



Vaal River City, the Cradle of Human Rights

The background of the cover page is a composite image. On the left, there is a photograph of a large, multi-story building with a grid-like facade. On the right, there is a close-up photograph of a calculator and a pen resting on a document. The entire background is overlaid with a blue gradient and white curved lines.

# **DRAFT SUPPLY CHAIN MANAGEMENT**

## **POLICY**

**2020/21 (with recommended  
amendments)**

**MUNICIPAL SUPPLY CHAIN MANAGEMENT POLICY**  
**LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003**  
**Date of adoption: [01 April 2019]**

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

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**1. Definitions**

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

“administrative documents” means documents as defined by the Bid Specification Committee applicable to the type of tender to be advertised”

**Cession**

A cession is the transfer of the rights to an award or contract from one party to another. The party acquiring the rights is called the cessionary. The party giving up the rights is called the cedent. A policy can be ceded in two ways:

**Outright cession** - all rights in terms of the policy are transferred to the cessionary and all proceeds of the award or contract are paid directly to the cessionary in the event of a claim and not to the previous owner, his/her beneficiaries or estate.

If a policy is ceded, the right of the cessionary takes precedent and will be paid before any payments to nominated beneficiaries.

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

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

**“co-operative”** means a co-operative registered in terms of section 7 of the Co-operative Act, 2005 (Act No. 14 of 2005);

**“EME”** means an exempted micro enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad Based Black Economic Empowerment Act;

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

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

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

- (a) a member of –
    - (i) any municipal council;
    - (ii) any provincial legislature; or
    - (iii) the National Assembly or the National Council of Provinces;
  - (b) a member of the board of directors of any municipal entity;
  - (c) an official of any municipality or municipal entity;
  - (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
  - (e) a member of the accounting authority of any national or provincial public entity;
- or

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

**“list of accredited prospective providers”** means the list of accredited prospective providers which the **Emfuleni Local Municipality** must keep in terms of paragraph 16 of this policy;

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

**“mandatory documents”** means all regulatory documents as required by law.

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

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

**QSE** – means a Quality Small Business Enterprise in terms of a code of good practice on Black Economic Empowerment issued in terms of section 9 (1) of the Broad-Based Economic Empowerment Act.

**“Senior Manager”** means a Municipal Manager or Acting Municipal Manager, read together with section 57 and section 56 of the MSA

**“Township”** means an urban living area that any time from the late 19<sup>th</sup> century until 27 April 1994 was reserved for black people, including area developed for historically disadvantaged individuals post 27 April 1994;

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

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

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

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

## **2. Abbreviations**

This is a shortened form of a word or phrase, used to represent the whole

**“QSE”** - Quality Small Business Enterprise

**“EME”** - Exempted Micro Enterprise

**“OCPO”** - Office of Chief Procurement Officer

**CHAPTER 1**  
**IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY**

**2. Supply chain management policy**

1. Each municipality and each municipal entity must in terms of section 111 of the act have and implement a supply chain management policy 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 regulatory framework prescribed in Chapter 2 of this 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.

1) The Emfuleni local municipality cannot act otherwise than in accordance with its supply chain management policy when -

- (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



- 2) 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, **except where specifically provided otherwise in these Regulations.**

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

- 1) The accounting officer must –
  - (a) at least annually review the implementation of this Policy; **in terms of regulations 2 of the SCM regulations**
  - (b) when the accounting officer considers it necessary, submit proposals for the amendment of this Policy to the **council.**
  - (c) the reviewed SCM Policy must be submitted to Gauteng Provincial Treasury (GPT) for inputs and comments before submission to Council.
- 2) If the accounting officer submits proposed amendments to the **council** that differs from the model policy issued by the National Treasury, the accounting officer must –
  - (a) **Make use of any treasury guidelines determining standards for municipal supply chain management policies, and submit to the council that guideline standard, or any modified version thereof, as a draft policy.**
  - (b) **If the accounting officer submits a draft amendment policy to the council that differs from the guideline standard, the accounting officer must ensure that such amended draft policy complies with regulation 2**
  - (c) **The accounting officer must report any deviation from the guideline standard 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 MFMA and MSA has delegated all the powers and duties to the Accounting Officer which are necessary to enable the Accounting Officer – (see comment in read mode)

- (a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
- a. Chapter 8 or 10 of the Act; and
  - b. this Policy;

-Internalize first to see which model to use that will be applicable

-Ensure SCM delegations is aligned with financial delegations approved by council

-To have a separate report on financial delegations that impact procurement process

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

**Commented [e1]:** The recommendation of GPT on this item differs with the regulation 4.1 as council must delegate those powers to the accounting officer

