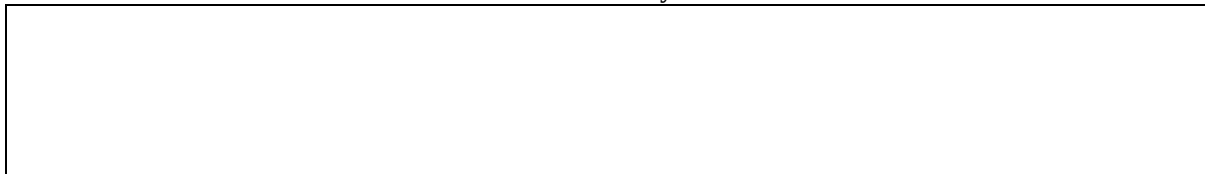


RICHMOND LOCAL MUNICIPALITY



DRAFT MUNICIPAL SUPPLY CHAIN MANAGEMENT POLICY 2024/2025



RICHMOND MUNICIPALITY

MUNICIPAL SUPPLY CHAIN MANAGEMENT POLICY

LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003

Date of adoption: 09th October 2006

Richmond 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 municipality.

IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

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Definitions

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 –

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

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

“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;

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

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

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

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

“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.

CHAPTER 1

IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

Supply chain management policy

2. (1) All officials and other role players in the supply chain management system of the municipality must implement this Policy in a way that –
 - (a) gives effect to –
 - (i) section 217 of the Constitution; and
 - (ii) Part 1 of Chapter 11 and other applicable provisions of the Act;
 - (b) is fair, equitable, transparent, competitive and cost effective;
 - (c) complies with –
 - (i) the Regulations; and
 - (ii) any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
 - (d) is consistent with other applicable legislation;
 - (e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
 - (f) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.
- (2) This Policy applies when the municipality.
 - a) procures goods or services;
 - (b) disposes goods no longer needed;
 - (c) selects contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
- (3) This Policy, except where provided otherwise, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –
 - (a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
 - (b) electricity from Eskom or another public entity, another municipality or a municipal entity.

Amendment of the supply chain management policy

3. (1) The accounting officer must –

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

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

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

Delegation of supply chain management powers and duties

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

- (a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
 - (i) Chapter 8 or 10 of the Act; and
 - (ii) this Policy;
- (b) to maximise administrative and operational efficiency in the implementation of this Policy;
- (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this Policy; and
- (d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.

(2) Sections 79 and 106 of the Act apply to the 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 municipality;

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(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

Subdelegations

5. (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 R1 million (VAT included) may not be sub delegated by the accounting officer;
- (b) above R500 000,00 (VAT included), but not exceeding R1 million (VAT included), may be sub delegated but only to –
 - (i) the chief financial officer;
 - (ii) a senior manager as per the delegations policy; or
 - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member

(3) An official or bid adjudication committee to which the power to make final awards has been sub delegated in accordance with subparagraph (2) must within five days of the end of each month submit to the official referred to in subparagraph (4) a written report containing particulars of each final award made by such official or committee during that month, including–

- (a) the amount of the award;
- (b) the name of the person to whom the award was made; and
- (c) the reason why the award was made to that person.

(4) A written report referred to in subparagraph (3) must be submitted –

- (a) to the accounting officer, in the case of an award by –
 - (i) the chief financial officer;
 - (ii) a senior manager; or
 - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or

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- (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 subdelegated, 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.

Oversight role of council

6. (1) The council reserves its right to maintain oversight over the implementation of this Policy.

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

(3) The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the mayor.

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

(5) Section 117 of the Municipal Finance Management Acts prohibits a councilor from being a member of a bid Committee or any other committee

evaluating or approving quotations or bids nor may a councilor attend any such meeting or observer

Supply chain management unit

7. (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.

Training of supply chain management officials

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

CHAPTER 2

SUPPLY CHAIN MANAGEMENT SYSTEM

Format of supply chain management system

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

Part 1: Demand management

System of demand management

10. (1) The accounting officer must establish and implement an appropriate demand management system in order to ensure that the resources required by the municipality support its operational commitments and its strategic goals outlined in the Integrated Development Plan.

(2) The demand management system must –

- (a) include timely development of procurement plans 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;
- (c) The development of a system which result in continuing improvement in affordability and value for money, based on total cost of ownership and quality of procurement as competition amongst suppliers is enhanced
- (d) provide for the compilation of the required specifications to ensure that its needs are met.
- (e) To undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.

Part 2: Acquisition management

System of acquisition management

11. (1) The accounting officer must implement the system of acquisition management set out in this Part in order to ensure –

- (a) that goods and services including construction works and consultant 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; Including, The Constitution of Republic of South Africa Act, the Preferential Procurement Policy Framework Act, and any conditions of the Construction Industry Development Board Act and,
- (e) that any Treasury guidelines on acquisition management are properly taken into account this includes the Provincial and National programs on National Key Priorities to address socio-economic development.

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

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

Range of procurement processes

12. (1) Goods and services may only be procured by way of –

- (a) **petty cash purchases**, up to a transaction value of R2,000 (VAT included);
- (b) **three written quotations** for procurements of a transaction value over R2 000 up to R10 000 (VAT included);
- (c) **three 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–

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- (i) procurements above a transaction value of R200 000 (VAT included);
and
 - (ii) the procurement of long term contracts exceeding one year in duration(which include any defects liability period, if applicable).
- (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) three 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.

12.2 Planning and Stipulation of Preference Point System to be Utilized, Pre-qualification criteria for preferential procurement, Bids to be evaluated on Functionality, Preference Point System and Broad-Based Black Economic Empowerment Status, Award of Contracts to Bidders not Scoring the Highest Number of Points and the Cancellation and Re-Invitation of Bids

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

An organ of state must, prior to making an invitation for bids-

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

12.2.2 Pre-qualification criteria for preferential procurement

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(1) If an organ of state decides to apply pre-qualifying criteria to advance certain designated groups, that organ of state must advertise the tender with a specific tendering condition that only one or more of the following tenderers may respond-

- (a) a tenderer having a stipulated minimum B-BBEE status level of contributor;
- (b) an EME or QSE;
- (c) a tenderer subcontracting a minimum of 30% to-
 - (i) an EME or QSE which is at least 51% owned by black people;
 - (ii) an EME or QSE which is at least 51% owned by black people who are youth;
 - (iii) an EME or QSE which is at least 51% owned by black people who are women;
 - (iv) an EME or QSE which is at least 51% owned by black people with disabilities;
 - (v) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
 - (vi) a cooperative which is at least 51% owned by black people;
 - (vii) an EME or QSE which is at least 51% owned by black people who are military veterans;
 - (viii) an EME or QSE.

(d) Specific Goals which will be used for professional services will be as follows

- (i) an EME or QSE which is at least 51% owned by black people;
- (ii) an EME or QSE which is at least 51% owned by black people who are youth;
- (iii) an EME or QSE which is at least 51% owned by black people who are women;
- (iv) an EME or QSE which is at least 51% owned by black people with disabilities;

(2) A tender that fails to meet any pre-qualifying criteria stipulated in the tender

12.2.3 Bids to be evaluated on functionality

- 1) An organ of state must indicate in the invitation to submit a bid if that bid will be evaluated on functionality.
- 2) The evaluation criteria for measuring functionality must be objective.
- 3) When evaluating bids on functionality, the-

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- a) evaluation criteria for measuring functionality.
- b) the points for each criteria and, if any, each sub-criterion; and
- c) applicable values; and
- d) minimum qualifying score for functionality.

