



**2016/17 Medium Term Revenue and Expenditure  
Framework (MTREF) Policy Review**

**DRAFT SUPPLY CHAIN MANAGEMENT AND  
PREFERENTIAL PROCUREMENT POLICIES**

**This policy consists of three parts:**

- **Part A** is the **Supply Chain Management Policy**, adopted in terms of section 111 of the Local Government: Municipal Finance Management Act, No. 56 of 2003 and the Municipal Supply Chain Management Regulations, Notice 868 of 30 May 2005;  
and
- **Part B** is the **Preferential Procurement Policy**, adopted in terms of section 2 of the Preferential Procurement Policy Framework Act, No. 5 of 2000 and the Preferential Procurement Regulations of 2011;  
and
- **Part C** is the **Supply Chain and Preferential Procurement Guidelines**.

## PART A

### MUNICIPAL SUPPLY CHAIN MANAGEMENT POLICY

The Council of the Elias Motsoaledi Local Municipality (EMLM) resolves in terms of section 111 of the Local Government: Municipal Finance Management Act, 2003 (Act No 56 of 2003) to adopt the following as the Supply Chain Management Policy of the municipality:

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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) (c) 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 QUOTATION”** means quotations referred to in paragraph 12(1) (b) of this Policy;

**“IN THE SERVICE OF STATE”** means to be –

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

**“LONG TERM CONTRACT”** means a contract with a duration period exceeding one year;

**“LIST OF ACCREDITED SUPPLIERS”** 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 Constitution of the Republic of South Africa Act, 1996 (Act No 108 of 1996);
- (b) The Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000);
- (c) The Broad-Based Black Economic Empowerment Act, 2003 (Act No 53 of 2003);
- (d) The Construction Industry Development Board Act, 2000 (Act No 38 of 2000); and
- (e) The Prevention and Combating of Corrupt Activities Act, 2004 (Act No 12 of 2004);

**“REGULATIONS”** means the Local Government: Municipal Finance Management Act, 2003, Municipal Supply Chain Management Regulations;

**“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); and

**“FORMAL WRITTEN QUOTATION”** means quotations referred to in paragraph 12(1) (b) of this Policy.

**“DEPARTMENT / DIVISIONS”** Means “all ELIAS MOTSOLEDI LOCAL MUNICIPALITY departments / divisions, as well as affiliated centers, units, institutes, whose financial records, by agreement, are maintained within ELIAS MOTSOLEDI LOCAL MUNICIPALITY’s Financial Accounting System”

**“SUPPLY CHAIN MANAGER”** Means “the duly appointed official with ultimate responsibility for the Procurement Service of ELIAS MOTSOLEDI LOCAL MUNICIPALITY”

**“PROCUREMENT OFFICE”** Means “the Procurement Office responsible for the procurement of goods and services for ELIAS MOTSOLEDI LOCAL MUNICIPALITY”

**“SUPPLY CHAIN”** Means “the planning, provisioning, and distribution of materials and services.” ...

**“TCO”** Means “Total Cost of Ownership” that is the best overall value

**“BEE”** Means “Broad-based Black Economic Empowerment”

**“DELEGATION OF AUTHORITY”** Means “Authority levels as per the Finance Policy of ELIAS MOTSOLEDI LOCAL MUNICIPALITY”

**“CODE OF CONDUCT”** Means “the behavior of individuals in the employment of ELIAS MOTSOLEDI LOCAL MUNICIPALITY and conducting business on behalf of ELIAS MOTSOLEDI LOCAL MUNICIPALITY”

**“SHARP PRACTICE”** Means “Unethical conduct compromising the Code of Conduct of ELIAS MOTSOLEDI LOCAL MUNICIPALITY”

**“MFST”** Means “Multi-Functional Sourcing Team(s)”

**“PAL”** Means “Purchase Approval Letter”

**“LPA”** Means “Limited Purchase Approval”

**“SME”** Means “Subject Matter Expert”

**“RFI”** Means “Request for Information”

**“RFB”** Means “Request for Bid”

**“RFP”** Means “Request for Proposal”

**“RFQ”** Means “Request for Quotation”

**“SENIOR SPONSORS”** Means “Executive Management”

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## **CHAPTER 1**

### **ESTABLISHMENT AND IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY**

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#### **(a) Introduction**

The purpose of this document is to set forth the policy of ELIAS MOTSOLEDI LOCAL MUNICIPALITY, with respect to procurement procedures and related contractual agreements, entered into by all departments for work and products/services with natural or legal entities, and to provide for the documentation to support such decisions. The term “procurement” includes products / services to include goods and services purchased or leased, used interchangeably, or it may refer to issuing a purchase order.

Section 1.02 ELIAS MOTSOLEDI LOCAL MUNICIPALITY is transforming its supplier interactions over the whole spectrum of its Procurement / Supply Chain processes. The objective is to establish a competitive advantage through the procurement of world class product / services which meet the needs of ELIAS MOTSOLEDI LOCAL MUNICIPALITY and its divisions/departments at the best possible Total Cost of Ownership (TCO).

##### **(a) Statement of Policy**

1.1 It is ELIAS MOTSOLEDI LOCAL MUNICIPALITY’s policy to source and procure quality products / services at the optimal Total Cost of Ownership and to award business on the basis of merit, based on those criteria and conditions as set forth by ELIAS MOTSOLEDI LOCAL MUNICIPALITY to qualified suppliers.

1.2 In pursuit of this objective, ELIAS MOTSOLEDI LOCAL MUNICIPALITY will be guided by the requirements of Government Policy, including a policy to establish and support a

competitive and viable base of suppliers and to support the needs of the development of Black Economic Empowerment.

1.3 ELIAS MOTSOALEDI LOCAL MUNICIPALITY's policy will be guided by the following South African Acts, their mandates and dictates:

- Preferential Procurement Policy Framework Act, No 5 of 2000 (PPPFA);
- Municipal Finance Management Act, 1999 (MFMA);
- Public Service Act, 1994 (Act No 103 of 1994) (PSA);
- The National Treasury's Supply Chain Management Guidelines; and
- The Broad-based Black Economic Empowerment Act, Act No 53 of 2003.
- CIDB Act 38 of 2000
- OSHACT

1.4 ELIAS MOTSOALEDI LOCAL MUNICIPALITY's policy is to support the PROUDLY SOUTH AFRICAN PROGRAMME.

1.5 All purchases shall be authorized and executed as per the Delegation of Authority as amended from time to time.

1.6 Purchasing activity will be performed in accordance with the Procurement Responsibilities

## **2. Principles and pledges**

2.1 The principles of this Policy are that it -

- (a) Gives effect to –
  - (i) Section 217 of the Constitution; and
  - (ii) Part 1 of Chapter 11 and other applicable provisions of the Act;
  - (iii) Is fair, equitable, transparent, competitive and cost effective;
  - (iv) Complies with the Regulations; and any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
- (b) Is consistent with other applicable legislation;
- (c) Does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
- (d) Is consistent with national economic policy concerning the promotion of investments and doing business with the public sector;
- (e) Consists of processes of supplier and tender evaluations, which are simple, workable and effective
- (f) Is focused on conclusion of the most cost-effective business transaction in the long term interests of ELIAS MOTSOALEDI LOCAL MUNICIPALITY.
- (g) Measures are aimed at assisting black business enterprises to achieve cost effectiveness in the supply of goods or services to ELIAS MOTSOALEDI LOCAL MUNICIPALITY.
- (h) Confirms that ELIAS MOTSOALEDI LOCAL MUNICIPALITY is committed to both the principle and the practical implementation of a procurement policy of black economic empowerment. The organization must implement such a policy and measure, monitor and evaluate progress against predetermined targets.



- (i) Confirms that ELIAS MOTSOLEDI LOCAL MUNICIPALITY's empowerment procurement policy is underpinned by its support for the policy of National Government:
- i. that black economic empowerment should be seen as integral with, related to and complementing the economic growth of South Africa;
  - ii. to pursue a broad-based empowerment drive that will effectively deracialise the South African economy and fast-track the inclusion of marginalized people in the mainstream economy
- 2.2 The municipality pledges effective and efficient service delivery by acquiring goods and services of optimum value through best purchasing practices. In addition to the above, this municipality will pursue the following four main aims:
- The promotion of the Interdivisional Support Policy;
  - The promotion, development and support of business from previously disadvantaged communities;
  - The promotion of local, provincial and national suppliers and agents before considering international suppliers; and
  - The development, promotion, and support of moral values that underpin the above in terms of the municipality's Ethical Code.
- 2.3 The municipality further supports the creation and maintenance of a good, sound business relationship with the bidding public in general, as well as with its valued supplier base, without which it cannot survive in a competitive market.
- 2.4 The municipality also seeks to develop and maintain positive, long term relationships based on mutual trust and respect with those suppliers who demonstrate their commitment to the municipality's shared goals. The municipality also commits itself to clarity in its communication of requirements, and to be professional, courteous, fair, factual, and responsive in its business dealings.
- 2.5 The municipality may not act otherwise than in accordance with this Policy when –
- i. Procuring goods or services;
  - ii. Disposing of goods no longer needed;
  - iii. Selecting contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
  - iv. Selecting external mechanisms referred to in section 80(1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.
- 2.6 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 –
- I. Water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
  - II. Electricity from ESKOM or another public entity, another municipality or a municipal entity.

- 2.7 The management of ELIAS MOTSOLEDI LOCAL MUNICIPALITY shall develop and implement strategies to assess, enlarge and monitor the empowerment component of ELIAS MOTSOLEDI LOCAL MUNICIPALITY's procurement spend, and report to EXCO on progress made. In formulating such strategies management may employ less formal and less technical procedures for smaller contracts, so as to minimise obstacles to the participation of smaller black enterprises in ELIAS MOTSOLEDI LOCAL MUNICIPALITY procurement.
- 2.8 In implementing strategies for black economic empowerment ELIAS MOTSOLEDI LOCAL MUNICIPALITY shall strive to procure supplies and services from all components of the black community.
- 2.9 Management of ELIAS MOTSOLEDI LOCAL MUNICIPALITY shall develop and implement strategies to counteract fronting and similar conduct which circumvents the true intent and purpose of this procurement policy.
- 2.10 ELIAS MOTSOLEDI LOCAL MUNICIPALITY's BEE Policy to be guided by and interpreted in conjunction with the Broad-based Black Economic Empowerment Act, No 53 of 2003.