## 5. Sub delegations

- (1) The accounting officer may in terms of section 79 or 106 of the Act subdelegate any supply chain management powers and duties, including those delegated to the accounting officer in terms of this Policy, but any such subdelegation must be consistent with subparagraph (2) of this paragraph and paragraph 4 of this Policy.
- (2) The power to make a final award –
  - (a) above R10 million (VAT included) may not be sub delegated by the accounting officer;
  - (b) above R2 million (VAT included), but not exceeding R10 million (VAT included), may be sub delegated but only to –
    - i. the chief financial officer;
    - ii. **a Senior Managers;**
    - iii. a bid adjudication committee of which the chief financial officer is a member of the bid adjudication committee.
  - (c) not exceeding R2 million (VAT included) may be sub delegated but only to –
    - i. the chief financial officer;
    - ii. **a Senior Manager;**
    - iii. **a manager directly accountable to the chief financial officer. (to be deleted)**
    - iv. a bid adjudication committee.
- (3) An **official** or bid adjudication committee to which the power to make final awards has been sub delegated in accordance with subparagraph (2) must within five days of the end of each month submit to the official referred to in subparagraph (4) a written report containing particulars of each final award made by such official or committee during that month, including–
  - (a) the amount of the award;
  - (b) the name of the person to whom the award was made; and
  - (c) the reason why the award was made to that person.
- (4) A written report referred to in subparagraph (3) must be submitted –

- (a) to the accounting officer, in the case of an award by –
  - (i) the chief financial officer;
  - (ii) a Senior Manager; or
  - (iii) a bid adjudication committee of which the chief financial officer is a member;or
- (b) to the chief financial officer or the Senior Manager responsible for the relevant bid, in the case of an award by –
  - (i) a manager referred to in subparagraph (2)(c)(iii); or
  - (ii) a bid adjudication committee of which the chief financial officer or a Senior Manager is not a member.
- (5) Subparagraphs (3) and (4) of this policy do not apply to procurements out of petty cash.
- (6) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in this Policy.
- (7) No supply chain management decision-making powers may be delegated to an advisor or consultant.

## 6. Oversight role of council

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

- (5) The reports must be made public in accordance with section 21A of the Municipal Systems Act.

**7. Supply chain management unit**

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

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

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

## CHAPTER 2 SUPPLY CHAIN MANAGEMENT SYSTEM

### 9. Format of supply chain management system

This Policy must provide systems to be implemented for effective–

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

#### *Part 1: Demand management*

### 10. System of demand management

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

- (a) Approved procurement plans containing all planned procurement for the financial year in respect of the procurement of goods, works and/or services which exceed R200 000 (all applicable taxes included) by no later than 31 July of each year. The procurement plan must be furnished in the format contained in the template provided by GPT.
- (b) Demand Management to monitor the implementation on the procurement plans and other capital expenditure projects on a monthly basis. Monthly report to be submitted to GPT and Quarterly reports to be submitted to Council for noting.

***Part 2: Acquisition management***

**11. System of acquisition management**

- (1) The accounting officer must implement the system of acquisition management set out in this Part in order to ensure –
  - (a) that goods and services are procured by **the municipality** in accordance with authorised processes only;
  - (b) that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
  - (c) that the threshold values for the different procurement processes are complied with;
  - (d) that bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
  - (e) that any Treasury guidelines on acquisition management are properly taken into account.
- (2) When procuring goods or services contemplated in section 110(2) of the Act, the accounting officer must make public the fact that such goods or services are procured otherwise than through the municipality's supply chain management system, including –
  - (a) Water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
  - (c) Electricity from Eskom, water from the water Department of Water Affairs or a public entity, another municipality or a municipal entity

3. A municipality procuring goods and services as contemplated in section 110(2) of the act must make public the fact that it procures goods or services otherwise than through its supply chain management system, including-

- a) The kinds of goods and services; and
- b) The name of the supplier

## 12. Range of procurement processes

- (1) This policy must subject to SCM regulation 11.2 provide for the procurement of goods and services, goods and services may only be procured by way of –
  - (a) petty cash purchases, up to a transaction value of R2 000 (VAT included);
  - (b) written or verbal quotations for procurements of a transaction value over R2 000 up to R10 000 (VAT included);
  - (c) formal written price quotations for procurements of a transaction value over R10 000 up to R200 000 (VAT included); and
  - (d) a competitive bidding process for–
    - (i) procurements above a transaction value of R200 000 (VAT included); and
    - (ii) the procurement of long-term contracts.
- (2) The accounting officer may, in writing-
  - (a) lower, but not increase, the different threshold values specified in subparagraph (1); or
  - (b) direct that –
    - (i) written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000;
    - (ii) formal written price quotations be obtained for any specific procurement of a transaction value lower than R10 000; or
    - (iii) a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000.
- (3) Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the policy. When determining



transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.

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

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

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

#### **(d) All Tax payers matters must be verified on the Central Supplier Database**

- Bidders must submit their tax complaint, if not, it must be verified through CSD
- If they don't comply, issue 7 days for them to comply. After that, they can be disqualified from the day of request.
- Do the closing process instead of inserting tax, when clearance is submitted, we will insert the tax pin

#### **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 written or verbal quotations and formal written price quotations; and
  - (b) at least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
  - (c) specify the listing criteria for accredited prospective providers; and
  - (d) disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.
  - (e) All prospective service providers must be registered on the Central Supplier Database (CSD) in line MFMA Circular 81.
- (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) The AO must ensure adherence to the stipulations of regulation '4' of PPPFA 2017. This can be included as a special condition
- (5) To ensure the achievement of local economic development as well as the identified designated groups in terms of regulation 4 of PPPFA 2017, the AO must ensure that the above provision must be included as a special condition of tender.