The minimum qualifying score for functionality for a tender to be considered further-

(a) Must be determined separately for each tender, and

(b) May not be so-

- (i) Low that it may jeopardize the quality of the required goods or services; or
- (ii) High that it is unreasonably restrictive.

5) Points scored for functionality must be rounded off to the nearest two decimal places.

6) A bid that fails to obtain the minimum qualifying score for functionality as indicated in the bid documents is not an acceptable bid.

7) Each bid that obtained the minimum qualifying score for functionality must be evaluated further in terms of price and the preference point system and any objective criteria envisaged in regulation 11.

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

- a) The following formula must be used to calculate the points for price in respect of bids (including price quotations) with a Rand value equal to, or above R30 000.00 and up to a Rand value of R50 000 000.00 (all applicable taxes included).

Where

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

Pt = Comparative price of bid or offer under consideration; and

Pmin = Comparative price of lowest acceptable bid or offer.

b) Organs of state may apply the formula in paragraph (a) for price quotations with a value less than R30 000.00 if and when appropriate. All companies who is registered a company in South Africa will be automatically qualify to quote for the price quotation less than R30 000.00

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

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B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

12.2.5. Award of contracts to bidders not scoring the highest number of points

- (1) A contract may be awarded to bidder that did not scored the highest total number of points, only in accordance with section 2 (1) (f) of the Act.
- (2) If an organ of state intends to apply objective criteria in terms of section 2(1)(f) of the Act, the organ of state must stipulate the objective criteria in the bid documents.

12.2.6. Cancellation and re-invitation of bids

- (1) (a) In the event that, in the application of the 80/20 preference point system as stipulated in the bid document, all bids received exceed the estimated Rand value of R50 000 000.00, the bid invitation must be cancelled.
- (b) If one or more of the acceptable bids received are within the prescribed threshold of R50 000 000.00, all bids received must be evaluated on the 80/20 preference point system.
- (2) (a) In the event that, in the application of the 90/10 preference point system as stipulated in the bid document, all bids received are equal to, or below Rand R50 000 000.00, the bid must be cancelled.
- (b) If one or more of the acceptable bids received are above the prescribed threshold of R50 000 000.00, all bids received must be evaluated on the 90/10 preference point system.
- (3) An organ of state which has cancelled a bid invitation as contemplated in sub-regulations (1) (a) and (2) (a) must re-invite bids and must, in the bid documents, stipulate the correct preference point system to be applied.
- (4) An organ of state may, before the award of bid, cancel a bid invitation if-

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- (a) Due to changed circumstances, there is no longer a need for the goods or services specified in the invitation.
 - (b) Funds are no longer available to cover the total envisaged expenditure; or
 - (c) No acceptable bids are received.
 - (d) There is a material irregularity in the bid process.
- (5) The decision to cancel a bid in terms of sub-regulation (1) must be published in the same manner in which the original bid invitation was advertised.
- (6) An organ of state may only with the prior approval of the relevant treasury cancel a bid invitation for the second time.

General preconditions for consideration of written quotations or bids

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

- (a) has furnished that provider's –
 - (i) full name;
 - (ii) identification number or company or other registration number; and
 - (iii) tax reference number and VAT registration number, if any.
 - (iv) Statement(s) providing that water, electricity, rates and business levy accounts of the owners directors of the company, including the business are up to date or formal payment arrangements have been made
 - (v) certificate of attendance at a compulsory site inspection, where applicable
 - (vi) Proof of registration with supplier's data base as determined by National Treasury
- (b) It is not the responsible of the Municipality to obtain a tax clearance from the South African Revenue Services that will confirm that the providers tax matters are in order , the municipality can or may check the validity of the tax clearance system through South African Revenue Services and
- (c) has indicated –
 - (i) whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
 - (ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
 - (iii) whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to in subparagraph (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.

Lists of accredited prospective providers

14. (1) In terms of MFMA Circular 81, as from 1 July 2016 municipalities and municipal entities must use the Central Suppliers Database (CSD). Must ensure that all service providers whose doing business with the municipality are registered

on a database. Must disallow any prospective provider whose name appears on the National Treasury database as a person prohibited from doing business with the public sector for any goods or service that is above R30 000.00.

(2) at least once a year through newspapers commonly circulated locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited service providers on the CSD.

Petty cash purchases

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

- (a) Municipal Manager to determine the terms on which a manager may delegate responsibility for petty cash to an official reporting to the manager;
- (b) Municipal Manager to determine the maximum number of petty cash purchases or the maximum amounts per month for each manager;
- (c) Municipal Manager to determine any types of expenditure from petty cash purchases that are excluded where this is considered necessary; and
- (d) a monthly reconciliation report from each manager must be provided to the chief financial officer, including –
 - (i) the total amount of any petty cash purchases for that month; and
 - (ii) receipts and appropriate documents for each purchase

Written or verbal quotations

16. The conditions for the procurement

17. of goods or services through written or verbal quotations are as follows:

- (a) Quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the municipality, provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria set out in paragraph 14(1)(b) and (c) of this Policy;

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

Formal written price quotations

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

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

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

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

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

- (a) when using the list of accredited prospective providers the accounting officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;

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- (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 municipality; be scored on price and targeted goals points designed in terms of the Preferential Procurement Points Framework Act **(PPPFA) and its regulations and Broad Base Black Economic Empowerment 2003 and be advertised for seven days on the website and an official notice board of Richmond Municipality;**
- (c) offers received must be evaluated on a comparative basis taking into account unconditional discounts;
- (d) the municipal manager or chief financial officer must on a monthly basis be notified in writing of all written or verbal quotations and formal written price quotations accepted by an official acting in terms of a sub-delegation;
- (e) offers below R30 000 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;
- (f) acceptable offers, which are subject to the preference points system (Preferential Procurement Points Framework Act (PPPFA) and its regulations PPPFA and associated regulations), must be awarded to the bidder who scored the highest points; where that bidder has been already awarded another tender
- (g) Procuring of goods and services in excess of R100 000 and unlimited must be reported to National Treasury on the monthly basis.
- (h) **for proper record keeping and audit purposes, the following documentation must be kept by Finance and department procuring goods or services;**
 - a. The authorized purchase requisition produced by the department requiring goods and services.
 - b. formal written price quotations
 - c. The order authorized by the Chief Financial Officer.
 - d. Formal signed delivery note submitted by the successful supplier.
 - e. Formal invoice or certificate of work performed submitted by the successful supplier.
 - f. Goods received voucher, as prepared by expenditure: creditors

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section.

- g. The Cheque voucher prepared by the Accountant: Expenditure and authorized by the Chief Financial Officer.
- h. The authorized payment Cheque.
- i. Any minutes of a bid resolution by the Bid Adjudication or Awarding Committee.
- j. Proof of authorized direct payment (cash focus) processed for each transaction
- (i) offers received must be evaluated on a comparative basis taking into account unconditional discounts;
- (j) 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;
- (k) 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;
- (l) 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;
- (m) Richmond Municipality's requirements for proper record keeping.
- (n) In order to fulfill the objectives of this policy and other local economic development initiatives or national government priorities like National Development Plan. Notwithstanding clause 18 (a) that required advertising on a Council website, The head of Supply Chain Management is delegated to determine that, despite this requirement, and since the advertising on the world wide web (www) may stifle rotation of local suppliers within the Richmond, procurement of quotations may be done by selecting and sending Request for Quotations, or targeting a minimum of 10 (ten) local service providers that not been awarded any order in a current financial year, without advertising on the Councilors official wesite or advertising on the website for local suppliers only or as contemplated in clause 34

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

1. 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.
2. For all bid advertised by the municipality at an excess value of R5 million and the Technical Services must ensure that sub-contracting is implemented to benefit the local emerging contractors who are registered CIDB Grade 1 and 2 registered on the municipal program for emerging contractors.
3. The municipality may not enter into any contract that will impose financial obligations beyond three years covered in the annual budget for that financial year, unless the requirement of section 33 of the Municipal Finance Management Act has been fully complied with
4. No contracts shall be extended for more than six months from the date of expiry.