### **3. Adoption and amendment of the Supply Chain Management Policy**

- 3.1 The Accounting Officer must –  
At least annually review the execution of provisions contained in this Policy;  
And when the Accounting Officer considers it necessary, submit proposals for the amendment of this Policy to the Council. If the Accounting Officer submits a draft policy to the Council that differs from the model policy issued by the National Treasury, the Accounting Officer must –
- Ensure that such draft policy complies with the Regulations; and
  - Report any deviation from the model policy to the National Treasury and the relevant provincial treasury.
- 3.2 When amending this 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.
- 3.3 The Accounting Officer must, in terms of section 62(1) (f) (IV) of the Act, take all reasonable steps to ensure that the municipality has and implements this Supply Chain Management Policy.

### **4. Broad-Based Black Economic Empowerment**

ELIAS MOTSOLEDI LOCAL MUNICIPALITY has a moral responsibility to support the involvement of disadvantaged communities in the main stream of economic activities and to utilize small and medium sized businesses whenever possible.

ELIAS MOTSOLEDI LOCAL MUNICIPALITY is in support to the BBEE and disadvantaged community and recommends that any specialized contract or service that is outsourced by the municipality should be subcontracted up to 30 % of the contract amount to a local EME for capacity building and skills transfer.

ELIAS MOTSOLEDI LOCAL MUNICIPALITY will apply the following strategic intervention principles:

- Target persons or categories of person who have been disadvantaged by unfair discrimination.
- Ensure that this policy is designed to protect or advance such persons and should be interpreted in this light.
- Ensure that this policy is designed to promote and achieve equality in the provision of goods and services by an organ of state.
- Procurement will assist each division to develop a list of BEE suppliers from previously disadvantaged communities by category, subject to continuous additions and revision.
- Tenders will not be restricted to BEE suppliers. Any other supplier may respond to the tenders, however cognizance will be given to the PPFA and the BEE Act when evaluating tenders.
- Facilitate access to ELIAS MOTSOLEDI LOCAL MUNICIPALITY procurement activities and present opportunities for BEE suppliers.
- A policy of recognizing traditionally large businesses that support BEE and implement acceptable policies within their organizations.
- Encourage the establishment of joint ventures between traditional suppliers and BEE suppliers giving the latter access to globally accredited technologies, business acumen and knowledge.
- Assist potential BEE suppliers to ELIAS MOTSOLEDI LOCAL MUNICIPALITY in creating and expanding their capacity to supply (Supplier Development Programmed).
- Proactively ensure that the adjudication process is compliant with ELIAS MOTSOLEDI LOCAL MUNICIPALITY's BEE Policy, thereby increasing the proportion of business being awarded to suppliers from previously disadvantaged communities.
- Relax payment terms and conditions to assist BEE suppliers with their respective cash flows, thereby creating a platform for growth and sustainability.
- Where appropriate disaggregate contracts into smaller components, for instance per division or item to enable suppliers from previously disadvantaged communities to qualify.

ELIAS MOTSOLEDI LOCAL MUNICIPALITY expects its established suppliers to support and include BEE suppliers from previously disadvantaged communities in the execution of contracts awarded.

## **5. Supply chain management unit**

- 5.1 One supply chain management unit is hereby established to implement this Policy for the municipality and the various policies for the municipal entities of which the municipality is the parent municipality.

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.

## **6. Delegation of supply chain management powers and duties**

- 5.1 The Council hereby delegates and is required to further delegate such additional powers and duties to the Accounting Officer so as to enable the Accounting Officer –
- i. To discharge the supply chain management responsibilities conferred on accounting officers in terms of Chapter 8 or 10 of the Act and this Policy;
  - ii. To maximise administrative and operational efficiency in the implementation of this Policy;
  - iii. 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
  - iv. To comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- 5.2 Sections 79 and 106 of the Act apply to the sub delegation of powers and duties delegated to the Accounting Officer in terms of paragraph 4(1) of this Policy.
- 5.3 The Council or Accounting Officer may not delegate or sub delegate any supply chain management powers or duties to a person who is not an official of the municipality or to a committee which is not exclusively composed of officials of the municipality.
- 5.4 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 27 of this Policy.

## **7. Sub delegations**

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

- (1) The power to make a final award –

- a) Above R200 000 (VAT included) may not be sub delegated by the accounting officer;
- b) Above R 30 000 (VAT included), but not exceeding R 200 000(VAT included), may be sub delegated but only to –
  - I. The chief financial officer;
  - II. A senior manager; or
  - III. A bid adjudication committee of which the chief financial officer or a senior manager is a chairperson; or
- c) Not exceeding R 200 000 (VAT included) may be sub delegated but only to –
  - I. The chief financial officer;
  - II. a senior manager;
  - III. a manager directly accountable to the chief financial officer or a senior manager; or
  - IV. a quotation adjudication committee.

**(2)** An official or bid adjudication committee to which the power to make final awards has been sub delegated in accordance with subparagraph (1) must within five (5) days of the end of each month submit to the official referred to in subparagraph (3) 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.

**(3)** A written report referred to in subparagraph (2) must be submitted –

- a) To the accounting officer, in the case of an award by –
  - (i) The chief financial officer;
  - (ii) A senior manager; or
  - (iii) A bid adjudication committee of which the chief financial officer or a senior manager is a member; or
- b) To the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by –
  - (i) A manager referred to in subparagraph (2)(c)(iii); or
  - (ii) A bid adjudication committee of which the chief financial officer or a senior manager is not a member.

- (4) Subparagraphs (2) and (3) of this policy do not apply to procurements out of petty cash.
- (5) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.
- (6) No supply chain management decision-making powers may be delegated to an advisor or consultant.

#### **8. Range of procurement processes**

- (1) Goods and services may only be procured by way of –
  - (a) Petty cash purchases, up to a transaction value of R1 000 (VAT included) and at least one written quotation ,Verbal quotations are prohibited
  - (b) One written quotation for the procurement of transaction value of R1 000.00 or less.
  - (c) At least two written quotations for the procurement of a transaction value from R2000.00 up to R5 000 (VAT included);
  - (d) Three formal written price quotations for procurements of a transaction value over R5 000 up to R30 000 (VAT included); and
  - (e) from R30 000.00 to R200 000.00 tenders will be advertised through the Municipal Website & Municipal Public Notice Boards
  - (f) Tenders between the transaction value of R30 000.00 to R200 000.00 must be evaluated & recommended by the quotation adjudication committee and further recommended by the Chief Financial Officer to the Accounting Officer for approval.
  - (g) a competitive bidding process for–
    - (i) Procurements above a transaction value of R200 000 (VAT included); and
    - (ii) The procurement of long term contracts.
  - (h) (i) Procurement transactions from R30 000.00 to R200 000.00 (VAT included) to be approved by the Quotation Adjudication committee appointed by the Accounting Officer;
  - (ii) R200 000.00 (above) will be tenders.
- (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 quotations be obtained for any specific procurement of a transaction value lower than R1 000.00;
- (ii) At least two formal written price quotations be obtained for any specific procurement of a transaction value lower than R5 000;
- (iii) Three formal price quotations must be obtained for any specific procurement of transactions value from R5000 to R30 000
- (iv) from R30 000.00 to R200 000.00 tenders will be advertised through the Municipal Website & Municipal Public Notice Boards
- (vi) A competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000.

c) 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.

PROCESS	VALUE	ADVERTISEMENT
Petty Cash Purchases	Up to R1 000.00 [VAT included] at least one written quotation	No
Formal Written Quotations	Over R1001 – R5 000.00 [VAT included] at least two written quotation	No
Formal Written Quotations	Over R5001 – R30 000.00 [VAT included] three written quotation must be obtained	No
Formal Written Price Quotations	Over R30 001 [VAT included] up to R 200 000 [VAT included]	Yes Municipal notice boards and website 7 days.
Competitive Bidding	Over R 200 001 [VAT included] or Long Term Contracts not exceeding one [1] year	Yes News paper , Municipal notice boards and CIDB for 14 days
	Over R 200 001 [VAT included] or Long Term Contracts exceeding one [1] year	Yes News paper , Municipal notice boards and CIDB for 30 days

- d) An official or bid adjudication committee to which the power to make final awards has been sub delegated in accordance with paragraph 5(2) of this Policy must within five (5) working days of the end of each month submit to the official referred to in paragraph 5(4) of this Policy a written report containing particulars of each final award made by such official or committee during that month, including –

- i. the amount of the award;
  - ii. the name of the supplier or person to whom the award was made; and
  - iii. The reason why the award was made to that supplier or person.
- e) A written report referred to in paragraph 5(3) of this Policy must be submitted to the Accounting Officer, in the case of an award by –
  - the Chief Financial Officer;
  - a Director of a department; or
  - a bid adjudication committee of which the Chief Financial Officer or Director is a member; or
  - to the Chief Financial Officer or Director responsible for the relevant bid, in the case of an award by an official referred to in paragraph 5(2)(c)(iii) of this Policy;
  - Or a bid adjudication committee of which the Chief Financial Officer or Director is not a member.
- f) Paragraphs 5(3) and 5(4) do not apply to procurements by way of direct purchases described in paragraph 15 of this Policy.
- g) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 27 of this Policy.
- h) No supply chain management decision-making powers may be delegated to an advisor or consultant.

## **9.Changing of thresholds**

The Accounting Officer may, after consulting with the Municipal Council, National Treasury and Heads of Departments, in writing change the different threshold values.

## **10.Oversight role of Council**

The Council must maintain oversight over the implementation of this Policy.

- 10.1 For the purposes of such oversight the Accounting Officer must –
- within 30 days of the end of each financial year, submit a report on the implementation of the Supply Chain Management Policy of the municipality and of any municipal entity under its sole or shared control, to the council of the municipality; and
  - Whenever there are serious and material problems in the implementation of such Supply Chain Management Policy, immediately submit a report to the Council.
- 10.2 The Accounting Officer must, within ten (10) working days of the end of each quarter, submit a report on the implementation of the Supply Chain Management Policy to the Mayor.
- 10.3 The reports must be made public in accordance with section 21A of the Municipal Systems Act.