#### **15. Petty cash purchases**

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

1. The Accounting Officer must establish the conditions for the procurement of goods by means of petty cash purchases, which must include conditions –
  - (a) determining the terms on which a Manager may delegate responsibility for petty cash to an Official reporting to the Manager;
  - (b) limiting the number of petty cash purchases or the maximum amounts per month for each Manager;
  - (c) excluding any types of expenditure from petty cash purchases, where this is considered necessary; and
  - (d) requiring monthly reconciliation reports from each Manager to the Chief Financial Officer, including –
2. a monthly reconciliation report from each manager must be provided to the chief financial officer, including –
  - (i) the total amount of petty cash purchases for that month; and
  - (ii) receipts and appropriate documents for each purchase.

#### **16. Written or verbal quotations**

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

- (a) Quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the **Emfuleni Local Municipality**, provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria set out in paragraph 16 (1) (b) and (c) of this Policy;
- (b) to the extent feasible, providers must be requested to submit such quotations in writing;
- (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the accounting officer or another official designated by the accounting officer;

- (d) the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices; and
- (e) if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.

#### **17. 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 **Emfuleni Local Municipality**;
  - (b) quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria set out in paragraph 16(1) (b) and (c) of this Policy;
  - (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer, and
  - (d) the accounting officer must record the names of the potential providers and their written quotations.
- (2) A designated official referred to in subparagraph (1) (c) must within three days of the end of each month report to the chief financial officer on any approvals given during that month by that official in terms of that subparagraph.

#### **18. Procedures for procuring goods or services through written or verbal quotations and formal written price quotations**

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

- (a) when using the list of accredited prospective providers, the accounting officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;
  - (b) all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, be advertised for at least seven days on the website and an official notice board of the **Emfuleni Local Municipality**;
  - (c) offers received must be evaluated on a comparative basis taking into account unconditional discounts;
  - (d) the accounting officer or chief financial officer must on a monthly basis be notified in writing of all written or verbal quotations and formal written price quotations accepted by an official acting in terms of a subdelegation;
  - (e) offers below R30 000 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;
- (a) 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;

#### **18.1 EVALUATION ABOVE THAN R30 000 NOT EXCEEDING R200 000.00**

- 1.1 Above R30 000.00 not exceeding R200 000.00 VAT included, specifications are performed by the specifications committee in line with section 26 of this policy
- 1.2 an evaluation is performed by the evaluations committee composed of user group, budget, Legal and the SCM Unit taking the following principles into account:
  - 1.2.1 Compliance with conditions/specification/TOR.
  - 1.2.2 Price.
  - 1.2.3 Preferential procurement only where it was made a condition of evaluation on a voluntary basis.

**Commented [e12]:** The municipality is advised that the bid evaluation must be based on the proposals received from the prospective service providers and 'administrative documents' cannot to be requested outside the evaluation process. Should the municipality intend on establishing a quotation committee, this must be formally established and must have specific terms of reference.  
GPT advice recommendation.

1.2.4 Before making an award to a person, Emfuleni Local Municipality must request the service provide to provide ELM with all administrative documents within seven days (Non-technical documents like Municipal Account, Tax Clearance, COIDA, etc), failure to submit within the stipulated period will result to immediate disqualification.

-Clarify what "administrative document is"

-Evaluate all the requests to submit administrative documents before awarding

-The clause should be included on the tender document and state failure to submit will be disqualify the municipality is advised that the bid evaluation must be based on the proposals received from the prospective service providers and "administrative documents' cannot to be requested outside the evaluation process

Should the municipality intend on establishing a quotation committee, this must be formally established and must have specific terms of reference.

GPT advice recommendation. ed, as well as if wrong documents are submitted

## 19. Competitive bids

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

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

## 20. Process for competitive bidding

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

- (a) Compilation of bidding documentation as detailed in paragraph 23;
- (b) Public invitation of bids as detailed in paragraph 24;
- (c) Site meetings or briefing sessions as detailed in paragraph 24;
- (d) Handling of bids submitted in response to public invitation as detailed in paragraph 25;
- (e) Evaluation of bids as detailed in paragraph 30;
- (f) Award of contracts as detailed in paragraph 31;
- (g) Administration of contracts

- (i) After approval of a bid, the accounting officer and the bidder must enter into a written agreement.
- (h) Proper record keeping
  - (i) Original / legal copies of written contracts agreements should be kept in a secure place for reference purposes.

## **21. Bid documentation for competitive bids**

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

- (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
- (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

2. Emfuleni Local Municipality must determine under which circumstances it will sell its bid documents.
3. All suppliers must in the relevant circumstances, pay a non-refundable pre-determined sum of money for all bid documents. This sum must be determined within a predetermined accountable framework.
- 3.1 The Accounting officer to determine the value of a tender which is non-refundable fee for bid documents
- 3.2 The purpose of this fee is to cover the printing costs of the bid document.