Process for competitive bidding

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

- (a) Compilation of bidding documentation as detailed in paragraph 21;
- (b) Public invitation of bids as detailed in paragraph 22;
- (c) Site meetings or briefing sessions as detailed in paragraph 22;
- (d) Handling of bids submitted in response to public invitation as detailed in paragraph 23;
 - (i) The Supply Chain Management Unit shall be responsible for the administration of bids received by the Municipality as described in clause 22 of this policy.
 - (ii) checking in terms of responsiveness shall be done by the Supply Chain Management unit.

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(iii) The Supply Chain Management units shall be responsible for the submission of a report to the Bid Evaluation Committee, of which the User Department shall finalize the technical aspect of report with a list of responsiveness with tender specifications, must be recorded, with a corresponding recommendation

(iv) Tender Waiver, if the user department for any reasonable reasons based on a risk assessment is not in agreement with the evaluation done. The user department shall compile a tender waiver stating the reasons the evaluation cannot be accepted

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

Bid documentation for competitive bids

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

- (a) take into account –
 - (i) the general conditions of contract and any special conditions of contract, if specified;
 - (ii) any Treasury guidelines on bid documentation; and
 - (iii) the requirements of the Construction Industry Development Board, 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.

Public invitation for competitive bids

22. (1) The procedure for the invitation of competitive bids, is as follows:

- (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the municipality or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin, Construction Industry Development Board (CIDB) website construction related bids or on E Tender Portal); 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

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case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2) of this policy;

- (ii) a statement that bids may only be submitted on the bid documentation provided by the municipality ;and
- (ii) 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.

- (4) Bids submitted must be sealed.

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

Procedure for handling, opening and recording of bids

23. 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.
- (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price;
- (c) No information, except the provisions in subparagraph (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
- (d) The accounting officer must –
 - (i) record in a register all bids received in time;
 - (ii) make the register available for public inspection; and
 - (iii) publish the entries in the register and the bid results on the website.

Negotiations with preferred bidders

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

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

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

Two-stage bidding process

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

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

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

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

Committee system for competitive bids

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

- (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) provide for an attendance or oversight process by a neutral or independent observer, appointed by the accounting officer, must attend or oversee

a committee when this is appropriate for ensuring fairness and promoting transparency.

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

Bid specification committees

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

- (2) Specifications –
 - (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
 - (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, 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 2001; and

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- (g) must be approved by the accounting officer prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.

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

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

Bid evaluation committees

28. (1) A bid evaluation committee must –

- (a) evaluate bids in accordance with –
 - (i) the specifications for a specific procurement; and
 - (ii) the points system set out in terms of paragraph 27(2)(f).
- (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 municipality.

Bid adjudication committees

29. (1) A bid adjudication committee must –

- (a) consider the report and recommendations of the bid evaluation committee; and
- (b) either –
 - (i) depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or

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- (ii) make another recommendation to the accounting officer how to proceed with the relevant procurement.

(2) A bid adjudication committee must consist of at least four senior managers of the municipality which must include –

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

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

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

(5) (a) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –

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

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

(7) The accounting officer must comply with section 114 of the Act within 10 working days

Procurement of banking services

30. (1) A contract for banking services –

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

(2) The process for procuring a contract for banking services must commence at least nine 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).

Procurement of IT related goods or services

31. (1) The accounting officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.

(2) Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.

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

- (a) the transaction value of IT related goods or services required in any financial year will exceed R500 000,00 (VAT included); or
- (b) the transaction value of a contract to be procured whether for one or more years exceeds R500 000,00 (VAT included).

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

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

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

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

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

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

Procurement of goods necessitating special safety arrangements

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

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

Proudly SA Campaign

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

Appointment of consultants

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

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

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

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

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

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

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

36. (1) The accounting officer may –

- (a) dispense with the official procurement processes established by this Policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only –
 - (i) in an emergency;
 - (ii) if such goods or services are produced or available from a single provider only;
 - (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
 - (iv) acquisition of animals for zoos and/or nature and game reserves; or
 - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and

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

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

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

(4) All Deviation be processed on the Pre-approved Deviation Request form as provided and must be approved by Accounting Officer

(5) Variation orders in terms of MFMA circular 62 contracts may be expanded or varied by not more 20% for construction related goods, services and/or infrastructure projects and 15% for all other goods and services of the original value of contracts.

Unsolicited bids

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

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

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

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

- (a) reasons as to why the bid should not be open to other competitors;
- (b) an explanation of the potential benefits if the unsolicited bid were accepted; and

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(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 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 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 Provincial Treasury and the National Treasury the reasons for rejecting or not following those recommendations.

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

Combating of abuse of supply chain management system

38. (1) The accounting officer must–

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

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- (c) check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
- (d) reject any bid from a bidder–
 - (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality, or to any other municipality or municipal entity, are in arrears for more than three months; or
 - (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
- (e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
- (f) cancel a contract awarded to a person if –
 - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
 - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
- (g) reject the bid of any bidder if that bidder or any of its directors –
 - (i) has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;
 - (ii) has been convicted for fraud or corruption during the past five years;
 - (iii) has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - (iv) has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).

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

Part 3: Logistics, Disposal, Risk and Performance Management

Logistics management

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

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

Disposal management

40. Sections 14 and 90 of the MFMA deal with the disposal of capital assets. These prescribe that, prior to transfer or disposal of a capital asset, council in an open meeting must decide that the asset is not needed to provide the minimum level of basic municipal services, and must have considered the fair value for the asset and the economic community value to be received in exchange for the asset.

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(i) The accounting Officer must ensure that:

- * Immovable property is sold at market-related prices, except when the public interest or plight of the poor demands otherwise.
- * Movable assets are sold either by price quotations, advertised competitive bidding, auction or at market related prices, whichever is the most advantageous to the municipality. The bid adjudication committee will determine the most advantageous method of disposal. The Accounting officer will approve sale of moveable assets with a value of less than R 1 000,00 (with delegated authority from Council under Section 14(4) of the MFMA).
- * The National Conventional Arms Control Committee approves disposal of firearms.
- * Market-related prices may be obtained through competitive bidding process.

(ii) For sale of land and buildings at market value, the market value will be either:

- (a) determined by a registered valuer and be approved by the Accounting Officer to the value of R1 000,00 or
 - (b) submitted to council for approval under Section 14(2) of the MFMA where the value exceeds R 1 000,00. The same procedures for advertisement, evaluation and adjudication will apply as for procurement under Section 12 of this policy including application of the Preferential Procurement Policy Act and regulations.
- (iii) Any asset may be transferred to another organ of state either at either or at market value or, when appropriate, free of charge.
- (iv) Assets may be destroyed where this is assessed to be in the best interests of the public.
- (v) In relation to computer equipment, the provincial department of education must be given first option to acquire equipment.
- (vi) Sale of assets through competitive bidding or auction shall follow the same communication process prescribed for bids in Section 12. In addition, advice will be given about where prospective buyers/bidders may view the assets and any notification of auction will advise the date, time and venue of the auction.