## **11 Training of supply chain management officials**

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

## **CHAPTER 2 FRAMEWORK FOR SUPPLY CHAIN MANAGEMENT SYSTEM**

### **1. INTRODUCTION**

ELIAS MOTSOALEDI LOCAL MUNICIPALITY's Procurement Policy framework sets out the philosophy behind the adoption of an integrated procurement function and will assist stakeholders to understand the responsibilities this implies. This document explains the impact of the changes for employees holding delegated authority and stakeholders at each step of the procurement cycle.

This policy framework is intended to facilitate a general understanding of the changes to the procurement practices. It must be seen as a step to assist ELIAS MOTSOALEDI LOCAL MUNICIPALITY in the smooth implementation of procurement practices within their departments. The policy will be supplemented on a regular basis to keep abreast as the development of the procurement management function within ELIAS MOTSOALEDI LOCAL MUNICIPALITY

### **Format of supply chain management system**

#### **12.**

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**

#### **13.**

- (1) The Accounting Officer must establish and implement an appropriate demand management system in order to ensure that the resources required by the municipality support its operational commitments and its strategic goals outlined in the Integrated Development Plan.
- (2) The demand management system must -
  - (a) include timely planning and management processes to ensure that all goods and services required by the municipality are quantified, budgeted for and effectively delivered at the right locations and at the critical

- delivery dates, and are of the appropriate quality and quantity at a fair cost;
- (b) Take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature;
- (c) Provide for the compilation of the required specifications to ensure that its needs are met.
- (d) Undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximised.

## ***Part 2: Acquisition management***

### **System of acquisition management**

**14.**

- (1) an effective system of acquisition management must be established in order to ensure that –
  - (a) Goods and services are procured by the municipality in accordance with authorised processes only;
  - (b) Expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
  - (c) The threshold values for the different procurement processes are complied with;
  - (d) Bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
  - (e) Any Treasury guidelines on acquisition management are properly taken into account.
- (2) This supply chain management policy, except where provided otherwise in the policy, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –
  - (a) Water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
  - (b) Electricity from ESKOM or another public entity, another municipality or a municipal entity.
- (3) The following information must be made public wherever goods or services contemplated in section 110(2) of the Act are procured other than through the supply chain management system -
  - (a) The kind of goods or services; and
  - (b) The name of the supplier.

## **1. RESPONSIBILITIES**

This section defines the roles and responsibilities of the organizations and individuals primarily involved in the procurement of goods and services on behalf of ELIAS MOTSOLEDI LOCAL MUNICIPALITY.

### **1.1. Procurement / Other Departments**

**1.1.1.** The Procurement Department has the authority to establish an ELIAS MOTSOLEDI LOCAL MUNICIPALITY wide Procurement Policy, Methods and Procedures and associated processes in consultation with End Users. In addition, Procurement has the authority to correspond with manufacturers and/or suppliers regarding ELIAS MOTSOLEDI LOCAL MUNICIPALITY's procurement processes. Procurement is also responsible for the co-ordination within ELIAS MOTSOLEDI LOCAL MUNICIPALITY, to initiate in conjunction with the end user and MFST, prepare and administer requests / bids / tenders / quotes to and from potential suppliers. In addition, to negotiate, execute and commercially administer contracts for products and services, maximize buying leverage by coordinating volume purchases. The Procurement Department will conduct business in an ethical manner, in accordance with ELIAS MOTSOLEDI LOCAL MUNICIPALITY's established policies and guidelines in the best interest of ELIAS MOTSOLEDI LOCAL MUNICIPALITY.

**1.1.2.** All other departments have the responsibility to ensure that their operational procedures comply with the Procurement Policy, Methods and Procedures and associated processes and applied within their departments as appropriate.

## **1.2. Multi-Functional Sourcing Teams (MFST's)**

**1.2.1.** Individuals who are Subject Matter Experts (SME's) from different functional divisions brought together to achieve optimal Total Cost of Ownership (TCO), related to products/services in their domains of operations. MFST's meet on a regular basis to manage, make decisions and recommendations on products and services in their area of responsibility. MFST's should always be comprised of End Users and Procurement personnel.

**1.2.2.** MFST's shall be responsible for various functions including, but not limited, to the following:

- The Procurement Department is responsible for convening the MFST's
- Responsible for supplier certification;
- Supplier de-certification recommendations to the Tender Committee;
- Responsible for developing selection criteria, which always include criteria for Black Economic Empowerment, meeting technical specifications, etc.;
- Responsible for monitoring supplier performance;
- Responsible for supplier management;
- Compiles/issues RFI/RFB/RFP and evaluates (or co-ordinates) responses;
- Evaluations performed according to rigid process of weighted criteria;
- Make supplier recommendations and selections;

- Notifies suppliers of selection decisions;
- Notifies appropriate divisional personnel formally;
- Advises and informs on project/issue status;
- Negotiates contracts;
- Be held accountable for decisions and economies;
- Stocking decisions if applicable;
- Compliance with Legislation applicable to ELIAS MOTSOLEDI LOCAL MUNICIPALITY.

**1.2.3.** All end users will be supported by Departmental Managers and the MFST will elect the Chairperson who will be changed on a bi-annual or more frequently as agreed by the MFST.

### **1.3. Subject Matter Experts (SME)**

The end users, select a representative (SME), directly responsible as a member of a MFST, through the appropriate Department's Head, for scrutinising and in some cases performing economic evaluations; preparing and/or approving specifications; identifying (determining) the need for an item; recommending product/services as suitable; determining the training requirements for an item; and providing on-going support. The SME can be designated within a product/service user group, or be designated to investigate new lines of business for possible future ELIAS MOTSOLEDI LOCAL MUNICIPALITY applications. In cases where the SMEs are not designated, the relevant delegated ELIAS MOTSOLEDI LOCAL MUNICIPALITY authority may perform these functions.

### **1.4. Procurement Services User / Client**

A user or client is any ELIAS MOTSOLEDI LOCAL MUNICIPALITY employee, manager or director for an order to be placed by Procurement, or requests Procurement's involvement, support, consultation, or the performance of activities associated with the acquisition of goods or services. It is the primary responsibility of the internal user/client to accurately and timeously prepare requisitions, execute receipt documents, and authorise the establishment of contracts and obtain proper budget approval as well as to maintain proper documentation, compliant to the Procurement Policy. Proper documentation may be in the form of studies, economic evaluations, or analyses, which demonstrate a comparison of product/services and/or suppliers.

## **2. ACQUISITION PROCEDURES**

Goods and services shall be obtained utilizing competitive procurement procedures, unless there are documented business reasons showing that another method is preferable.

Where the Procurement Department has Agreements/Contracts in place with multiple suppliers for the same product/services, it is for the convenience of the user group. Where the user group places business directly with the supplier and the Procurement Department has no further involvement, it is the user group's responsibility to document reasons for selecting the particular product/service or supplier, with the appropriate approvals in accordance with the Delegation of Authority.

Where the appropriate MFST has developed "Certified Supplier Lists" based on careful evaluation of available product/services and services via RFB or RFP, they should be utilized (see 6.2). It is anticipated that certified Supplier Lists will generally remain valid for a period of two to three years before the MFST again re-evaluates all possible suppliers via a new RFB or RFP. However, the MFST may initiate a new RFB or RFP at any time prior to that and at its discretion.

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

#### **15.**

- (1) A written quotation or bid may not be considered unless the provider who submitted the quotation or bid –
  - (a) Has furnished that provider's –
    - (i) Full name;
    - (ii) Identification number or company or other registration number;
    - (iii) Tax reference number and VAT registration number, if any; and
    - (iv) Tax clearance from the South African Revenue Services that the provider's tax matters are in order; and
  - (b) 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 paragraph 13(b) (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.

### **Supplier Selection/Certification**

#### **Lists of accredited prospective providers**

The Accounting Officer must –

- (a) Develop Certified Supplier List: At the beginning of the supplier selection process, this function can be delegated to the appropriate MFST that must

develop and maintain a list of potential suppliers that are deemed acceptable. These providers that must be used by service departments for the procurement of goods and services by obtaining informal written quotations or formal written price quotations;

- (b) at least once a year through newspapers commonly circulating locally, the municipality's website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
- (c) Specify the listing criteria for accredited prospective providers which must include at least the requirement to submit proof of compliance with:-
  - (i) SARS tax registration;
  - (ii) Municipal rates and tax payments; and
  - (ii) The Occupational Health and Safety Act, 1993 (Act No 85 of 1993); and
- (d) Disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.
- (2) The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time. Any updates or revisions to the original list must also be dated; deletions from list must be based on valid reasoning and documented.
- (3) The list must be compiled per commodity and per type of service.
- (4) Report to council.

- The following items are to be considered and documented, prior to qualifying the supplier for ELIAS MOTSOLEDI LOCAL MUNICIPALITY business. This list is not all inclusive and other items may be considered:

- ◆ Specification compliance and adherence to ELIAS MOTSOLEDI LOCAL MUNICIPALITY's criteria.
- ◆ The financial health of the supplier and its ability to secure qualified labour, supervision, and equipment in order to provide required goods or services.
- ◆ The ability of the supplier to be insured and willingness to adhere to a non-discriminatory employment policy and acceptable Black Economic Empowerment policy.
- ◆ Acceptance of ELIAS MOTSOLEDI LOCAL MUNICIPALITY's required Terms and Conditions.
- ◆ Note that certified supplier lists are not intended to be restrictive to EMEs and will be monitored continually by the Department Head Procurement.

- The determination of a potential supplier's qualification should be completed promptly. The information gathered in the determination of a supplier's qualification must be accurate. This information should be considered proprietary information of

ELIAS MOTSOLEDI LOCAL MUNICIPALITY and should not be disclosed to unauthorised persons outside ELIAS MOTSOLEDI LOCAL MUNICIPALITY.

- MFST's may also make recommendations to the Tender Committee to "de-certify" suppliers that are deemed to be unacceptable. Some examples of why a supplier may be de-certified are:

- ♦ Consistent poor performance in quality, deliveries, etc.
- ♦ Failed to adopt or maintain acceptable BEE policies.
- ♦ Not adhering to contractual Terms and Conditions.
- ♦ Insolvency or deemed to be a financial risk.
- ♦ Unethical behavior
- ♦ It is an implied term that Elias Motsoledi Local Municipality may cancel any contract awarded if it is awarded contrary to any terms of the policy even if misrepresentation cannot be proved.

