decision to proceed to the next procurement gate is made, must be sufficient to enable an informed decision.

6.2.8 The Accounting Officer must develop and implement effective and efficient emergency procurement procedures, including relevant approval delegation, in compliance with relevant legislation.

6.2.9 The Accounting Officer must develop and implement an effective and efficient infrastructure disposal policy in line with the Municipal Asset Transfer Regulations. The institution may consider disposal strategies aligned to their internal disposal policy, prior to proceeding with the procurement strategy.

6.2.10 The Accounting Officer must keep records of Procurement Gate Approvals, in a manual or electronic format, with the following minimum requirements:

a) Procurement gate;
b) Delegated person/s or body;
c) Date on which the approval request was received;
d) Date on which the approval was actioned; and
e) Signature of the delegated person or body.

6.2.11 All assets must be recorded in the municipal asset register as required by the GRAP standards.

6.3 Infrastructure Procurement Gates

6.3.1 Procurement **Gate 1 (PG 1)**

a) Initiate a procurement process;

b) **Minimum Requirement for PG 1:**

1) Establish and clarify the procurement need, aligned to the municipality's development and transformation priorities specified in the IDP.
2) Determine a suitable title for the procurement, to be applied as the project description.
3) Prepare the broad scope of work for the procurement.
4) Perform market analysis.
5) Estimate the financial value of proposed procurement and contract for budgetary purposes, based on the broad scope of work.
6) Confirm the budget.
7) Compliance with section 33 of the MFMA with respect to community and stakeholder consultation.

c) **PG 1 is complete when a designated person or body makes the decision to proceed/not to proceed, with the procurement of the infrastructure.**

6.3.2 Procurement **Gate 2 (PG 2)**

a) Approve procurement strategy to be adopted.

b) **Minimum Requirement for PG 2:**

1) Develop a procurement strategy aligned to the institutional procurement strategy:
   a. Establish contracting and pricing strategy comprising of an appropriate allocation of responsibilities and risks; and the methodology for contractor payments.
   b. Identify service required for works.
   c. Decide on contracting strategy.
   d. Decide on pricing strategy.
   e. Decide on form of contract.
   f. Establish opportunities for promoting preferential procurement in compliance with legislative provisions and the Construction Sector Code.

c) **PG 2 is complete when a delegated person or body approves the procurement strategy that is to be adopted.**

6.3.3 Procurement **Gate 3 (PG 3)**

a) Approve procurement documents.

b) **Minimum requirements for PG 3:**

1) Prepare procurement documents that are compatible with:
   (i) approved procurement strategies.
   (ii) project management design documentation.

c) **PG 3 is complete when the Bid Specification Committee approves the procurement document. .**

6.3.4 Procurement **Gate 4 (PG 4)**

a) Confirm that cash flow processes are in place to meet projected contractual obligations.

b) **Minimum requirement for PG 4**

1) Confirm that cash flow processes are in place to meet contractual obligations.
2) Establish control measures for settlement of payments within the time period specified in the contract.

c) **PG 4 is complete when a delegated person or body confirms in writing that cash flow processes are in place; and control measures are established for the procurement to take place.**

6.3.5 Procurement **Gate 5 (PG 5)**

a) Solicit tender offers.

b) **Minimum requirements for PG 5**

1) Invite contractors to submit tender offers.
2) Receive tender offers.
3) Record tender offers.
4) Safeguard tender offers.

c) **PG 5 is complete when tender offers received are recorded and safeguarded by a delegated person from the SCM unit.**

6.3.6 Procurement **Gate 6 (PG 6)**

a) Evaluate tender offers premised on undertakings and parameters established in procurement documents.

b) **Minimum Requirement for PG 6:**

1) Determine whether tender offers are complete.
2) Determine whether tender offers are responsive.
3) Evaluate tender submissions.
4) Review minimum compliance requirements for each tender.
5) Perform a risk analysis.
6) Prepare a report on tender offers received, and on their achievement of minimum compliance.

c) **PG 6 is complete when the chairperson of the Bid Evaluation Committee approves the BEC report.**

6.3.7 Procurement **Gate 7 (PG 7)**

a) Award the contract.

b) **Minimum Requirement for PG 7:**

1) Bid adjudication committee review of the BEC evaluation report.
2) Bid Adjudication Committee makes an award.
3) Accounting Officer approval of the tender process.
4) Notify successful tenderer and unsuccessful tenderers of the outcome.
5) Sign contract document.
6) Formally accept tender offer.

c) **PG 7 is complete when the Accounting Officer, or the Bid Adjudication Committee where delegated, confirms that the tenderer has provided evidence of complying with all requirements stated in the tender data and formally accepts the tender offer in writing, and issues the contractor with a signed copy of the contract.**

6.3.8 Procurement **Gate 8 (PG 8)**

a) Administer and monitor the contract.

b) **Minimum Requirements for PG 8:**

1) Finance department to:

(i) Capture contract award data.