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- (vii) In disposing of movable assets the Bid Adjudication Committee will determine the most advantageous method of sale that provides best value for money to the municipality. The Committee will adhere to the communication requirements prescribed for quotations. If deemed necessary notification may also be by advertisement in a widely circulated local newspaper. In sales by private treaty the adjudication committee will adjudicate and approve quotations received. The adjudication committee reserves the right not to accept any bids offered.
- (viii) The Bid Adjudication Committee shall adjudicate all bids for sales of immovable assets by private treaty.

Risk management

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

Performance management

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

Part 4: Other matters

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

- 43.** (1) No award above 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) At the time of Bid or Quotation closure, the bidder must have attached either a valid SARS tax clearance certificate, or alternative a letter from SARS confirming that the bidder has applied for Tax Clearance certificate as stipulated on clause 13(b)

(3) In the case where letter from SARS confirming that an application for tax clearance has been received, such Tax Clearance certificate is to be provided by the Bidder, within 7(seven) calendar days, failing which the bid will be regarded as non-responsive. A bidder shall obtain proof of receipts from Council upon submission of Tax Clearance certificate.

Prohibition on awards to persons in the service of the state

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

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

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

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

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

Ethical standards

46. (1) A code of ethical standards as set out in [subparagraph (2) / the ***“National Treasury’s code of conduct for supply chain management practitioners and other role players involved in supply chain management”***] is hereby established for officials and other role players in the supply chain management system of the municipality in order to promote –

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- (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 municipality;
- (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
- (g) must be scrupulous in his or her use of property belonging to municipality;
- (h) must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
- (i) must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –
 - (i) any alleged fraud, corruption, favouritism or unfair conduct;
 - (ii) any alleged contravention of paragraph 47(1) of this Policy; or
 - (iii) any alleged breach of this code of ethical standards.

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- (3) Declarations in terms of subparagraphs (2)(d) and (e) -
- (a) must be recorded in a register which the accounting officer must keep for this purpose;
 - (b) by the accounting officer must be made to the mayor of the municipality who must ensure that such declarations are recorded in the register.

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

- (5) A breach of the code of ethics must be dealt with as follows -
- (a) in the case of an employee, in terms of the disciplinary procedures of the municipality envisaged in section 67(1)(h) of the Municipal Systems Act;
 - (b) in the case a role player who is not an employee, through other appropriate means in recognition of the severity of the breach.
 - (c) In all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act.

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

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

- (a) any inducement or reward to the municipality for or in connection with the award of a contract; or
- (b) any reward, gift, favour or hospitality to –
 - (i) any official; or
 - (ii) any other role player involved in the implementation of this Policy.

(2) The accounting officer must promptly report any alleged contravention of subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such

person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.

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

Sponsorships

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

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

Objections and complaints

49. (1) 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.

(2) The person hearing the objection must within 30 days after receipt of the written representation from the objector determine whether the objection is frivolous, vexatious or without merit.

(3) If the person hearing the objection finds that the objection is frivolous, vexatious or without merit, he/she

- a. must dismiss the objection and in writing notify the objector and any other interested party of his/her decision together with reasons for the decision; and
- b. must make an appropriate order as to costs, which may include the costs to the Municipality of having the objection heard.

Resolution of disputes, objections, complaints and queries

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

- (a) to assist in the resolution of disputes between the municipality and other persons regarding -
 - (i) any decisions or actions taken in the implementation of the supply chain management system; or

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- (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 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. A Municipal Bid Appeals Tribunal

- (1) The council shall establish a Municipal Bid Appeals Tribunal for its area of jurisdiction to hear and determine an appeal against the award of a bid.
- (2) The accounting officer of the municipality, in consultation with the Provincial Treasury, shall appoint the Chairperson, Deputy Chairperson and Members of the Municipal Bid Appeals Tribunal.
- (3) The powers, duties and functions of the Municipal Bid Appeals Tribunal, and matters incidental thereto, are set out in the Rules.
- (4) The administrative and secretarial work involved in the performance of the duties and functions of the Municipal Bid Appeals Tribunal shall be performed by officers of the Provincial Treasury as set out in the rules referred to in paragraph 50A(3).

(4) There shall be no further appeal against a decision of the Municipal Bid Appeals Tribunal.

Contracts providing for compensation based on turnover

51. If a service provider acts on behalf of a municipality to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for the service or the amount collected, the contract between the service provider and the municipality must stipulate –

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

52. Management of expansions or variation orders against the original contract

52.1 In exceptional cases the accounting Officer may deem it necessary to expand or vary orders against the original contract. The Accounting Officer may expanded or varied contracts by not more than 20 % or R20 million (including applicable taxes) for construction related goods, works and/or services by 15% or R15 million (including all applicable taxes) for all other goods and/or services of the original value of the contract, whichever is the lower amount. The relevant treasuries may, however, decrease these thresholds for institutions reporting to them.

52.2 Any deviations in excess of these thresholds will only be allowed subject to the prior written approval of the relevant treasury.

52.3 The contents of paragraph 52.1 are not applicable to transversal term contracts facilitated by the relevant treasuries and specific term contract as in such contract, orders are placed as and when commodities are required and that at time of awarding the contract, required quantities are not known.

53. Preferential Procurement

Definitions

“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,

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“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 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 contract 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

These Regulations apply to organ of state as defined in section 1i of the Act.

Identification of preference point system

- (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

- (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:

$$Ps = 80(1 - \frac{Pt - Pmin}{Pmax - Pmin})$$

Pmin

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

- (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:

$$Ps = 90(1 - \frac{Pt - Pmin}{Pt})$$

Pmin

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(a)(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

- (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;

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

P_{min}

Where-

P_s = **Points scored for price of tender under consideration;**

P_t = **Price of tender under consideration; and**

P_{min} = **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 tenders for income – generating contracts with Rand value above R50 million

- (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:

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

P_{min}

Where-

P_s = **Points scored for price of tender under consideration;**

P_t = **Price of tender under consideration; and**

P_{min} = **Price of lowest acceptable tender.**

- (2) A maximum of 10 points may be awarded to 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

- (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

- (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

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- 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

- (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

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

Calculation of points for price

Preference point system [(for acquisition of services, works or goods with a Rand value above R1million) (all applicable taxes included)]

Calculation of points for B-BBEE status level of contributor

Points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	8	16
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

- (c) A bid must not be disqualified from the bidding process if the bidder does not submit a certificate substantiating the B-BBEE status level of contribution or is a non-compliant contributor. Such a bidder will score zero (0) out of a maximum of 10 or 20 points respectively for B-BBEE
- (d) All bidders will have to submit BEE rating certificates, issued by either verification agencies accredited by the South African Accreditation System (SANAS) or by registered auditors approved by the Independent Regulatory Board for Auditors (IRBA) or sworn affidavits in a case of Exempted Micro Enterprises or Qualifying Small Enterprise.
- (e) Any enterprise with an annual Total Revenue of R 10 million or less qualifies as an Exempted Micro-Enterprise.
- (f) Exempted Micro-Enterprises are deemed to have B-BBEE Status of "Level Four Contributor" having a B-BBEE procurement recognition of 100% in terms of the Codes of Good Practice..
- (g) An Exempted Micro Enterprise (EME) with at least 51% black ownership qualifies as a Level 2 contributor with BBEE level of 125% in terms of the Codes of Good Practice.
- (h) An Exempted Micro Enterprise with 100% black ownership qualifies as a

Level 1 contributor with BBEE level of 135% in terms of the Codes of Good Practice.