#### **Petty cash purchases (< R1000)**

##### **16.**

- (1) The conditions for the procurement of goods by means of petty cash purchases referred to in paragraph 12 (1) (a) of this policy, are that minor items are purchased for up to R1000, 00 (VAT included) where it is impractical, impossible or not cost-effective to follow the official procurement process and is strictly of a reimburse nature and not for advances.
- (2) A monthly reconciliation report from each manager must be provided to the Chief Financial Officer, including –
  - (i) The total amount of petty cash purchases for that month; and
  - (ii) Receipts and appropriate documents for each purchase.

#### **Verbal quotations prohibited**

##### **17.**

No orders may be placed based on verbal price quotations.

#### **Formal Written Price Quotations (> R1000 < R30 000)**

##### **18.**

- (1) the conditions for the procurement of goods or services through written quotations, are as follows-
  - (a) Quotations must be obtained in writing from at least two for (R1000 – R5000) and three quotes for (R5001 – R30 000) 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 in the supply chain management policy required by paragraph 14(1) (b) and (c);

- (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 be registered in the deviation register.
  - (d) The accounting officer or his nominee must record the names of the potential providers and their written quotations.
  - (e) All invitations for quotations should be selected from suppliers in the provider list and should be done in writing (fax or collection)
- (2) A designated official referred to in subparagraph (1) (c) must within five [5] working 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.

**Formal written price quotations (> R30 001 <= R200 000)**

**19.**

- (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, these is done through seven days advertisement on the municipal website and notice boards.
  - (b) In a case were by in our data base we don't we don't have a provider who provide the service or goods required we can only select a provider who is not register however the deviation must be approved by the Municipal Manager and be registered in the deviations register;
  - (c) If it is not possible to obtain at least three quotations, the reasons must be recorded and submitted for consideration by the evaluation committee;
  - (d) The buying officer must record the names of the potential providers requested to provide such quotations and their formal written price quotations; and
  - (e) All bids must be sealed and opened by the evaluation committee and
  - (f) All bids must be adjudicated by the adjudication committee
  - (g) All bids must be advertised for 7 days on the municipal website and also in notice boards.
- (2) The designated official referred to in paragraph 18(1) (c) must within three (3) working 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 paragraph.

**Procedures for procuring goods or services through formal written quotations R1001 – R200 000,**

**20.**

The procedure for the procurement of goods or services through formal written quotations, are as follows:-

- (a) When using the list of accredited prospective providers the buying officer must promote on-going competition amongst providers by inviting providers to submit quotations on a rotation basis;
- (b) all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written quotations must, in addition to the requirements of paragraph 19, be advertised for at least seven days on the website and the official notice boards of the municipality EXCEPT IN A CASE OF EMERGENCY;
- (c) Offers received must be evaluated on a comparative basis taking into account unconditional discounts;



- (d) The Buying officer must take all reasonable steps to ensure that the procurement of goods and services through formal written price quotations is not abused;
- (e) the Accounting Officer or Chief Financial Officer must on a monthly basis be notified in writing of all informal and formal written quotations accepted by an official acting in terms of a sub delegation;
- (f) 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;
- (g) Offers with a value of R30 000 (VAT included) and above are subject to the preference points system (PPPFA and associated regulations) and must be dealt with according to the Council's Procurement Policy; and
- (h) The Chief Financial Officer must set requirements for proper record keeping of all formal written quotations accepted on behalf of the municipality.

### **Competitive bidding process (R200 000 AND OVER)**

#### **21.**

- (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 paragraphs 11(2) and 37 of this Policy.
- (2) No requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

#### **1.1. Competitive Quotations**

When suppliers are invited to submit bids to provide goods or services, ELIAS MOTSOLEDI LOCAL MUNICIPALITY is not making an offer to procure. A written disclaimer should be contained on all Requests for Information (RFI), Request for Proposals (RFP) or Requests for Bid (RFB) such as, "This RFI, RFP or RFB is not an offer to purchase, order or contract. By issuing the RFI, RFP or RFQ, ELIAS MOTSOLEDI LOCAL MUNICIPALITY is not making an undertaking to award a contract to any supplier submitting a quote. The supplier, in responding, makes an offer to supply product/services.

ELIAS MOTSOLEDI LOCAL MUNICIPALITY prefers to utilize BEE, EME, South African suppliers whenever possible and will actively seek out these types of suppliers in competitive quotations.

An authorized ELIAS MOTSOLEDI LOCAL MUNICIPALITY employee (the Quotation Registrar) will be designated to maintain a file or control log of outgoing Requests for Bid/Proposal/Information (RFB/RFP/RFI). Control methods are established which include that, access by the employee soliciting quotations, is not allowed prior to the quotation due date, unless all quotes have been received. All RFIs, RFBs, RFPs will be assigned a unique number by the Quotation Registrar which the supplier will refer to when responding. Quotations are to be secured at a central location.

#### **1.2. Request for Information (RFI)**

RFI's are issued to determine availability of product/services or services in the marketplace. From RFI responses, suppliers may be "pre-screened" to determine if, in the sole opinion of ELIAS MOTSOLEDI LOCAL MUNICIPALITY, they are capable of meeting the needs of ELIAS MOTSOLEDI LOCAL MUNICIPALITY in that area. If ELIAS MOTSOLEDI LOCAL MUNICIPALITY elects to "pre-screen" suppliers from an RFI, only those suppliers who meet those criteria will be issued an RFB or RFP that further details ELIAS MOTSOLEDI LOCAL MUNICIPALITY's requirements. Therefore, in this case, RFB's and RFP's should only be sent to qualified suppliers as determined by ELIAS MOTSOLEDI LOCAL MUNICIPALITY. This process may be utilized in both cases where Certified Supplier Lists are developed as indicated in section 6.1.2 and 6.2 and in other types of RFI/RFB/RFP activities.

The data contained in the RFI will vary in accordance with the type of procurement. However, the following minimal information should be incorporated:

- A description of the goods or services to be supplied, or the purpose for which they are required including any specifications as may be available to alternately describe the need required as determined by ELIAS MOTSOLEDI LOCAL MUNICIPALITY;
- The dates for which goods or services are required if applicable;
- The tender office address where the quotes are to be submitted;
- Request for itemized pricing that may or may not include volumes;
- The date for the response to be provided to ELIAS MOTSOLEDI LOCAL MUNICIPALITY office;
- A statement that responses from this RFI may be used to "pre-screen" potential respondents to ELIAS MOTSOLEDI LOCAL MUNICIPALITY's requirements if applicable. If applicable, only those suppliers deemed capable of meeting ELIAS MOTSOLEDI LOCAL MUNICIPALITY's requirements as determined from the RFI responses by ELIAS MOTSOLEDI LOCAL MUNICIPALITY, will be considered further or issued an RFB or RFP as appropriate;
- Add ELIAS MOTSOLEDI LOCAL MUNICIPALITY proprietary statement on all RFI's;
- Evaluation criteria.

### **1.3. Request for Bid (RFB)**

- 1.3.1.** This is the process of soliciting quotations/offer from qualified suppliers to conclude a contract or afford the privilege or right to supply specified services or product/services. A RFB is generally used when the specifications of the

product/service are well defined. It normally provides the highest degree of assurance that prices and quality are competitive and favoritism is avoided.

**1.3.2.** Request for Bids should be the method of procurement considered whenever practicable when acquiring product/services or services, except when the nature or monetary value of the transaction makes quoting inappropriate.

**1.3.3.** The data contained in the Request for Bid (RFB) will also vary depending on the nature of the project or of the type of Procurement. Generally, however, the following information is contained in a RFB.

- A detailed description of the goods or services supplied including as detailed functional specifications as possible to completely convey the needs of ELIAS MOTSOALEDI LOCAL MUNICIPALITY.
- A copy of a draft contract with Terms and Conditions that is prescribed by ELIAS MOTSOALEDI LOCAL MUNICIPALITY.
- Request for pricing based on meeting ELIAS MOTSOALEDI LOCAL MUNICIPALITY's requirements. RFB should also estimate the volume of purchase and request pricing based on those volumes; however, appointment does not guarantee any amount of business unless explicitly stated otherwise by ELIAS MOTSOALEDI LOCAL MUNICIPALITY.
- The date and location the RFB or RFP should be returned to ELIAS MOTSOALEDI LOCAL MUNICIPALITY.
- A statement regarding any criteria that disqualifies the response from consideration (e.g. telegrams/mailgrams, facsimile transmissions unacceptable, failure to comply with RFB critical criteria, late submissions, etc.).

**1.3.4.** Under the circumstances when additions, deletions, or changes are made to the original specifications, drawings, etc. furnished to suppliers in an RFI, RFB or RFP, all suppliers requested to submit a bid are to be notified of these changes at the same time.

**1.3.5.** Determinations as to allowing re-quotes should be examined for possible repercussions and should be approved in writing by the next higher level of management.

**1.3.6.** In general, contracts will be awarded to the bidder that provides the best overall value to ELIAS MOTSOALEDI LOCAL MUNICIPALITY. However, ELIAS MOTSOALEDI LOCAL MUNICIPALITY, at its sole discretion, can award to any other bidder if it is in ELIAS MOTSOALEDI LOCAL MUNICIPALITY's best interest. When this situation occurs, reasons must be documented in detail.

**1.3.7.** The most apparent lowest quote on a price per unit contract may not always yield the lowest overall price to ELIAS MOTSOALEDI LOCAL MUNICIPALITY. In the case of numerous unit prices on a single quote, the total quote should be evaluated to determine the overall lowest cost. Transportation, set up and any miscellaneous

charges should also be considered in the award decision and documented accordingly.

**1.3.8.** After awarding to the successful bidder(s), a written notification should be sent to all other bidders to advise them that their quotation was not selected or publish on the municipal website the selected bidder.