(ii) Manage cash flow projection.

(ii) Administer contract in accordance with the terms and provisions of the contract.

2) Delivery department to:

(i) Ensure compliance with contractual requirements.

c) **PG 8 is complete when a delegated person captures the contract completion/termination data (close out reports and relevant documents), including payment certificates due.**

7. Conclusion

It is advised that municipalities and municipal entities review this document from a practical implementation perspective and amend its SCM policies accordingly by inserting those parts that is practically implementable into the SCM Policy to be approved by the municipal council. You are also encouraged to share this with the relevant officials within the institution to ensure organisational awareness of this reform.

Enquiries pertaining to the content of this framework may be directed to:
Email: InfrastructureProcurement@treasury.gov.za



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Contents

No.		Gazette No.	Page No.
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS			
National Treasury / Nasionale Tesourie			
2721	Preferential Procurement Policy Framework Act (5/2000): Preferential Procurement Regulations	47452	3

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

NATIONAL TREASURY

NO. 2721 **4 November 2022**

PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000: PREFERENTIAL PROCUREMENT REGULATIONS

The Minister Finance has, in terms of section 5, read with section 2(1)(b)(i) and (ii) and 2(1)(c), of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000), and with effect from 16 January 2023, made the regulations set out in the Schedule.

SCHEDULE

PREFERENTIAL PROCUREMENT REGULATIONS, 2022

Contents

1. Definitions
2. Application
3. Identification of preference point system
4. 80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million
5. 90/10 preference point system for acquisition of goods or services with Rand value above R50 million
6. 80/20 preference points system for tenders to generate income or to dispose of or lease assets with Rand value equal to or below R50 million
7. 90/10 preference point system for tenders to generate income or to dispose of or lease assets with Rand value above R50 million
8. Criteria for breaking deadlock in scoring
9. Remedies
10. Repeal of regulations
11. Short title and commencement

Definitions

1. In these Regulations, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act must bear the meaning so assigned—

"highest acceptable tender" means a tender that complies with all specifications and conditions of tender and that has the highest price compared 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;

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

"Rand value" means the total estimated value of a contract in Rand, calculated at the time of the tender invitation;

"specific goals" means specific goals as contemplated in section 2(1)*(d)* of the Act 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" 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 envisaged in legislation;
"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; and
"the Act" means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

Application

2. These Regulations apply to organs of state as defined in section 1[1] of the Act.

Identification of preference point system

3.(1) An organ of state must, in the tender documents, stipulate—
(a) the applicable preference point system as envisaged in regulations 4, 5, 6 or 7;
(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, an organ of state must, in the 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.

80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million

4.(1) The following formula must be used to calculate the points out of 80 for price in respect of an invitation for a tender with a Rand value equal to or below R50 million, inclusive of all applicable taxes:

[1] Paragraph (f) of the definition of organ of state in section 1 of the Act includes any other institution or category of institutions included in the definition of "organ of state" in section 239 of the Constitution and recognised by the Minister by notice in the *Government Gazette* as an institution or category of institutions to which the Act applies. Government Notices—
(a) R. 501 of 8 June 2011 recognises, with effect from 7 December 2011, all public entities listed in Schedules 2 and 3 to the Public Finance Management Act, 1999; and
(b) R. 571 of 15 June 2017 recognises, with effect from 17 June 2017, national and provincial government components listed in Schedule 3 to the Public Service Act, 1994 and municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000, as institutions to which the Act applies.
Note should be taken of notices issued from time to time in terms of paragraph (f) of this definition. The application of these Regulations is also subject to applicable exemptions approved in terms of section 3 of the Act.

$$Ps = 80\left(1 - \frac{Pt - P\min}{P\min}\right)$$

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of lowest acceptable tender.

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

(3) 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.