- (i) An Exempted Micro Enterprise that is regarded as a specialized enterprise with at least 75% black beneficiaries qualifies as a Level 1 contributor with BBEE level of 135% in terms of the Codes of Good Practice.
- (j) An Exempted Micro Enterprise that is regarded as a specialized enterprise with at least 51% black beneficiaries qualifies as a Level 2 contributor with BBEE level of 125% in terms of the Codes of Good Practice.
- (k) A Qualifying Small Enterprise (QSE) with at least 51% black ownership qualifies as a Level 2 contributor.
- (l) A QSE with 100% black ownership qualifies as a Level 1 contributor.
- (m) A QSE that is regarded as a specialized enterprise with at least 51% black beneficiaries qualifies as a Level 2 contributor with BBEE level of 125% in terms of the Codes of Good Practice.
- (n) A QSE with less than 51% black ownership is required to submit a BBEE level verification certificate issued by BBEE verification professional.
- (o) A Trust, consortium or joint venture:
 - (i) Must submit a B-BBEE status level certificate in order to qualify for points;
 - (ii) Will qualify for points as an unincorporated entity provided, that they submit their consolidated scorecard is prepared for separate tender; and
 - (iii) Where no consolidated scorecard exists, the weighted average (in accordance with participation percentages) will be used and rounded off to the nearest status level.
- (p) If a service is provided by only tertiary institutions, such services must be procured from the tertiary institutions identified by means of bidding process. Tertiary institutions must submit their B-BBEE status in terms of the B-BBEE Codes of Good Practice Specialized Scorecard.

54 Sub-Contracting and Cession Implementation

- (a) A person awarded a contract may not sub-contract more than 25% of the value of the contract to an enterprise that does not have an equal or higher B-BBEE status level, unless the intended sub-contractor is an EME who has the ability and capability to execute the contract.
- (b) A person awarded a contract may not cede more than 25% of the value of the contract to an enterprise that does not have an equal or higher B-BBEE status level, unless the intended cession is for specialized major items of the contract, i.e. Steel, concrete etc. (Company signing cession or sub-contracting must submit all company documents such as tax clearance, CIDB grading, BBEE certificate, CSD registration and must sign MBD forms 4 and 8)
- (c) A person awarded a contract in relation to a designated sector may not sub contract in such a manner that the local production and content of the overall value of the contract is reduced to below the prescribed minimum threshold.
- (d) If feasible to subcontract for a contract above R30 million, an organ of state must apply subcontracting to advance designated groups.
- (e) If an organ of state applies subcontracting as contemplated in paragraph (d) above, the organ of state must advertise the tender with a specific tendering condition that the successful tenderer must subcontract a minimum of 30% of the value of the contract to-
 - (i) an EME or QSE which is at least 51% owned by black people;
 - (ii) an EME or QSE which is at least 51% owned by black people who are youth;
 - (iii) an EME or QSE which is at least 51% owned by black people who are women;
 - (iv) an EME or QSE which is at least 51% owned by black people with disabilities;
 - (v) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;

- (vi) a co-operative which is at least 51% owned by black people;
 - (vii) an EME or QSE which is at least 51% owned by black people who are military veterans;
 - (viii) An EME or QSE.
- (f) A person or entity awarded a contract may only enter into a subcontracting arrangement with the approval of the organ of state.
- (g) In addition, the revised Regulations address the objectives of Industrial Policy Action Plan, especially those aimed at promoting the procurement of domestically produced goods and services.
- (h) The Regulations empower the Department of Trade and Industry to designate specific industries of critical and / or strategic importance where such tenders should prescribe that only locally manufactured products will be considered or that only locally manufactured products with a prescribed minimum threshold for local content will be considered. The current list regarding designated sectors is as follows:
- (i) Textile, clothing, leather and footwear;
 - (ii) Buses (bus body);
 - (iii) Steel power pylons;
 - (iv) Canned / processed vegetables;
 - (v) Rail rolling stock;
 - (vi) Set top boxes;
 - (vii) Furniture; and
 - (viii) Electrical and telecom cable products.
 - (ix) Power pylons
 - (x) Pharmaceutical products
 - (xi) Power and Telecom cables
 - (xii) Solar water heaters (collectors and storage tanks/geysers)
 - (xiii) Valves products actuators

- (xiv) Working vessels
 - (xv) Residential electricity meters
 - (xvi) Steel conveyance pipes
 - (xvii) Powerline hardware and Structures
 - (xviii) Transformers
- (i) The Bid Specification Committee shall set appropriate Local Economic Development targets in the form of Contract Participation Goals, set as performance criteria within contracts, where appropriate, for the following target groups:
- (i) Priority population groups
 - (ii) Women
 - (iii) Youth
 - (iv) Disabled
 - (v) Co-operatives
 - (vi) Military Veterans
- (j) In reference to clause 22 above, an organ of state can decide to apply pre-qualifying criteria to advance designated groups, that organ of state must advertise the tender with a specific tendering condition that only one or more of the following tenderers may respond-
- (i) a tenderer having a stipulated minimum BBBEE status level contributor
 - (ii) an EME or QSE
 - (iii) a tenderer sub-contracting a minimum of 30% to –
 - An EME or QSE which is at least 51% owned by black people;
 - An EME or QSE which is at least 51% owned by black people who are youth;
 - An EME or QSE which is at least 51% owned by black people who are women;
 - An EME or QSE which is at least 51% owned by black people with

disabilities;

- An EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
- A co-operative which is at least 51% owned by black people;
- An EME or QSE which is at least 51% owned by black people who are military veterans;
- An EME or QSE.

(k) A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender.

(l) The preference points system is still to be used on the sale or letting of assets and in accordance with the disposals management section of this policy.

Calculation of total points scored for price and B-BBEE status level of contribution

The points scored for price must be added to the points scored for B-BBEE status level of contribution to obtain the bidder's total points scored out of 100.

EVALUATION OF BIDS THAT SCORED EQUAL POINTS

In the event that two or more bids have scored equal total points, the successful bid must be the one that scored the highest points for B-BBEE.

If two or more bids have equal points, including equal preference points for BBBEE, the successful bid must be the one scoring the highest score for functionality, if functionality is part of the evaluation process.

In the event that two or more bids are equal in all respects, the award must be decided by the drawing of lots.

CANCELLATION AND RE-INVITATION OF BIDS

- (a) In the application of **the 80/20 preference point system**, if **all** bids received exceed R50 000 000, the bid must be cancelled. If one or more of the acceptable bid(s) received are within the R50 000 000 threshold, **all bids received must be evaluated on the 80/20 preference point system.**
- (b) In the application of **the 90/10 preference point system**, if **all** bids

received are equal to or below R50 000 000, the bid must be cancelled. If one or more of the acceptable bid(s) received are above the R50 000 000 threshold, **all bids received must be evaluated on the 90/10 preference point system.**

- (c) If a bid was cancelled in terms of paragraph (a) or (b), the correct preference point system must be stipulated in the bid documents of the re-invited bid.

An AO may, prior to the award of a bid, cancel the bid if:

- (a) Due to changed circumstances, there is no longer a need for the services, works or goods requested. [AOs / AAs must ensure that only goods, services or works that are required to fulfill the needs of the institution are procured]; or
- (b) Funds are no longer available to cover the total envisaged expenditure. [AO has to ensure that the budgetary provisions exist]; or
- (c) No acceptable bids are received. [If all bids received are rejected, the institution must review the reasons justifying the rejection and consider making revisions to the specific conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids].