**1.3.9.** When competitive bidding is utilized, the following supporting information must be documented and maintained in the departmental files. The following must be retained for a period of 5 years:

- A copy of the Request for Bid/Proposal/Information and instructions to bidder(s);
- The original quote responses (and envelopes in which they were received when not controlled by a Quotation Registrar);
- Copies of the quote award letter and quote rejection letters;
- All pertinent internal correspondence, project addenda, forecasts, quote plans, specifications, and other information including documentation for qualifying and/or disqualifying potential suppliers;
- The date the quotes were opened and/or received by the Quotation Registrar;
- A list of all bidders invited and submitted, showing the name of the bidder, the amount and/or pricing arrangement, and any additional pertinent information. Any lowest priced quote that has been withdrawn by a supplier or rejected by ELIAS MOTSOLEDI LOCAL MUNICIPALITY should also be included with a written explanation supporting the withdrawal or rejection;
- The contract award information;
- All resulting agreements, contracts, revisions, etc. should be included in this file. It is the responsibility of the Legal Services to maintain a copy of the contract that has original signatures. The Legal Services must maintain and retain the signed contract not only during its applicable term but also in compliance with applicable legislative retention requirements after its expiration for five (5) years.

#### **1.4. Request for Proposals (RFP)**

**1.4.1.** This is an alternate procurement method that should be employed where goods or services are available from general sources and differ from each other not only in price but in other aspects (i.e. quality, availability, functionality, etc.). A Request for Proposal (RFP) is typically used when the product/service or service cannot be defined with absolute specificity and further dialogue with suppliers concerning the subject of the RFP is expected.

**1.4.2.** Competitive proposals are the recommended method of contracting for services such as, systems requirements, and turnkey projects.

**1.4.3.** Competitive proposals are the preferred method of obtaining certain professional services such as engineering, architecture, accounting, auditing, etc. (but not legal services). However, where circumstances do not permit multiple proposals, this must be adequately documented. Requests for Proposals will be utilized for obtaining information relative to a particular product or service, when exact requirements are unknown or undetermined. RFP's do not constitute an "offer" to buy or do business, but rather, serve as an inquiry of the marketplace as to what, if any, options are available.

**1.4.4.** Contract awards based on competitive proposals must be documented and state the criteria used in the selection process. Minimum documentation should include:

- List of suppliers considered, or if no other suppliers were considered, the reasons why;
- Qualification of the suppliers such as experience, specialized skills, availability, etc.;
- Price quotations including any services offered as a "package" such as installation, warranties, etc.;
- Consideration of BEE;
- Credit approval, insurance compliance; and
- Any additional considerations used in evaluating the proposal.

## **1.5. Pre-award Negotiations**

Pre-award negotiations are defined as negotiations entered into prior to The award of a contract. Negotiations can be done prior to a mandate to Conclude a contract after either the conclusion of a pre-selection process or a Short listing process.

- The negotiation process must in itself be fair and competitive.
- It must be ensured that the process is in compliance with PPPFA and BEE Act, as appropriate.
- Elias Motsoaledi Local Municipality will not be held responsible for any inconvenience, hardship or the like to any supplier /contractor arising out of the negotiations.

## **1.6. Single Source Negotiations**

**1.6.1.** Single Source Negotiations should be used when one of the other procurement procedures is impractical or otherwise inappropriate. Comparison of prices with

goods or services of like complexity or similar product/service costs should be used as a substitute for competitive procurement processes in this method. This method of procurement is recommended:

- For the appointment of professional services such as engineering, financial, medical, security, etc. where individual expertise is desired;
- For emergency situations or where the needs of the business preclude the use of the competitive quotation or competitive proposal process;
- All decisions to go Single Source must be well documented by the appropriate MFST or user groups and must always have the approval of the delegated Procurement authority.
- NB the 70:30 EMEs must apply.

**1.6.2.** Items to be considered, when selecting suppliers with which single source negotiations are to be performed, should include, but not be limited, to:

- Previous performance of the supplier;
- Capacity of the supplier to perform within the required time;
- Experience of the firm in the specialized requirement;
- Reputation and standing of the firm within the community; or
- Equitable distribution of ELIAS MOTSOLEDI LOCAL MUNICIPALITY business where cost to ELIAS MOTSOLEDI LOCAL MUNICIPALITY is essentially the same, e.g. BEE, PPFA, etc.
- Before Procurement will execute the Contract, the MFST or user group must justify the single source directed decision and should provide documentation accordingly.

**1.6.3.** It is ELIAS MOTSOLEDI LOCAL MUNICIPALITY's policy to use its best efforts to ensure that the price and terms negotiated are fair and reasonable based upon comparison of prices for goods or services of like complexity or product/service cost. Evidence of this comparison should be contained within the documentation supporting the decision.

**1.6.4.** Single Source emergency purchases should be reviewed as they occur to determine if the emergency situations are emergencies as defined by this practice. Documentation regarding the emergency should be maintained in the files.

## **1.7. Sole Source Negotiations**

- When there is only one supplier for the goods/services sought, this is a Sole Source Situation and not a Single Source. Documentation to support the award in this situation is also required from the MFST and or End User.

### **1.8. Purchasing Approval Letter (PAL)**

- A Purchasing Approval Letter announces and designates a product/service as approved for purchase/standard for use in ELIAS MOTSOLEDI LOCAL MUNICIPALITY. The PAL is a letter which contains application, availability, stocking information, restrictions (if any), and documentation (possibly including references to supplier documentation) regarding a product / service(s). This is largely applicable in determining stocking requirements in the stores environment. The PAL is a numbered letter for easy reference. Pals must be authorized and signed by the appropriate MFST Team Leader or if no formal MFST exists, by the duly authorized Procurement representative.

### **Procurement Manual**

- A collection of ELIAS MOTSOLEDI LOCAL MUNICIPALITY instructional methods issued under the auspices of the Department Head Procurement, and is to be utilized as guidelines by Procurement personnel when engaged in purchasing activity. Supplementary or departmental guidelines and/or procedural practices that are issued to provide clarity or procedure are subordinate to this Policy.

### **Process for competitive bidding**

#### **22.**

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

- (a) Compilation of bidding documentation, detailed in paragraph 22.
- (b) Public invitation of bids, detailed in paragraph 23.
- (c) Site meetings or briefing sessions, detailed in paragraph 23.
- (d) Handling of bids submitted in response to public invitation.
- (e) Evaluation of bids, detailed in paragraph 29.
- (f) Awarding of contracts, detailed in paragraph 30.
- (g) Administration of contracts –
  - (g)(i) After approval of a bid, the Accounting Officer and the bidder must enter into a written agreement.
- (h) Proper record keeping –
  - (h)(i) Original / legal copies of written contracts and agreements must be kept in a secure place for reference purposes.
- (j) Feedback to contractor who participated to the bid by publicizing the awarded contract on the municipal website.

### **Bid documentation for competitive bids**

#### **23.**

- (1) the criteria to which bid documentation for a competitive bidding process must comply, must –
  - (a) Take into account –

- (i) The general conditions of contract and any special conditions of contract, if specified;
- (ii) Any Treasury guidelines on bid documentation; and
- (iii) The requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
- (b) Include the 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) compel bidders to declare whether they work for the state or not;
- (e) Include a tax clearance certificate issued by SARS;
- (f) 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 –
    - (Aan) 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;
- (g) 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;
- (h) where surety is required it shall be in the form of cash, a certified cheque, or a bank guarantee from a banking institution registered in terms of the Banks Act, 1965 (Act No. 23 of 1965) or from an insurer registered in terms of the Insurance Act, 1943 (Act No. 27 of 1943). Where bids in Category A cannot raise the required surety of 2, 5%, and it is feasible to deduct the amount from the Preliminary and General (P+G) payment certificate, such concessions may be granted;

Guarantees will be required as follows:

CATEGORY	PROJECT VALUE	GUARANTEE
A	< R500 000	2,5%
B	R500 001 – R1 000 000	5%
C	R1 000 001 – R2 000 000	7,5%
D	>R2 000 000	10%



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

#### **Public invitation for competitive bids**

##### **24.**

- (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 Bid Bulletin); and
  - (b) The information contained in a public advertisement, must include –
    - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or not less than 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to paragraph 23(2) of this Policy;
    - (ii) A statement that bids may only be submitted on the bid documentation provided by the municipality;
    - (iii) Date, time and venue of any proposed site meetings or briefing sessions; and
    - (iv) A statement stipulating that bids submitted late and bidders coming late for site meetings will be disqualified.
- (2) The Accounting Officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.
- (3) Bids submitted must be sealed.
- (4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

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

##### **25.**

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

- (a) Bids –
  - (i) Must be opened only in public;
  - (ii) Must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
  - (iii) Received after the closing time should not be considered and returned unopened immediately.
- (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 paragraph 24(1)(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.

(2) **Opening of bids and quotations**

- (a) All bids in excess of R200 000 (VAT included) shall be opened in public at the Supply Chain Management Unit as soon as possible after the expiry of the advertised closing date and time. At such public bid openings the names of the bidders and the prices are read out. All quotations i.e. responses received in terms of procurement mechanisms below the value of R200 000 (VAT included) are excluded from public bid openings. When such quotations are opened, the names of conbids who responded are therefore not read out. This is to prevent collusion between a limited number of conbids or, in the event of one supplier only, the creation of a monopolistic situation.
- (b) All bids and quotations i.e. responses received in terms of procurement mechanisms, of a value of R200 000 (VAT included) and above shall be opened in public at the relevant stores offices as soon as possible after the expiry of the advertised closing date and time. At such public bid openings the names of the bidders and the prices are read out.
- (c) All bids and quotations, addressed to the municipality, shall be opened by a relevant Director or delegated official in the presence of the delegated official of the representative of the Supply Chain Management Unit, or a nominee.
- (d) Bids and quotations, which fall within the jurisdiction of Unit Managers, shall be opened in the presence of the SCM representative.
- (e) Both officials shall sign the bids and declare that they were present at the opening of the bids.

(3) **Stamping of bids and reading out of names**

- (a) As each bid is opened, the name of the bidder and the amount shall be read out. An employee shall date-stamp the bid or quotation and all enclosures related to prices, delivery periods and special conditions. Bids and quotations shall be numbered in the sequence in which they have been opened and the words "and last" shall be endorsed on the last bid or

quotation. In instances where only one bid has been received the words "and only" shall be endorsed on such bid.