## 22 Public invitation for competitive bids

- (1) **The procedure for the invitation of competitive bids, is as follows:**
  - (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating within the areas as stipulated by current legislation, the website of the **Emfuleni Local Municipality** or any other appropriate ways (which may include an advertisement in the Government Tender



Bulletin), which may include an advertisement in the Central Supplier Database;  
and

- (b) the information contained in a public advertisement, must include –
  - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2)(a) of this policy;
  - (ii) a statement that bids may only be submitted on the bid documentation provided by the **Emfuleni Local Municipality**; and
  - (iii) date, time and venue of any proposed site meetings or briefing sessions.;
- (2) The accounting officer may determine a closure date for the submission of bids which is less than the 30- or 14-days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.
- (3) Bids submitted must be sealed.
- (4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

The municipality is urged to revise the draft policy and incorporate the content of MSCM Regulations 19 and 22 on procurement of transactions above R200 000 and long-term contracts.

MFMA Circular 83 gives further guidance on advertising on the mandatory E-tender portal.

The decision to utilize e-tender portal is at the sole discretion of the AO.

The Emfuleni Municipality reserves the right to sell tender documentation in order to cover printing costs.

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

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

- (a) Bids–
  - (i) must be opened only in public;

- (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
  - (iii) received after the closing time should not be considered and returned unopened immediately.
- (a) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price;
  - (b) No information, except the provisions in subparagraph (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
  - (c) The accounting officer must –
    - (i) record in a register all bids received in time;
    - (ii) make the register available for public inspection; and
    - (iv) publish the entries in the register and the bid results on the website.

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

- (1) The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation –
  - (a) does not allow any preferred bidder a second or unfair opportunity;
  - (b) is not to the detriment of any other bidder; and
  - (c) does not lead to a higher price than the bid as submitted.
- (d) If the price offered by a tenderer scoring the highest points is not market related, the organ of the state may not award the contract to that tenderer.
- (e) The organ of the state may:
  - (1) Negotiate a market related price with the tenderer scoring the highest points or cancel the tender;
  - (2) If the tenderer does not agree to a market related price, negotiate a market related price with the tenderer scoring second highest points or cancel the tender;

(3) If the tenderer scoring second highest points does not agree to a market related price, negotiate a market related price with the tenderer scoring third highest points or cancel the tender;

1. If a market related price is not agreed as envisaged in paragraph (e) (3), the organ of the state must cancel the tender.

Negotiations with preferred bidders should be in line with regulation six (6) of the Preferential Procurement Regulations, 2017

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

#### **25 Two-stage bidding process**

- (4) 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.
- (5) 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.
- (6) In the second stage final technical proposals and priced bids should be invited.

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

- (1) A committee system for competitive bids is hereby established, consisting of the following committees for each procurement or cluster of procurements as the accounting officer may determine:
  - (a) a bid specification committee;
  - (b) a bid evaluation committee; and
  - (c) a bid adjudication committee;
- (2) The accounting officer appoints the members of each committee, taking into account section 117 of the Act; and

- (3) A neutral or independent observer, appointed by the accounting officer, must attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.
- (4) The committee system must be consistent with –
  - (a) paragraph 29, 30 and 31 of this Policy; and
  - (b) any other applicable legislation.
- (5) The accounting officer may apply the committee system to formal written price quotations.

#### **27 Bid specification committees**

- (1) A bid specification committee must compile the specifications for each procurement of goods or services by the **Emfuleni Local 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 labeling of conformity certification;
  - (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word “equivalent”;
  - (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2017; and

- (g) must be approved by the accounting officer prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.
- (3) A bid specification committee must be appointed by the Accounting Officer for each project.
- (4) A bid specification committee must be composed of one or more officials of the municipality preferably the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.
- (5) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.

#### **28 Bid evaluation committees**

- (1) A bid evaluation committee must –
  - (a) evaluate bids in accordance with –
    - (i) the specifications for a specific procurement; and
    - (ii) the points system set out in terms of paragraph 29(2) (f).
  - (b) evaluate each bidder's ability to execute the contract;
  - (c) Advise Adjudication Committee of all administrative documents (e.g tax clearance, municipal accounts, etc) to be submitted by the successful bidder before award.
  - (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 be appointed by the Accounting Officer per project.
- (3) 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 **Emfuleni Local Municipality**.

The municipality is advised that the bid evaluation must be based on the proposals received from the prospective service providers and "administrative documents" cannot to be requested outside the evaluation process

Should the municipality intend on establishing a quotation committee, this must be formally established and must have specific terms of reference.

GPT advice recommendation.