AWARD OF CONTRACTS

- (a) A contract must be awarded to the bidder who scored the highest total number of points in terms of the preference point systems.
- (b) In exceptional circumstances a contract may, on reasonable and justifiable grounds, be awarded to a bidder that did not score the highest number of points. The reasons for such a decision must be approved and recorded for audit purposes.

55. Performance Monitoring of Service Providers

- (a) A municipal service can be provided by the Municipality by entering into a Service Delivery Agreement in terms of Section 76(b) of the Municipal System Act 32 of 2000 with an external service provider. The Municipality is responsible for monitoring and assessing the implementation of the agreement, including the performance of the service provider in accordance with section 41 of the Municipal Systems Act 32 of 2000.
- (b) The performance of service providers that have been selected to provide assistance in the provision of a municipal service, otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies, is required, by Section 116 of the Municipal Finance Management Act, to be monitored and reported on.
- (c) Section 53 of this policy apply to contracts that have been awarded or reviewed, before or after the adoption of this policy. Furthermore this policy applies to all tenders with a contract value greater than R10million VAT included.
- (d) The objectives of the Performance Monitoring of Service Providers is to:-
 - (i) Ensure a high quality of service is maintained
 - (ii) Detect underperformance early, thereby reducing the risks to projects
 - (iii) Create mechanisms to improve performance where targets are not being achieved
 - (iv) Provide data to municipal officials so that informed decisions can be made
 - (v) Assist in government's developmental objectives in the form of structuring appropriate business
 - (vi) support strategies/interventions to targeted enterprises
 - (vii) Assess the suitability of a service provider for pre-qualification, selective tender lists or expressions of interest

While departments have mechanisms in place to monitor the work done by service providers, the following is the minimum standard set.

- 1) All service providers or prospective service providers must be made aware of:
 - (a) the requirement for the assessment and reporting of a service provider's performance;
 - (b) the use of the service provider performance reports when evaluating service providers for registration, pre-qualification, selective tender list, expressions of interest or awarding of a contract; and
 - (c) the exchange of information on service provider performance reports between government units and/or departments.
- 2) The appointed service provider must be given the opportunity to discuss the

performance criteria with the Implementing Department before commencement of the contract.

- 3) Any changes to the performance criteria must be agreed to by the Municipality and the service provider.
- 4) The decision to change a performance criteria after commencement of a contract is the responsibility of the Reporting Officer.
- 5) These amendments must be signed by the service provider and the client and implementing department and attached to the contract or service delivery agreement.
- 6) A service provider's performance must be assessed in the context of the project as a whole. The respective roles and obligations of the Municipality and service provider under the contract must be taken into account.
- 7) The delegated official preparing or reviewing the performance of a service provider must consider whether satisfactory progress or completion of a project has been affected by any matters which are:
 - (a) outside the service provider's control, or
 - (b) the result of some action by the Municipality; and
 - (c) Measure the service provider's performance after taking into account subparagraphs (a) and (b).
- 8) If there is evidence that the underperformance or non-performance of the service provider is due to factors caused by the Municipality then:
 - (a) there will be no penalization of the service provider
 - (b) the Accounting Officer, or delegated official, must take corrective action where necessary.
- 9) The performance assessment reports will be made available to inter-departmental, inter-governmental departments and the CIDB (where applicable) only:
 - (a) on completion of a contract; and
 - (b) if there are no pending disputes.
- 10) The Service Provider must be notified of the assessment.
- 11) The Service Provider may respond on the assessment, in writing, and this must be filed with the assessment.
- 12) The conditions of appointment set in the contract will determine what action will be taken against the service provider if underperformance or non-performance is detected.

- 13) Appropriate key performance indicators for the contract must be set by the Municipality as a yardstick for measuring performance.
- 14) Measurable targets must be set for each key performance indicator.
- 15) The SMART principle as laid out in the Municipality's Organizational Performance Framework must be followed in developing key performance indicators. (Specific, Measurable, Achievable, Realistic, Time-framed)
- 16) The management of the contract and the performance of the service provider must be reported quarterly to the Council of the Municipality in the format set by the SCM Unit.
- 17) The performance information will be audited:
 - (a) as part of the Municipality's internal auditing process; and/or
 - (b) Annually by the Auditor-General.
- 18) The Municipality will endeavor to facilitate support interventions to service providers in the identified areas of underperformance.
- 19) Service providers who have been identified as under-performing in identified areas must be informed of these support interventions.
- 20) The support interventions may be:
 - (a) sponsored by the Municipality,
 - (b) subsidized by the Municipality; or
 - (c) Paid for by the attending service provider.
- 21) Records of support interventions and attendance registers must be signed by all parties and filed.
- 22) The impact of the support interventions provided by the Municipality to the service provider must be monitored.
- 23) The table below outlines the roles and responsibilities of municipal officials in the management of service provider performance.

ROLES	RESPONSIBILITY
SCM Practitioner	▪ Line Departments ▪ Monitor and assess work done or service provided as per the service delivery agreement or contract ▪ Report on the performance of the service provider
SCM Expenditure Accountant	▪ Review the assessment made by the reporting officer
Supply Chain Management	▪ Manage the performance monitoring process ▪ Report on contract management and service provider

	- performance to council quarterly ▪ Report to Council annually on the performance of service providers ▪ Investigate and report on the impact of the interventions on areas of underperformance as part of the quarterly and annually report. ▪ Review the policy and process annually. ▪ Liaise with Business Support Unit on interventions for underperforming areas.
Accounting Officer: Delegated to Performance Management Unit	▪ Ensure that KPI's are included in the appropriate Individual Performance Plan of the Municipal Official ▪ Review the policy and process annually. ▪ Facilitate the quarterly and annual report to internal audit
Internal Audit	▪ Audit the performance information
Business Support Unit	▪ Facilitate support interventions to address the underperforming areas

24) The requirements of this policy must be included in the contract of the service provider.

25) The performance of the contractor under the contract or must be assessed monthly by the SCM Practitioner.

26) The assessment must be filed in the contract file or captured onto the database.

27) The SCM Practitioner must complete the Service Provider Assessment Form on the database at the end of each quarter and on completion or termination of the contract in the prescribed format.

28) The SCM Expenditure Accountant must review the assessment on the database for each quarter.

29) The quarterly assessment must be completed within 15 working days after the end of each quarter.

30) The SCM Practitioner must provide a copy of the assessment to the Service Provider at the end of each quarterly assessment period.

31) Supply Chain Management Unit will review the quarterly Service Provider Assessments within 20 days after the end of each quarter. This process will include verification and may require a site visit.

56. Amendments to contracts – MFMA Section 116(3)

1) This section is applicable to all contracts and Circular 62 and Section 116(3) of the Act must be complied with in respect of amendments to contracts.