- (b) Where prices have not been inserted in all relevant spaces on the form and such items have not been deleted by bidders, such spaces shall be stamped "no price" by the employee who opens the bids or quotations.

**Note:** It is the policy of the municipality to disclose bid prices. With regard to quotations of a value below R200 000, names of bidders and prices should not be read out.

- (c) Details on how bidders responded to the relevant evaluation criteria e.g. EME contribution, community benefits, job creation, environmental impact, etc. should not be disclosed.
- (d) Bids opened in public should be registered in the Bidding Register.

#### **(4) Late Bids**

- (a) Bids or quotations arriving after the specified closing time shall not be considered and where practicable shall be returned to the bidder unopened with a letter explaining the circumstances.
- (b) Bid documents must clearly state the venue where the bidding box is situated for each bid. Any bid delivered to the wrong bid box will not be considered, even if it was delivered on time.
- (c) Where it is necessary to open a late bid or quotation to obtain the name and address of the sender, each page of the document shall be stamped "late bid" before the bid is returned to the bidder. The envelope must be stamped and initialled in like manner and must be retained for record purposes.

#### **(5) Amendments before the closing date**

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

#### **(6) Dealing with bids and quotations if the closing date thereof has been extended**

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

(7) **No amendments after the closing date allowed**

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

**Negotiations with preferred bidders and communication with prospective providers and bidders**

**26.**

- 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 and as far as practical be made part of the final contract.
- 3) **Communication with bidders and prospective providers**
  - (a) Where bids and quotations have been submitted to the municipality, a bidder may not communicate with any councillor or official on any matter regarding his bid, quotation or offer other than a notice of withdrawal.
  - (b) No municipal personnel may communicate with a bidder or any other party who has an interest in a bid, on the one hand, and any employee of the municipality, on the other hand, during the period between the closing date for the receipt of the bid or quotation (or date of receipt of an offer), and the date of notification of the successful bidder of acceptance of his bid, quotation or offer, except as provided for in paragraph (c) below. Every such case of unauthorised communication shall forthwith be reported to the Supply Chain Management Unit as well as the relevant Chairperson of the Bid Adjudication Committee. A bid or quotation in respect of which unauthorised communication has occurred may be disqualified.
  - (c) After informing the Accounting Officer the Chairperson of the Bid Adjudication Committee may authorise an employee in writing to communicate with a bidder during the period mentioned in paragraph 25(3)(b) above for the purpose of:-
    - (i) explaining and verification of declarations made in the bid response;
    - (ii) confirming that a quoted price is correct;
    - (iii) confirming technical particulars and the compliance thereof with specifications;
    - (iv) determining whether there will be any change in price if only a portion of work is awarded to a bidder;

- (v) requesting an explanation for an unreasonable price increase when it is compared with a previous price and the interim movement of a relevant price index;
- (vi) clarifying delivery times/quantities;
- (vii) extending the validity period of a bid, quotation or offer;
- (viii) amending any bid condition, validity period or specification after the closing date; and
- (ix) clarifying any other commercial aspect.
- (d) In all cases where authority has been granted to communicate with bidders in terms of paragraph 25(3)(c) above, it should be clearly stated in the submission to the Bid Adjudication Committee the nature of the communication as well as by whom such authority to communicate has been granted.
- (e) All changes and/or clarification of specifications shall be conveyed to all bidders by means or methods as specified in paragraph 24.

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

#### **27.**

- (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**

#### **28.**

- (1) The following committees are hereby established -
  - (a) bid specification committees;
  - (b) bid evaluation committees; and
  - (c) a bid adjudication committee.
  - (d) The committee should be reviewed annually.
- (2) The Accounting Officer is required to appoint the members of each committee, taking into account section 117 of the Act.
- (3) The Accounting Officer is required to appoint a neutral or independent observer to attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.
- (4) The committee system must be consistent with –
  - (a) paragraphs 29, 30 and 31 of this Policy; and
  - (b) any other applicable legislation.
- (5) The Accounting Officer may apply the committee system to formal written quotations. price

## **Bid specification committees**

### **29.**

- (1) In conjunction with the head of the department the bid specification committee must compile the specifications for the procurement of goods or services.
- (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) where possible, must be described in terms of performance required rather than in terms of descriptive characteristics for design;
  - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification;
  - (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word “equivalent”;
  - (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2011; and
  - (g) must be approved by the Accounting Officer prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.
- (3) A bid specification committee must be 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.
- (5) The bid specification committee must include an official representing the Supply Chain Management Section.

## **Bid Evaluation Committees**

### **30.**

- (1) The 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 28(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) The 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**

### **31.**

- (1) The bid adjudication committee must –
  - (a) consider the report and recommendations of the bid evaluation committee; and
  - (b) either –
    - (i) depending on its delegations, make a final award or a recommendation to the Accounting Officer to make the final award; or
    - (ii) make another recommendation to the Accounting Officer how to proceed with the relevant procurement.
- (2) The 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) The chairperson of the bid adjudication committee may ask a member of the evaluation committee to explain the committee's recommendations during the adjudication process.
- (6) (a) if the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –
  - (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears; and
  - (ii) notify the Accounting Officer.
- (b) The Accounting Officer may –

- (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph 30(5)(a); and
  - (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (7) The Accounting Officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (8) The Accounting Officer must comply with section 114 of the Act within 10 working days.

### **Procurement of banking services**

#### **32.**

- (1) 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 sixty (60) days from the date on which the advertisement is placed in a newspaper in terms of paragraph 23(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**

#### **33.**

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

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

#### **34.**



- (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) Paragraphs 33(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.

## **CONTRACTS / AGREEMENTS IN GENERAL**

- It is necessary to enter into a formal, written contract for the procurement of goods and services estimated in value over R1,000,000 or where ELIAS MOTSOLEDI LOCAL MUNICIPALITY determines the complexity and/or risk to be significant enough to warrant it. The provisions of a contract are always binding on the contracting parties. Therefore, a contract, where the terms and conditions are not legally enforceable by the contracting parties, should not be entered into.
- For purposes of this policy, a contract is an agreement between two or more legal entities, to perform or not to perform a specific act or acts. Contracts will be concluded in writing. A purchase order containing ELIAS MOTSOLEDI LOCAL MUNICIPALITY pre-printed Standard Terms and Conditions, when accepted by a supplier, becomes a contract. However a formal written contract is necessary for item value over R1,000,000. An order should never be placed for values exceeding this amount without a contract except where negotiations to finalise a contract is underway and where orders must be placed to meet ELIAS MOTSOLEDI LOCAL MUNICIPALITY's required delivery dates. If this is done, the terms and conditions of the applicable Request for Bid (or Proposal) should be made to apply until the final contract is executed. Acceptance may be either in writing or by performance unless the purchase order requires acceptance to be in writing.
- Contracts / Agreements must be signed by the appropriate authorised personnel, as designated in the Delegation of Authority.
- Contracts generally fall into three categories, products, product and services or services, and are commitment or non-commitment, or any combination thereof.

The following list is not an all inclusive; however, it reflects the types of most frequently executed contracts:

- 2.1.** A commitment contract consists of agreed upon terms and conditions for definite quantities, minimum/maximum stocks, product/service schedules, scope of work, or any

combination of the above requirements. This type of contract obligates the supplier to sell and ELIAS MOTSOLEDI LOCAL MUNICIPALITY to buy the quantity designated; otherwise, the potential exists for some form of billing at the expiration of the contract.

**2.2.** A non-commitment contract is without a definite quantity. This type of contract is often referred to as an “as ordered” contract. It does not obligate ELIAS MOTSOLEDI LOCAL MUNICIPALITY to purchase a predetermined quantity. Purchase orders for definite quantities are placed against the contract and when accepted by the supplier establishes the commitment under the terms and conditions of the contract.

**2.3.** General Agreements are non-commitment agreements, containing terms and conditions that govern a purchase should ELIAS MOTSOLEDI LOCAL MUNICIPALITY place an order or negotiate a contract with the supplier. Such agreements contain clauses that might be unique and where ELIAS MOTSOLEDI LOCAL MUNICIPALITY anticipates the supplier having difficulty in accepting standard terms and conditions. Such an agreement would save time in future negotiations and transactions. Such agreements have particular application with multi-contract suppliers, a continuing source of supply or a continuing service provider.

A subsequent purchasing document or contract that is subordinate to the Terms and Conditions of the main agreement is needed to complete any transaction under the General Agreement.

**2.4.** Purchase Orders are an official ELIAS MOTSOLEDI LOCAL MUNICIPALITY document containing pre-printed pre-approved terms and conditions used to formalise a purchase transaction with a supplier. A purchase order, when placed with a supplier, acts as a contract when there is no existing contract to reference and should normally contain: statements as to the quantity, description and price of the goods or services ordered; reference (by number) to any pre-negotiated contract which provides the terms and conditions of the purchase; agreed terms as to payment, discounts, date of performance, transportation terms; invoice address, delivery notes and all other agreements pertinent to the purchase and its execution by the supplier.

Purchase Orders may be used in three distinct situations:

- As a standalone document to order product/service and/or services utilising the terms and conditions on the reverse side of the document to define the contractual terms of the business relationship;
- As a shipping release and billing document under a commitment supply contract where the contract defines the commitment and terms and conditions of doing business; or
- As an acceptance to purchase a definite quantity under a non-commitment supply contract.

**2.5.** Service Contracts can be commitment or non-commitment and contain agreed upon terms and conditions for a well-defined scope of work statement, that in turn describes the service to be provided. The how, when, and where the service is to be performed is contained in a commitment contract or in a purchase order for a non-commitment contract.

**2.6.** Fixed Cost or Flat-Sum Contracts specify the total amount to be paid the supplier for the goods and/or services rendered. When the specifications for the desired goods or services are sufficiently complete these types of contracts are the most desirable because they fix the total cost and in most instances will result in the least overall cost.

**2.7.** Unit Cost Based Contracts specify costs per hour, item, etc. for material and/or services to be performed for ELIAS MOTSOLEDI LOCAL MUNICIPALITY on an as-ordered, non-commitment basis.