It is advised that the above clause should be exactly in terms of SCM regulation 28

## 29 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) Before making an award to a person, Bid Adjudication Committee must request the service provide to provide ELM with all administrative documents (Non-technical documents like Municipal Account, Tax Clearance, COIDA, etc), within seven days (Non-technical documents like Municipal Account, Tax Clearance, COIDA, etc), failure to submit within the stipulated period will result to immediate disqualification.
- (3) A bid adjudication committee must consist of at least four senior managers of the Emfuleni Local Municipality which must include –
  - (a) the chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer; and
  - (b) at least one senior supply chain management practitioner who is an official of the **Emfuleni Local Municipality**; and
  - (c) a technical expert in the relevant field who is an official, if such an expert exists.
- (4) The accounting officer must appoint the chairperson and members 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.
- (6) (a) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –
  - (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;
  - (ii) notify the accounting officer.
- (b) The accounting officer may –
  - (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
  - (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (7) 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.
- (8) The accounting officer must comply with section 114 of the Act within 10 working days

The municipality is advised that the bid evaluation must be based on the proposals received from the prospective service providers and "administrative documents" cannot to be requested outside the evaluation process

Should the municipality intend on establishing a quotation committee, this must be formally established and must have specific terms of reference.

GPT advice recommendation.

It is advised that the above clause should be exactly in terms of SCM regulation 29

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

- (1) A contract for banking services –
  - (a) must be procured through competitive bids;
  - (b) must be consistent with section 7 or 85 of the Act; and
  - (c) may not be for a period of more than five years at a time.
- (2) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.
- (3) The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of paragraph 24(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

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

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



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

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

The above clause should be done in strict accordance with SCM regulation 32 as well as National Treasury circular 96.

The internal audit must audit compliance with above circular and advise the AO.

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

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

### **34 Proudly SA Campaign**

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

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

Management is advised to apply the Proudly SA Campaign in terms of the issued Preferential Procurement Regulations 2017. Comment from GPT

Refer to regulations

### 35 Appointment of consultants

- i. Accounting Officers must only contract with consultants after a gap analysis report has confirmed that the municipality does not have the requisite skills or resources in its permanent employment to perform the services required.
- ii. Evidence of acute planning of the project must be visible to all relevant persons including the administration and political oversight mechanisms in place at the municipality.
- iii. Consultants, including construction and infrastructure related services, must only be remunerated at the rates equal to or below those:
  - a. determined in the “Guidelines on fees for audits done on behalf of the Auditor-General South Africa”, issued by the South African Institute of Chartered Accountants (SAICA);
  - b. set out in the “Guide on Hourly Fee Rates for Consultants”, by the Department of Public Service and Administration (DPSA); or
  - c. Prescribed by the body regulating the profession of the consultant.
- iv. Ensure an exacting “specification” of the work to be accomplished accompanies the tender and is used as a monitoring tool, are appropriately recorded and monitored.
- v. Ensure that contracts for consultants include retention and penalty clauses for poor performance and in this regard against the above specification, accounting officers must invoke such clauses, where deemed necessary.
- vi. It is mandatory that accounting officers of municipalities and municipal entities conclude on the best “value for money”, i.e. matching fees against quality and against benchmarked practices.
- vii. Accounting officers of municipalities and municipal entities must appoint consultants on a time and cost basis with specific start and end dates.

- viii. Travel and subsistence costs for the appointment of consultants must be in accordance with the travel policy of government and the contract price specifies all travel & subsistence costs.
- ix. If travel and subsistence costs for appointed consultants are exclusive of the contract, the costs must be in accordance with the following provisions:
  - a) Hotel accommodation may not exceed the amount mentioned in this Circular;
  - b) Only economy class air tickets may be purchased for flights;
  - c) Only group B vehicles or lower may be hired for engagements, as mentioned in this Circular;
  - d) Kilometers claimed for the use of private vehicles may not exceed the rates approved by the National Department of Transport, as updated from time to time.
- x. Municipalities are urged to develop consultancy reduction plans.
- xi. Undertake all engagements of consultants in accordance with the SCM Regulations and the municipality's SCM policy.
  - i. 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.
- xii. Consultancy services must be procured through competitive bids
- xiii. 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.
- xiv. 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 Emfuleni Local Municipality.

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

- (1) The accounting officer may –

- (a) dispense with the official procurement processes established by this Policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only –
    - (i) in an emergency;
    - (ii) if such goods or services are produced or available from a single provider only;
    - (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
    - (iv) acquisition of animals for zoos and/or nature and game reserves; or
    - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
  - (b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.
- (2) The accounting officer must record the reasons for any deviations in terms of subparagraphs (1) (a) and (b) of this policy and report them to the next meeting of the council and include as a note to the annual financial statements.
  - (3) Subparagraph (2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this policy.

### **37 Unsolicited bids**

- (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- (2) The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if –
  - (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
  - (b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
  - (c) the person who made the bid is the sole provider of the product or service; and

- (d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
- (3) If the accounting officer decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with –
  - (a) reasons as to why the bid should not be open to other competitors;
  - (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
  - (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) The accounting officer must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, to the National Treasury and the relevant provincial treasury for comment.
- (5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, depending on its delegations.
- (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (7) When considering the matter, the adjudication committee must take into account –
  - (a) any comments submitted by the public; and
  - (b) any written comments and recommendations of the National Treasury or the relevant provincial treasury.
- (8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the accounting officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.
- (9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the Emfuleni Local Municipality to the bid may be entered into or signed within 30 days of the submission.
- (10) Solicit the views of GPT on intention to participate in contract secured by another organ of the state in terms of the Municipal SCM Regulation 32. Correspondence

to GPT regarding the intention to utilize Regulation 32, must be addressed and submitted to GPT's Head of Department, together with a detailed motivation, in addition to the annexure provided with regulation 32.