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

90/10 preference point system for acquisition of goods or services with Rand value above R50 million

5.(1) The following formula must be used to calculate the points out 90 for price in respect of an invitation for tender with a Rand value above R50 million, inclusive of all applicable taxes:

$$Ps = 90\left(1 - \frac{Pt - P\min}{P\min}\right)$$

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of lowest acceptable tender.

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

(3) 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.

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

80/20 preference points system for tenders for income-generating contracts with Rand value equal to or below R50 million

6.(1) 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

Pmax = Price of highest acceptable tender.

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

(3) 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.

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

90/10 preference point system for tenders for income-generating contracts with Rand value above R50 million

7.(1) 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:

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

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmax = Price of highest acceptable tender.

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

(3) 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.

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

Criteria for breaking deadlock in scoring

8.(1) 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 for specific goals.

(2) If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

Remedies

9.(1) If an organ of state is of the view that a tenderer submitted false information regarding a specific goal, it must—

(a) inform the tenderer accordingly; and

(b) give the tenderer an opportunity to make representations within 14 days as to why the tender may not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part.

(2) After considering the representations referred to in subregulation (1)*(b)*, the organ of state may, if it concludes that such information is false—

(a) disqualify the tenderer or terminate the contract in whole or in part; and

(b) if applicable, claim damages from the tenderer.

Repeal of regulations

10.(1) Subject to this regulation, the Preferential Procurement Regulations, 2017 published in Government No. 40553 of 20 January 2017, are hereby repealed with effect from the date referred to in regulation 11.

(2) Any tender advertised before the date referred to in regulation 11 must be dealt with in terms of the Preferential Procurement Regulations, 2017.

Short title and commencement

11. These Regulations are called the Preferential Procurement Regulations, 2022 and take effect on 16 January 2023.

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Annexure C

GOVERNMENT PROCUREMENT

GENERAL CONDITIONS OF CONTRACT

NOTES

The purpose of this document is to:

(i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and

(ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.

- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if (applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier’s performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force Majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties
33. National Industrial Participation Programme (NIPP)

General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:

1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.

1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.

1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.

1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.

1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.

1.7 “Day” means calendar day.

1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.

1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.

1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.

1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.

1.12 ”Force majeure” means an event beyond the control of the supplier and not involving the supplier’s fault or negligence and not foreseeable.

Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.

1.14 "GCC" means the General Conditions of Contract.

1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.

1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.

1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.

1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.

1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.

1.20 "Project site," where applicable, means the place indicated in bidding documents.

1.21 "Purchaser" means the organization purchasing the goods.

1.22 "Republic" means the Republic of South Africa.

1.23 "SCC" means the Special Conditions of Contract.

1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

2. Application

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General

3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za

4. Standards

4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

5. Use of contract documents and information; inspection.

5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.

5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent rights

6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

7. Performance security

7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.

7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:

(a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
(b) a cashier's or certified cheque

7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and analyses

8.1 All pre-bidding testing will be for the account of the bidder.

8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.

8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.

8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.

8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.

8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with

supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.

10.2 Documents to be submitted by the supplier are specified in SCC.

11. Insurance

11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

12. Transportation

12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

13. Incidental services

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

(a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
(b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
(c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
(d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and

(e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

14. Spare parts

14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

(a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
(b) in the event of termination of production of the spare parts:
  (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
  (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

16. Payment

16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.

16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.

16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

17. Prices

17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.

18. Contract amendments

18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

19. Assignment

19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.

20. Subcontracts

20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

21. Delays in the supplier's performance

21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.

21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

23. Termination for default

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

(a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;

(b) if the Supplier fails to perform any other obligation(s) under the contract; or

(c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard

the intended penalty as not objected against and may impose it on the supplier.

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

(i) the name and address of the supplier and / or person restricted by the purchaser;
(ii) the date of commencement of the restriction
(iii) the period of restriction; and
(iv) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24. Anti-dumping and countervailing duties and rights

24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him

25. Force Majeure

25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security,

damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

27. Settlement of Disputes

27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

27.5 Notwithstanding any reference to mediation and/or court proceedings herein,

(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
(b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;

(a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

(b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

29. Governing language

29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

30. Applicable law

30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.

31. Notices

31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice

31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

32. Taxes and duties

32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.

32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.

32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

33. National Industrial Participation (NIP) Programme

33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.