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

#### **35.**

- (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**

#### **36.**

- (1) 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:-
  - (a) Firstly, suppliers and businesses within the municipality/municipal district;
  - (b) Secondly, suppliers and businesses within the relevant province; and
  - (c) Thirdly, suppliers and businesses within the Republic of South Africa.
- (2) These principles are to be embodied in the points allocated in terms of the Preferential Procurement Policy of the municipality.

### **Appointment of consultants**

#### **37.**

##### **1.8.1. Background**

A basic principle is that managers should be given the flexibility to manage, within a framework that satisfies ELIAS MOTSOLEDI LOCAL MUNICIPALITY's requirements of transparency and accountability

- (1) The Accounting Officer may procure consulting services provided that any Treasury guidelines and CIDB requirements 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.

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.

It is necessary to impose measures to ensure that consultancy assignments are executed in such a way that the ethical principles of the relevant profession are met at all times. This includes ensuring that advice received is unbiased, i.e., free from any affiliation, economic or otherwise, which may cause conflict between the consultant's interests and those of ELIAS MOTSOLEDI LOCAL MUNICIPALITY.

- Only the peculiarities of appointing consultants are dealt with herein, as the services to which these procedures apply are of an intellectual and advisory nature.
- For the purpose of this policy, the term consultant includes, among others, consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, other multinational organisations, investment and merchant banks, universities, research agencies, government agencies, non-governmental organizations (NGOs) and individuals.
- Duly authorised ELIAS MOTSOLEDI LOCAL MUNICIPALITY employees may use these organisations as consultants to assist in a wide range of activities such as policy advice, reform management, engineering services, construction supervision, financial services, procurement services, social and environmental studies and identification, preparation and implementation of projects to complement ELIAS MOTSOLEDI LOCAL MUNICIPALITY'S capabilities in these areas.
- Consultants should only be engaged when the necessary skills and / or resources to perform a project / duty / study are not available and it cannot be reasonably expected to train or to recruit people in the time available.
- The relationship between the duly authorised ELIAS MOTSOLEDI LOCAL MUNICIPALITY employee and the consultant should be one of purchaser / provider and not employer / employee. The work undertaken by a consultant should be regulated by a contract. The duly authorized employee is, however, responsible for monitoring and evaluating contractor performance and outputs against project specifications and targets and should take remedial action if performance is below standard.

#### **1.8.2. Applicability**

The policy outlined herein applies to all contracts for consulting services. In procuring consulting services, the duly authorized ELIAS MOTSOLEDI LOCAL MUNICIPALITY employee should satisfy himself / herself that:

- The procedures to be used will result in the selection of consultants who have the necessary professional qualifications;
- The selected consultant will carry out the assignment in accordance with the agreed schedule; and
- The scope of the services is consistent with the needs of the project.

### **1.8.3. General Approach**

The duly authorized ELIAS MOTSOLEDI LOCAL MUNICIPALITY employee should be responsible for preparing and implementing the project, for selecting the consultant, awarding and subsequently administering the contract. While the specific rules and procedures to be followed for selecting consultants depend on the circumstances of the particular case, at least the following four major considerations should guide the accounting officer's / authority's policy on the selection process:

- The need for high-quality services;
- The need for economy and efficiency;
- The need to give qualified consultants an opportunity to compete in providing the services; and
- The importance of transparency in the selection process.

In the majority of cases, these considerations can best be addressed through competition among firms in which the selection is based both on the quality of the services to be rendered and on the cost of the services to be provided (Quality-and-Cost-Based Selection [QCBS]) as described.

However, there are cases when QCBS is not the most appropriate method of selection. For complex or highly specialized assignments or those that invite innovations, selection based on the quality of the proposal alone (Quality-Based Selection [QBS]), would be more appropriate. Other methods of selection and the circumstances in which they are appropriate are outlined.

### **1.8.4. Selecting Consultants**

The four stages of selection:

There are essentially four distinct stages in the recommended selection process:

- Identify the approach;
- Invite bids / proposals;
- Receive responses; and
- Evaluate responses.

### **1.8.5. Identify the Approach**

Various approaches may be followed in selecting consultants. In most instances, 'Quality and Cost Based Selection' (QCBS) is recommended. However, other possibilities are:

- Quality based selection;
- Selection under a fixed budget;
- Least cost selection; and
- Single source selection.

In determining the most appropriate approach, it may be useful to ask: What sort of Consultancy do I require? Is it for?

An assignment that is not complex or specialized	Use 'Quality and Cost Based Selection' (QCBS)
A complex or highly specialized assignment, for which consultants are expected to demonstrate innovation in their proposals (for example, policy formulation, financial sector reforms)	Use 'Quality-Based Selection' (QBS)
An assignment that has a high downstream impact and requires the best available experts (for example, EIA, Technical/Professional Engineering, IT Systems )	Use QBS
An assignment that could be carried out in substantially different ways, hence proposals will not be comparable (for example, EIA studies in which the value of the services depends on the quality of the analysis)	Use QBS
A very small assignment which does not justify the preparation and evaluation of competitive proposals	Selection based on Consultants' qualifications as detailed herein. Potential suppliers may be obtained from the list of approved service providers.
A task that represents a natural continuation of previous work carried out by the firm	Use 'Single-source selection'
An emergency operation	You MAY use 'Single source selection'
An assignment where only one firm is qualified or has experience of exceptional worth for the assignment	Use 'Single-Source Selection'

#### 1.8.6. Other Methods of Selection

##### ***Quality-Based Selection (QBS)***

**QBS is appropriate for the following types of assignments:**

- Complex or highly specialized assignments for which it is difficult to define precise TOR and the required input from the consultants and for which the client expects the consultants to demonstrate innovation in their proposals (for example, country economic or sector studies, multi-sectoral feasibility studies, policy formulation, financial sector reforms);
- Assignments that have a high downstream impact and in which the objective is to have the best experts (for example, feasibility studies, policy studies of significance, management studies); and
- Assignments that can be carried out in substantially different ways, such that proposals will not be comparable (for example, management advice and sector and

policy studies in which the value of the services depends on the quality of the analysis).

#### ***Selection under a fixed budget***

- This method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed. The RFP should indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes, within the budget.

#### ***Least-Cost Selection***

- This method is more appropriate to selection of consultants for assignments of a standard or routine nature (audits, engineering design of non-complex works, and so forth) where well-established practices and standards exist and in which the contract amount is small.

#### ***Selection based on Consultants' Qualifications***

This method may be used for very small assignments for which the need for preparing and evaluating competitive proposals is not justified.

#### ***Single-Source Selection***

- Single-Source Selection should be used only in exceptional cases. Single-Source Selection may be appropriate only if it presents a clear advantage over competition:
  - For tasks that represent a natural continuation of previous work carried out by the firm;
  - Where a rapid selection is essential (for example, in an emergency operation);
  - For very small assignments; or
  - When only one firm is qualified or has experience of exceptional worth for the assignment.
- The reasons for a single-source selection should be recorded and approved by the accounting officer / authority or his / her delegate prior to the conclusion of a contract.
- When continuity for downstream work is essential, the initial RFP should outline this prospect and if practical, the factors used for the selection of the consultant should take the likelihood of continuation into account.

#### ***Selection of Individual Consultants***

Individual consultants may normally be employed on assignments for which:

- Teams of personnel are not required;
- No additional outside (home office) professional support is required; and
- The experience and qualifications of the individual are the paramount requirement.

Selection of consultants must be undertaken by the duly authorized ELIAS MOTSOLEDI LOCAL MUNICIPALITY employee in conjunction with the Commodity Manager.

## 1.9. Once Off Purchases

At the recommendation of the appropriate MFST, and with the approval of the Commodity Manager or his/her delegate, or Site Delegated Authority, product/services may be purchased via the Direct Purchase method. These purchases may be made without following ELIAS MOTSOLEDI LOCAL MUNICIPALITY's traditional purchasing procedures and will be utilised primarily for product/services that are enhancements or additions to existing systems in use in ELIAS MOTSOLEDI LOCAL MUNICIPALITY for which there is no other alternative source or option other than to go with the original supplier, must be reported to Council for approval before the purchase.

## 1.10. CIDB Compliance

### 1.10.1. Introduction

The Construction Industry Development Board (CIDB) is a schedule 3A public entity established in terms of the Construction Industry Development Board Act, 2000 to provide leadership to stakeholders to stimulate sustainable growth, reform and improvement of the construction sector for effective delivery and the industry's enhanced role in the country's economy.

Elias Motsoaledi Local Municipality as an organ of state (in terms of S239 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)) is obliged when securing construction works to do so in terms of CIDB requirements. (See Annexure A for CIDB Code of Conduct)

The CIDB regulations issued in terms of the Act defines "construction works" to mean: "the provision of a combination of goods and services arranged for the development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset including building and engineering infrastructure. (See Annexure B for Classes of Construction Works)

The Act, applicable to all organs of state, established a means by which the CIDB can promote and implement policies, programmes and projects aimed at procurement procedures within the framework of procurement policy of government. It establishes a national register of contractors (and if required, consultants and suppliers) to manage public sector procurement risk.

The Act prohibits the award of engineering and construction works contracts in the public sector to an unregistered contractor and requires the CIDB to establish a national register of contractors and projects to promote contractor development, indicate the volume, nature and performance of contractors and target groups and categorizes contractors in a manner that facilitates public sector procurement.

### 1.10.2. Register of Projects as established by CIDB

#### 1.10.2.1. Purpose:

**To gather information on the nature, value and distribution of projects and provide the basis for best practice project assessment scheme to promote the performance of public and private sector clients in the development of the construction industry (*preamble to Chapter 4 of the Act*).**



**1.10.2.2. Section 18(1) of the Regulations:**

"An employer (*Elias Motsoaledi Local Municipality*) must, within 21 working days from the date on which a contractors' offer to perform construction works contract is accepted in writing by an employer (*Elias **Motsoaledi Local Municipality***), apply on the approved form to the CIDB for the registration of every project, consisting of a single construction works contract, of which the contract value exceeds a value determined by the Minister by notice in the Gazette."