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

- (1) The accounting officer must–
  - (a) take all reasonable steps to prevent abuse of the supply chain management system;
  - (b) investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this Policy, and when justified –
    - (i) take appropriate steps against such official or other role player; or
    - (ii) report any alleged criminal conduct to the South African Police Service;
  - (c) check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
  - (d) reject any bid from a bidder–
    - (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the **Emfuleni Local 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 **Emfuleni Local Municipality** or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
  - (e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
  - (f) cancel a contract awarded to a person if –
    - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or

- (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
- (g) reject the bid of any bidder if that bidder or any of its directors –
  - (i) has abused the supply chain management system of the **Emfuleni Local Municipality** or has committed any improper conduct in relation to such system;
  - (ii) has been convicted for fraud or corruption during the past five years;
  - (iii) has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - (iv) has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- (2) The accounting officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) of this policy.

It is highly advised that council must adopt a policy as recommended by SCM regulation 38

### ***Part 3: Logistics, Disposal, Risk and Performance Management***

## **39 . LOGISTICS MANAGEMENT**

The Municipal Manager must establish an effective system of logistics management in order to provide for the setting of inventory levels, receiving and distribution of goods, stores and warehouse management, and contract administration in terms of performance

### **1. 39.1. LEGISLATIVE FRAMEWORK**

- Constitution of the Republic of Emfuleni Local Municipality of 1996;
- Municipal Finance Management Act No. 56 of 2003;
- Sopyy Chain Management Regulation of 2005
- Municipal Supply Chain Management Framework

- Asset Management Policy
- Grip Standards

### **39.2. INVENTORY MANAGEMENT**

- (a) The stores accounting system to be in line with GRAP 12 standards
- (b) The settings of inventory levels including minimum and maximum levels and lead times where goods are placed in stock
- (c) Certification of invoices by the stock controller for goods received on time in accordance with the specifications where applicable and that price charged is according to the contract
- (d) Ensure appropriate standards of internal control and warehouse management including safeguarding of inventory
- (e) Ensure adequate codification of stock and bin numbering system
- (f) Only stores personnel are authorized to issue stock
- (g) Handing and taking over of stock from inventory holders (stores personnel) should be done during the stock reconciliation period

### **39.3. INVENTORY COUNTS**

- (a) Stock take to be done according the stock take instruction that approved by the Supply Chain Manager.
- (b) The stock takes must be done on quarterly basis
- (c) Stock taking to be done in line with the stock take instruction as approved by the Supply Chain Management Manager.
- (d) Items may be subjected to spot checks by the stock controller.
- (e) Stock takes to be performed quarterly.
- (f) All stores discrepancies (shortages and surpluses) identified during the stock take must be investigated.
- (g) The discrepancy report must be submitted to the Chief Financial Official for write off approval and to ensure compliance to the prescribed legislation.
- (h) The quarterly / annual stock report must also be done to Council.



## **40.DISPOSAL MANAGEMENT**

Asset disposal is the final phase in the life cycle of an asset. It is the outcome of the organization's realization that the economic life of an asset expired. Asset disposal has to be executed in line with the section 217 of the Constitution: - in a transparent, competitively, equitable and in a cost-effective manner

The Municipal Manager must establish 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 as per the functions below

### **40.1 THE DISPOSAL OF ASSETS IN LINE WITH MFMA MUST–**

be by one of the following methods –

- (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
- (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
- (iii) selling the asset; or
- (iv) destroying the asset;

provided that –

- (i) immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
  - (ii) movable assets may be sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
  - (iii) in the case of the free disposal of computer equipment, the provincial department of education must first be approached to indicate within 30 days whether any of the local schools are interested in the equipment; and
  - (iv) in the case of the disposal of firearms, the National Conventional Arms Control Committee has approved any sale or donation of firearms to any person or institution within or outside the Republic;
- furthermore, ensure that –
- (i) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise; and
  - (ii) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed; and ensure that where assets are traded in for other assets, the highest possible trade-in price is negotiated

### **40.2. DISPOSAL COMMITTEE**

The Accounting Officer must appoint the chairperson and members of the committee for movable assets:

- (a) A Disposal Committee for movable assets should consist of at least more than three officials.
- (b) The relevant commodity manager
- (c) An official proficient in disposal management.
- (d) An official proficient in Asset Management.
- (e) The relevant end user of the commodity considered for disposal.

**40.2(1) The following must be represented on the Committee for immovable assets:**

- (a) CFO or his/her nominee as chairperson
- (b) Manager Finance
- (c) Manager Legal
- (d) An official proficient in disposal management.
- (e) The relevant end user/commodity manager of the commodity considered for disposal.
- (f) Manager Supply Chain Management.
- (g) Manager Asset Management
- (h) The Disposal Committee must be established on an ad hoc basis for each requirement. Once the disposal requirement is identified that should be satisfied, the SCM Unit must facilitate the establishment of a Disposal Committee.