Section 116(3) of the Act states:

“A contract or agreement procured through the supply chain management policy of the municipality or municipal entity may be amended by the parties, but only after-

- (a) The reasons for the proposed amendment have been tabled in the council of the municipality or, in the case of a municipal entity, in the council of its parent
- (b) The local community-
 - (i) has been given reasonable notice of the intention to amend the contract or agreement; and
 - (ii) has been invited to submit representations to the municipality or municipal entity”

The Policy and Process for Major Amendments to Contracts:

- 1) **Step 1** of the process is for the Line Department to submit an Executive Committee (EXCO) Report to SCM Policy and Support Services Department recommending approval of Major Amendments to a Contract before submission to Executive Committee.
 - (a) The contents of the report must contain:
 - (i) proof that the contract or agreement procured was through the supply chain management policy;
 - (ii) proof that there a written contract in place;
 - (iii) proof that the contract been monitored on a monthly basis in terms of Section 116(2)(b) of the Act;
 - (iv) proof that the contract been reported on in terms of Section 116(2)(d) of the Act;
 - (v) proof and motivation that the reasons for the proposed amendments are valid
 - (vi) proof that draft for EXCO has appropriate content;
 - (vii) Draft advert for the proposed amendments in terms of Section 116(3) (b) (i) & (ii) of the MFMA.
- 2) There must be a consideration of Section 33 of the MFMA for contracts exceeding three years.
- 3) Step 2 of the process is the submission of a Report to Bid Adjudication Committee recommending approval of Major Amendments to a Contract
 - (a) The contents of the report must contain:
 - i. proof that Steps 1 for Major Amendments have been followed, together with associated documentation; and
 - ii. Results of advertising in terms of Section 116(3) (b) (i) & (ii) of the MFMA, and the results thereof showing representations received and the materiality and impact of these representations.
 - (b) Consideration must be made of Section 33 of the MFMA for contracts exceeding three years.

- (c) Where the contract authority exceeds R10 million, or is a long-term contract, then final authority rests with the Accounting Officer.

The Policy and Process for Minor Amendments to Contracts

- 1) Step 1 is the submission of a Report to the Bid Adjudication Committee recommending approval of Minor Amendments to a Contract
 - (a) The contents of the Report must contain:
 - (i) proof that the contract was procured through the supply chain management policy;
 - (ii) proof that there is a written contract in place;
 - (iii) proof that the contract been monitored on a monthly basis in terms of Section 116(2)(b) of the Act;
 - (iv) proof that the contract been reported on in terms of Section 116(2)(d) of the Act;
 - (v) proof and motivation that the reasons for the proposed amendments are valid and do not exceed the thresholds for minor amendments.
 - (b) Consideration must be made of Section 33 of the MFMA for contracts exceeding three years.
 - (c) Minor amendments can only be considered if the total amended value does not exceed 20% of its original contract authority for construction related goods, services and/or infrastructure projects and 15% for all other goods and/or services of the original value of the contract.
 - (d) Where the contract authority exceeds R10 million, or is a long-term contract, then final authority rests with the Accounting Officer.
- 2) Step 2 of the process is the submission of a Report to Council on the Minor Amendments to contracts, including reasons for the amendments.
 - (a) The report to be included as a separate annexure in the standard monthly reports on tender awards made, which are produced by the SCM Manager.
 - (b) The Departmental Heads overseeing the projects have the responsibility of ensuring that all applicable information is made available to SCM to adequately prepare these reports.

56. Blacklisting

Application of Policy to Blacklisted Persons

- 1) Any blacklisting imposed on any person by the Blacklisting Committee will, at

- the discretion of the Municipality, also be applicable to any partner, manager, director or any other person who wholly or partly exercised, exercises or may exercise control over the business entity.
- 2) If blacklisted persons attempt to re-organize themselves into new business entities, such new business entities will be precluded from tendering for work put out to tender by eThekweni Municipality.
 - 3) The onus is on the blacklisted person to advise their business associates that they have been blacklisted.
 - 4) The Blacklisting Committee may at its discretion, blacklist such entity that may have a business relationship with the blacklisted person, depending on the level of complicity involved.

5) Grounds for Blacklisting

The following are grounds for blacklisting, including but not limited to:-

- (a) committing an irregular practice/s as defined;
- (b) failing to achieve a specified goal as stipulated in the tender document in terms of Regulation 15(1) of the Preferential Procurement Regulations;
- (c) committing any offence as set out in Section 12 and 13 of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004;
- (d) persistent non-performance as defined, and as monitored in terms of the Performance Management Policy of the Municipality; and
- (e) a conviction in respect of criminal related activity, by a competent Court of Law, for which the sentence is a term of imprisonment of not less than 6 months.

6) Procedures

- (a) A Department within the Richmond Municipality must be regarded as the Applicant.
- (b) All external complaints must be lodged with the Richmond Municipality's Integrity and Investigation Unit.

7) The Application

- (a) the Applicant must apply on the prescribed forms which can be collected from the duly authorized department;
- (b) the application form must make provision for the reasons for the application, which if not stated must render the application null and void and such

application must not be considered; and

(c) The Applicant's application must be signed by the Head of that Department.

8) Application Processes

(a) In the case of Applications for blacklisting pertaining to construction or works, and where non-performance (excluding failure to achieve specified goals) is claimed, the application is to be accompanied by proof that the contractor has been advised in writing of his non-performance and been given an opportunity to remedy his non-performance. A certificate issued by a registered Engineer or an internal report from a suitably qualified official confirming the non-performance must also be lodged;

(b) a final demand must be issued by the Accounting Office or duly authorized official requesting the contractor to perform not later than 14 days from the Notice;

(c) in the case of applications in respect of contracts, other than contracts mentioned in (4)(a), and applications alleging failure to achieve specified goals, a copy of all Notices served on the Contractor to perform must be attached to the Application; and

(d) the completed application form must be lodged with the authorized department.

9) Notification

(a) The Blacklisting Committee must send out a notice to the person against whom the application is made.

(b) the notice must be sent by registered post or delivered by hand to the person concerned.

(c) the notice must set out the following:

(i) that an application for blacklisting of the respondent has been received by the Blacklisting Committee;

(ii) the basis of the blacklisting application, including any supporting documentation available at the time of writing;

(iii) that the respondent has a right to make written representations opposing the application for blacklisting against them furnishing reasons as to why he/she should not be blacklisted;

(iv) the time period within which the respondent is to respond in terms of

subsection (c), must be at least 14 calendar days from the date of delivery of the notice; and

(v) the place for the delivery of the response.

10) Response

(a) The Respondent must be expected in his response to indicate:

- (i) whether or not he admits or denies the allegations; and
- (ii) the reasons for denial, if applicable, and the reasons why he should not be blacklisted.

(b) The Respondent may attach supporting documentation to his or her response.

11) Decision

(a) The Blacklisting Committee must make its determination based on the application and response received.

12) Factors

(a) If the Blacklisting Committee is satisfied that there are grounds to blacklist a person, the blacklisting committee must decide on the blacklisting period based on the merits of each matter.

(b) The Blacklisting Committee may take into account the following:

- (i) the seriousness of the offence;
- (ii) previous similar conduct in bidding processes with eThekweni Municipality; other municipalities, other government departments or organs of state;
- (iii) the hardship and/or inconvenience that has been occasioned by the persons conduct; and
- (iv) other remedies which the Municipality may invoke.

13) Notification of Decision

(a) The Blacklisting Committee must advise the parties of its decision in writing within 5 days of the decision being made, by enclosing together with such notice, a copy of the Decision and reasons.

(b) The notification must contain the following information:

- (i) the decision of the Blacklisting Committee;
- (ii) the effective date of the blacklisting and the date of expiration of the blacklisting;
- (iii) the reasons for the decision; and
- (iv) that the respondent has a right to request a review of the decision taken

by the blacklisting authority to the appropriate Municipal committee.

14) Register of Blacklisted Persons

- (a) The Supply Chain Management Unit must keep a register of all blacklisted persons.
- (b) The Register of Blacklisted Persons must be made available on the Municipality's website and updated on a monthly basis.
- (c) The National Treasury must be sent updated copies of the Blacklisting Register of the municipality on a monthly basis.