**40.2(2) Functions of a Disposal Committee**

- (i) The Disposal Committee subsequently convenes on a date previously arranged by the chairperson of the Disposal Committee.
- (ii) After the inspection and evaluation of the items the Disposal Committee must make recommendations, which must include the list of items to be disposed to council for approval.
- (iii) The Asset Management representative must ensure that all disposal actions are accounted for in the financial records.

**40.3 Delegation of powers and duties of Municipal Manager**

The municipal Council may delegate to the Accounting officer the power to make determination of transferring ownership or otherwise dispose of a municipal asset up the value of five hundred thousand rand (500 000.00) in line with the Municipal Financial Management Act section 14, 2 (a) and (b)

**41 Risk Management**

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

**(3) Cession**

The Contract once awarded is personal to the contractor who shall not cede, wholly or partially, to any other person without the prior written consent of the Accounting Officer or his Delegated Official, and on such conditions as he or his Delegated Official may approve.

A contractor requiring such cession shall furnish the name, address, ownership, registration and any other details relating to the proposed cessionary as the Municipality may require, together with reasons for such cession in writing, as well as the cessionary's written consent to the cession.

A cession can only be recommended for acceptance if such acceptance does not prejudice ELM in any way and if it does not result in one or more of the following situations:

- a) The contract being ceded to a cessionary whose name appears in the Register of Restricted Tenderers kept by National Treasury or in the register kept by ELM.
- b) An increase in the contract price or any other additional cost or expenditure being incurred by ELM
- c) The preferential points in terms of the PPPFA and its associated Preferential Procurement Regulation, 2017 and in particular the equity points which would have been awarded to the cessionary had the cessionary tendered for that contract in the first instance, being less than the preferential points awarded to the contractor. For this purpose, the contractor must submit an **Enterprise Declaration Affidavit** fully completed by the cessionary and the cessionary's shareholder agreement (if applicable) and any other documentation or information relating to the cessionary which ELM may require.
- d) Or any other valid and justifiable circumstance that the Accounting Officer may deem necessary.

Upon receipt of the request by the contractor to cede the contract, the end user will evaluate the reasons and compile a report within 5 days of receiving such request. The report must contain recommendation(s) to the AO, indicating whether the cession should be accepted or not. If the cession is approved, the conditions governing such approval must also be determined, resulting in a new SLA signed between the municipality and the cessionary.

#### **42 Performance management**

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

#### ***Part 4: Other matters***

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

- (1) No award above **R30 000** may be made in terms of this Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (2) Before making an award to a person the accounting officer must first check with SARS and/or bidder to provide evidence on whether that person's tax matters are in order.
- (3) If SARS and /or the bidder does not respond within 7 days such person's tax matters may for purposes of subparagraph (1) be presumed to be in order.

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

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

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

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

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

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

#### **46 Ethical standards**

- (1) A code of ethical standards as set out in the “*National Treasury’s code of conduct for supply chain management practitioners and other role players involved in supply chain management*” is hereby established for officials and other role players in the supply chain management system of the **Emfuleni Local Municipality** in order to promote –
  - (a) mutual trust and respect; and
  - (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
- (2) An official or other role player involved in the implementation of this Policy –
  - (a) must treat all providers and potential providers equitably;
  - (b) may not use his or her position for private gain or to improperly benefit another person;
  - (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
  - (d) notwithstanding subparagraph (2) (c), must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
  - (e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the **Emfuleni Local 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 **Emfuleni Local 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 49(1) of this Policy; or
  - (iii) any alleged breach of this code of ethical standards.
- (3) Declarations in terms of subparagraphs (2)(d) and (e) -
  - (a) must be recorded in a register which the accounting officer must keep for this purpose;
  - (b) by the accounting officer must be made to **the mayor of the municipality** who must ensure that such declarations are recorded in the register.
- (4) The National Treasury's code of conduct must also be taken into account by supply chain management practitioners and other role players involved in supply chain management.
- (5) A breach of the code of ethics must be dealt with as follows -
  - (a) in the case of an employee, in terms of the disciplinary procedures of the **Emfuleni Local Municipality** envisaged in section 67(1)(h) of the Municipal Systems Act;
  - (c) in the case a role player who is not an employee, through other appropriate means in recognition of the severity of the breach.
  - (d) In all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act.

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

- (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
  - (a) any inducement or reward to the **Emfuleni Local Municipality** for or in connection with the award of a contract; or
  - (b) any reward, gift, favour or hospitality to –
    - (i) any official; or
    - (ii) any other role player involved in the implementation of this Policy.

- (2) The accounting officer must promptly report any alleged contravention of subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
- (3) Subparagraph (1) does not apply to gifts less than R350 in value.

#### **48 Sponsorships**

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

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

#### **49 Objections and complaints**

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

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

- (1) The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes –
  - (a) to assist in the resolution of disputes between the **Emfuleni Local Municipality** and other persons regarding -
    - (i) any decisions or actions taken in the implementation of the supply chain management system; or
    - (ii) any matter arising from a contract awarded in the course of the supply chain management system; or
  - (b) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.



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

#### **51 Contracts providing for compensation based on turnover**

If a service provider acts on behalf of a **Emfuleni Local 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 **Emfuleni Local Municipality** must stipulate –

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

## 52 Subcontracting as a condition of tender.

52.1 The municipality may, in the bid specification for construction or infrastructure projects with cost estimate above R5 million, require contractors whose head offices are not located in the area of jurisdiction of the Emfuleni Local Municipality or whose head offices are located in the area of jurisdiction of the Emfuleni Local Municipality but do not contribute on at least level 4 of the BBBEE, to subcontract at least 30% of their contract value including construction work, skills transfer and procurement of goods and services in line with the bill of quantities in the bid, to a local contractor registered in the municipal local contractor database.

52.1.1 If the municipality applies subcontracting as contemplated in 54.1 above,

52.1.2 The municipality must advertise the tender with a specific tendering condition that the successful tenderer must subcontract to minimum of 30% of the value of the contract to –

- (a) An EME or QSE;
- (b) An EME or QSE which is at least 51% owned by black people registered on CSD and ELM Database;
- (c) An EME or QSE which is at least 51% owned by black people who are youth registered on CSD and ELM Database;
- (d) An EME or QSE which is at least 51% owned by black people who are women registered on CSD and ELM Database;
- (e) An EME or QSE which is at least 51% owned by black people with disabilities registered on CSD and ELM Database;
- (f) An EME or QSE which is at least 51% owned by black people living in rural or underdeveloped areas or townships registered on CSD and ELM Database;
- (g) A cooperative which is at least 51% owned by black people registered on CSD and ELM Database;
- (h) An EME or QSE which is at least 51% owned by black people who are military veterans registered on CSD and ELM Database; or
- (i) More than one of the categories referred to in (a) to (h).

**NB: AO to provide a list of subcontractors to choose from as per commodities registered on database.**

52.2 With no liability to the municipality, no construction work on awarded contracts shall commence unless the contractor has satisfied the Accounting Officer or his delegated authority with the following in respect of subcontracted work:

- 52.2.1 the contractor has nominated a local contractor within the database as approved by National Treasury for local contractors;
  - 52.2.2 the contractor has signed a subcontract which is legal and valid and is subject to written consent of the municipality with such a contract indicating amongst others:
  - 52.2.3 the contractor will pay the local sub-contractor timeously at least 30 days after submission of invoices by the subcontractor;
  - 52.2.4 the Contractor grants the municipality the authority and power to deduct local subcontractor invoices from payments due to the contractor and pay to the subcontractor directly, should the contractor have previously defaulted in paying the local contractor after the municipality had paid the contractor payments covering the local contractors' invoices;
  - 52.2.5 the sub -contracted local contractor is registered in the municipal database for local contractors;
  - 52.2.6 the sub -contracted local contractor is validly registered with the CIPC, is validly registered with appropriate CIDB grading and where applicable NHBRC;
  - 52.2.7 the sub-contracted local contractor is owned by Historically Disadvantaged individuals' resident in the Emfuleni Local Municipality;
  - 52.2.8 the sub-contracted local contractor will procure most goods and services with Emfuleni Local Municipality;
  - 52.2.9 the subcontracted local contractor will employ local residents within Emfuleni Local Municipality.
- 52.3 In the ordinary course of business local contractors or contractors whose head offices are located within the jurisdiction of the Emfuleni Local Municipality and contribute on at least level 4 are not precluded from directly bidding for infrastructural and construction projects if they meet requirements of the bid and shall be exempted from a requirement to subcontract 30% of the bid value to another local contractor in terms of section 54.1 of the policy.
- 52.4 The supply chain management unit must prior to the signing of the service level or appropriate agreement and commencement of construction by the contractor, facilitate and convene a meeting with the project management unit and the appointed contractor to consider and facilitate compliance with requirements of section 54.2
- 52.5 The Accounting Officer may in consultation with council, extend the requirement for subcontracting of 30% of the contract value to other services and supplies.

52.6 The municipality may, subject to the provisions of section 83(2) of the Municipal Systems Act, give preference to local contractors in the event of awarding of tenders with contract value not exceeding R 5 000 000 (5 million Rand)

Subcontracting as a condition of a tender should be in line with regulation four and nine of the Preferential Procurement Regulations, 2017

Section 14.18 of the NT Implementation Guide on PR 2017 states as follows:

The institution must make available the list of suppliers registered on the CSD to provide the required goods or services in respect of the applicable designated groups mentioned in the relevant tender from which the tenderer must select a supplier.

The municipality is urged to revise this statement and ensure no suppliers are prejudiced due to their place of residence in the Republic.

The policy must have a detailed of all abbreviations to avoid misinterpretations.

The municipality is urged to apply consistently with the requirement of PPR 2017 without prejudice.

### **53 Commencement**

This Policy takes effect on 01 July 2020 or on the day of the council resolution whatever comes first.