15) Uplifting of sanction

- (a) The Blacklisting Committee, may amend or uplift any blacklisting which is imposed on a person if it is shown that there has been a material change in the circumstances giving rise to the decision to blacklist or where the decision was based on a material error.
- (b) An application for the uplifting of the blacklisting must be made by the blacklisted person.
- (c) An application for uplifting may only be made after the blacklisted person has been blacklisted for at least two years from the effective date of the decision unless it can be shown that a material error occurred in the decision making process of the Blacklisting Committee.
- (d) If an application to uplift a blacklisting is refused, the applicant is precluded from bringing a further application for a period of two years from the date of the refusal.

16) Onus

- (a) The onus is on the blacklisted person to ensure they are removed from the Richmond Municipality Website once the blacklisting period has expired or where the sanction is uplifted.

17) Evaluation and review

- (a) The Supply Chain Management Unit must together with the Accounting Officer undertake to evaluate and review this policy as least once a year, and recommend amendments to be made as they are deemed to be necessary. All amendments to this policy must be approved by the Council prior to the

amendments being made.

58. STANDARD FOR INFRASTRUCTURE PROCUREMENT AND DELIVERY MANAGEMENT

The municipality will subscribe to the requirement of the Standard for Infrastructure Procurement and Delivery Management when implementing the infrastructure projects. The controls framework and stages follows when implementing the standard is as follows:

CONTROL FRAMEWORKS

Control framework for infrastructure delivery management

1. General

- 1.1. The control framework for the management of infrastructure delivery shall comprise the applicable stages and gates as set out in Figure 1 and the key deliverables described in Table 1. Stages 3 to 9 may be omitted where the required work does not involve the provision of new infrastructure or the rehabilitation, refurbishment or alteration of existing infrastructure. Stages 5 and 6 may be omitted if sufficient information to proceed to stage 7 is contained in the stage 4 deliverable. Decisions to proceed to the next stage shall at each gate, subject to the provisions of 1.2, be based on the acceptability or approval of the end-of-stage deliverable.
- 1.2. A stage shall only be complete when the deliverable has been approved or accepted by the person or persons designated in the institutional arrangements to do so. Activities associated with stages 5 to 9 may be undertaken in parallel or series, provided that each stage is completed in sequence.
- 1.3. The level of detail contained in a deliverable associated with the end of each stage shall be sufficient to enable informed decisions to be made to proceed to the next stage. In the case of stages 3 to 6, such detail shall, in addition, be sufficient to form the basis of the scope of work for taking the package forward in terms of the selected contracting strategy.

1.4. Prefeasibility and feasibility reports shall be required as end-of-stage deliverables for stages 3 and 4, respectively, where one or more of the following applies.

1.4.1. the major capital project is required for:

1.4.1.1. a major public enterprise where the total project capital expenditure exceeds R1,5 billion; or

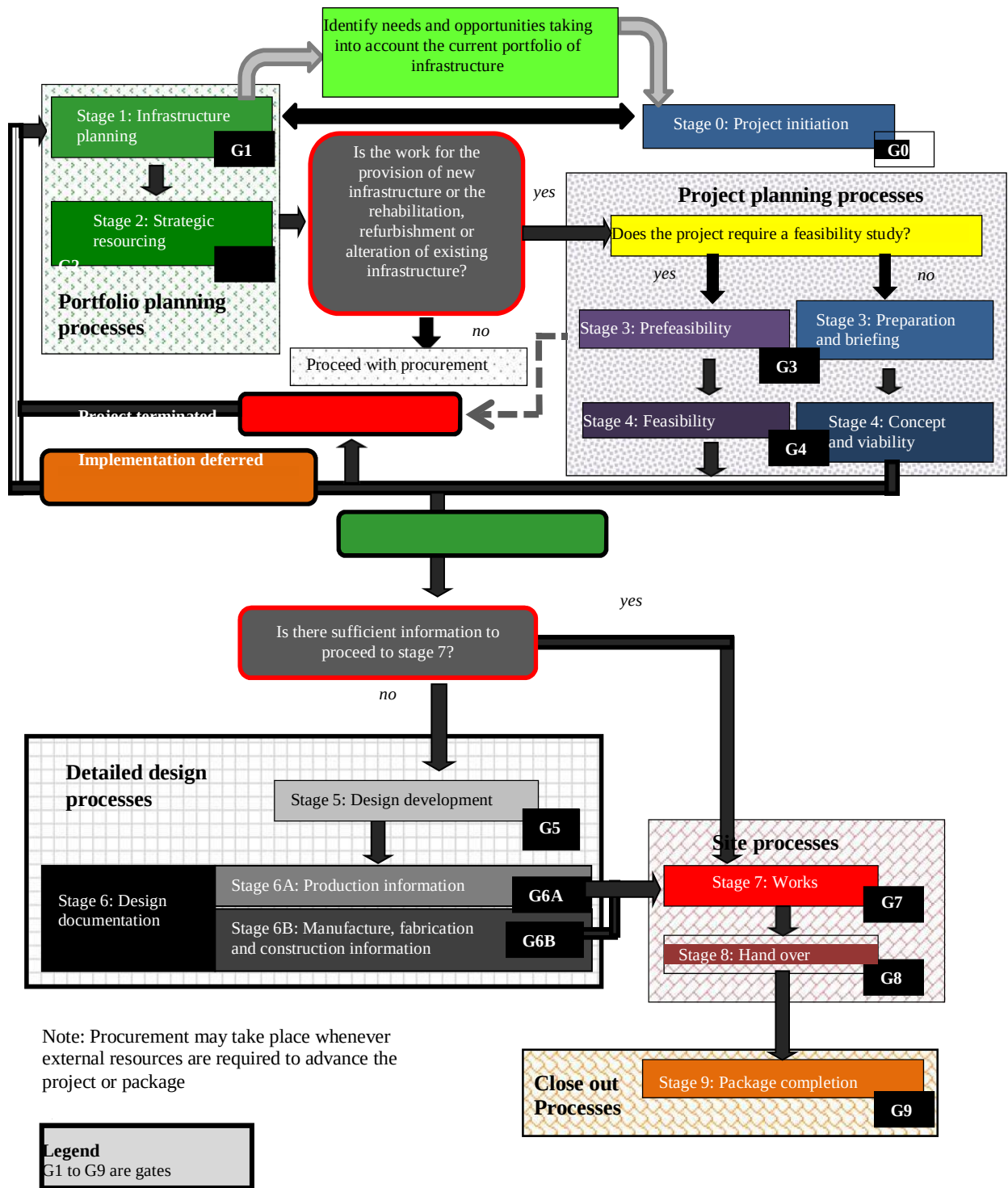
1.4.1.2. an organ of state subject to the Public Finance Management Act other than a major public enterprise where the total project capital expenditure exceeds R1,0 billion including VAT, or where the expenditure per year for a minimum of three years exceeds R250 million per annum including VAT;

1.4.2. the project is not:

1.4.2.1. A building project with or without related site works; or

1.4.2.2. A process-based, somewhat repetitive or relatively standardized project where the risk of failing to achieve time, cost and quality objectives is relatively low; or

1.4.2.3. The organ of state's infrastructure procurement and delivery supply chain management policy requires that prefeasibility and feasibility reports be produced during stages 3 and 4 respectively. 4.1.1.5 Stages 3 and 4 shall be repeated for each package if the acceptance at stage 4 is for the acceptance of a project comprising a number of packages which are to be delivered over time.



Commencement

59. This Policy takes effect on 1 July 2024