Currently the amount determined is all contract values greater than R30 000,00

**1.10.2.3. "Client" is defined in terms of the Act to mean**

*"A person, body or organ of state that enters into a contract to procure construction works".*

**1.10.2.4. "Contractor" means** *"a body of persons who undertakes to execute a complete construction works".*

**1.10.3. CIDB registration**

Only primary or main contractors must be registered. Subcontractors need not be registered. It is further advised by CIDB that labour only contractors and those contractors who are provided with the bulk of the materials required for engineering and construction works by the employer (*Elias Motsoaledi Local Municipality*) or an agent of the employer (*Elias Motsoaledi Local Municipality*), need not register.

A Tenderer must be registered or be in a position to be registered at the time of evaluation of the tender (see 4.5.6).

For expression of interest a contractor need only register– 21 days grace after the closing date of submissions.

Emergency situations are detailed under clause 4.5.11.

Only one tender received and no other contractor capable – OK to award.

**1.10.4. Exemptions to registration**

Section 19 of the regulations, "Any projects consisting of a contract entered into with a client or employer (*Elias Motsoaledi Local Municipality*) that relates only to construction works-

- a) in relation to the provision of homes as contemplated in the Housing Consumer Protection Measures Act, 1998 (Act No 95 of 1998); or
- b) undertaken in a mining area as defined in the Petroleum and Mineral Resources Development Act, 2002 (Act 28 of 2002), and which from part of the excavations below surface bounded by the shaft collar, or portal to the edit of an underground mine, or by the pit rim for open cast mines, and including the construction of a shaft collar, portal or pit rim, is exempt from the regulations."

#### **1.10.5. Elias Motsoaledi Local Municipality's duties**

S20 (1) of the regulations "The employer (Elias Motsoaledi Local Municipality) must on the approved form identify a person who acts as its representative and who is authorised to access the register of projects and the register of contractors on its behalf".

Elias Motsoaledi Local Municipality's Procurement Department has undertaken this function and has a dedicated person in place.

#### **1.10.6. Tenders submitted by unregistered contractors**

As a general rule, tenders submitted by unregistered contractors, will not be evaluated, however the complexity and treatment thereof will be explained below as CIDB has introduced the term "capable of being registered".

"Capable of being registered"

Regulation 25(1A) reads

"Notwithstanding subregulation (I) , the tender offer or expression of interest of a contractor who is not registered as contemplated in that subregulation, but who is capable of being so registered prior to the evaluation of those submissions may be evaluated, but in the case of expressions of interest, the contractor concerned must be capable of being so registered within 21 days after the closing date for those submissions".

This means that an employer (Elias Motsoaledi Local Municipality) may, but is not obliged to, evaluate a tender received from an unregistered tenderer, but is only permitted to do so if there is a reasonable chance that the unregistered contractor will become registered in the required contractor grading designation.

Note: An employer (Elias Motsoaledi Local Municipality) may evaluate a tender from an unregistered contractor who is likely to be registered in the appropriate category, however is not permitted to award a contract to an unregistered contractor or to a registered contractor who is not registered in the required contractor grading designation,

#### **1.10.7. Advertising of Tenders on the CIDB website**

This is compulsory in accordance with Section 24 of the regulations, those details-

"Every client or employer (Elias Motsoaledi Local Municipality) who is soliciting competitive tenders in the construction industry must publish that invitation to tender on the official CIDB website and that solicitation must be in accordance with

- a) if applicable, the Regulations in terms of the Public Finance Management Act, Framework for Supply Chain Management;
- b) the Standard for Uniformity in Construction Procurement".

#### **1.10.8. CIDB's treatment of Joint Ventures**

Once-off joint ventures do not have to register, provided that each partner of the joint venture is separately registered. In cases where one partner of a JV has a majority share of the work, then that party must have the appropriate grading for the whole tender value, if not then the "CIDB calculator" will be used to determine the combined JV grading.

The contractor grading designation of registered contractors in joint venture with each other may be calculated, by combining the data used in the determination of each individual member's contractor grading designation, using the calculator on the registers section of the CIDB Website [www.cidb.org.za](http://www.cidb.org.za).

The "effective" contractor grading designation so calculated is the contractor grading of the joint venture.

#### **1.10.9. The value of contracts that needs to be registered with CIDB**

Section 23 of the regulations prescribes that the only contracts with a value above R30 000.00 needs to be registered, where construction works are required. (See Annexure C for Contractor and Tender Value range designations).

#### **1.10.10. Evaluation and acceptance of tender offers from CIDB registered contractors who tender above their designated tender value range**

- Elias Motsoaledi Local Municipality is not permitted to do this, except, where the margin by which the tender value range exceeded is "reasonable". This is allowed in terms of Regulation 25(7A). The regulation permits tenders to be awarded to a contractor outside of his tender value range on condition that:
- the amount by which the tendered sum exceeds the tender value range is reasonable; and
- the award of a contract to such a contractor does not impose any undue risk.

Reasonable" in terms of South African case law has been interpreted to mean that a value judgment must be made that is balanced and justifiable. CIDB has provided some guidance in this regard and in the case of tenders close to a threshold, they have suggested that tendering an amount of up to 10 and 15 percent above the upper limit of the tender value range associated with a particular contracting designation would in most circumstances be considered reasonable.

#### **1.10.11. In the case of extreme conditions, is the employer (Elias Motsoaledi Local Municipality) obliged to evaluate unregistered contractors, but who have the potential to be registered within 21 days?**

No, Elias Motsoaledi Local Municipality is not obliged to do so in terms of S25 (2) of the regulations. A client or employer (Elias Motsoaledi Local Municipality) under "extreme conditions" is entitled to determine that only submissions of tender offers or expressions

of interest by contractors who are already registered (at any grade) in terms of these regulations will be evaluated.

“Extreme conditions” means conditions where:

- human injury or death;
- human sufferings or deprivation of human rights;
- serious damage to property or financial losses;
- injury, suffering or death to livestock or other animals;
- serious environmental damage or degradation, or
- interruption of essential services, in the present or imminent

The reissuing of a tender on cancellation or rejection of a tender

Clause F1.5.2 contained in Annexure F of the CIDB Standard for uniformity reads as follows:

“the employer (Elias Motsoaledi Local Municipality) may not subsequent to the cancellation or abandonment of a tender process or rejection of all responsive tender offers reissue a tender covering substantially the same scope of work within a period of six months unless one tender was received and such tender was returned unopened to the tenderer.”

The interpretation of the above clause is that where only one tender is received this must be returned unopened to that tenderer or Elias Motsoaledi Local Municipality will be forced to adjudicate on the basis of one proposal received, and if it is “responsive” then it will have to be accepted, alternatively, Elias Motsoaledi Local Municipality will have to wait the six month period before going out to tender on substantially the same scope again.

Should all tenders be non-responsive on evaluation, Elias Motsoaledi Local Municipality will not have to wait the six month period, however should some of the tenders received be responsive and the process is then cancelled or abandoned, the six month period would then apply.

A “responsive” tender is one that conforms to all terms, conditions, and specifications of the tender documents without material deviation or qualification. A material deviation or qualification is one which, in the employer’s opinion, would:

- detrimentally affect the scope, quality, or performance of the works, services or supply identified in the scope of work,
- change the employers (Elias Motsoaledi Local Municipality’s) or the tenderer’s risks and responsibilities under the contract, or
- affect the competitive position of other tenderers presenting responsive tenders, if it were to be rectified.

**1.10.12.** Acceptance of a tender where a lower grading was requested , but the responses received were at a higher grading than that what was indicated for

Elias Motsoaledi Local Municipality can accept a tender of a higher grading than indicated on our initial grading requirements, provided it is not lower than what was required.

**1.10.13.** The acceptance of a tender outside of the class of construction works indicated on the tender documents, but which meets the specified tender value range or possibly even exceeds it. e.g. a 5CE is requested but a 6ME classification is received.

Legislation prohibits the acceptance of a contract that falls outside the specific class of works requested.

Where there are situations when there may be more than one class of construction works that apply describe a contract, the regulations will permit alternatives and not dual classes e.g. the engineer may than specify a 2GB or 2CE, but not a 2GB and 2CE

**1.10.14.** Potentially Emerging Enterprises

Defined in the Act as

“an enterprise which is owned, managed and controlled by previously disadvantaged persons and which is overcoming business impediments arising from the legacy of apartheid.”

**1.10.15.** CIDB's treatment of Potentially Emerging Enterprises

In terms of 25(8) of the regulations, where employers (Elias Motsoaledi Local Municipality) has in place a targeted development programme, contractors who were registered with the CIDB as potentially emerging contractors may be awarded a contract in one contractor designation higher than their current contractor designation. The employer (Elias Motsoaledi Local Municipality) must however be satisfied that the contractor has the potential to develop into and qualify for registration in a higher grade, and ensures that financial management or other support is provided to that contractor to enable the contractor to successfully execute that contract.

**1.10.16.** Contractor requirements in terms of CIDB

In terms of Chapter 3 of the CIDB Act at Section 16(6), “a contractor may, in writing, apply to the Board for registration and the application must be accompanied by the prescribed particulars, e.g. financial statements and prescribed administration fees,

which are not refundable. Details of more exact requirements are to be found at Section 7 of the regulations. If all is in order, the CIDB will issue the Contractor with a registration certificate. Section 8 of the regulations details the process for amendment of a category status.

#### **1.10.17. Status of unregistered contractors**

Section 18 (1)- “A contractor may not undertake, carry out or complete any construction works or portion thereof for public sector (Elias Motsoaledi Local Municipality) contracts, awarded in terms of competitive tender or quotations, unless the contractor is registered with the CIDB and holds a valid registration certificate issued by the CIDB”.

Section 18(2)- “Any contractor who carries out or attempts to carry out any construction works or portion thereof under a public sector (Elias Motsoaledi Local Municipality) contract and who is not a registered contractor of the CIDB in terms of this Act, is guilty of an offence and liable, on conviction, to a fine not exceeding ten per cent of the value of the contract so carried out.”

Note: Regulation 25(1A) allows an unregistered tenderer to submit a tender / expression of interest if there is a reasonable chance that the unregistered contractor will become registered in the required contractor grading designation; and an employer may evaluate such tender (not obligated to) but cannot award to the unregistered tenderer, thus the unregistered tenderer is not allowed to carry out construction works prior to appropriate registration.

#### **1.10.18. Validity of the contractor registration certificate**

The contractor registration certificate is valid for a period as determined by the CIDB.

Section 20(2) “A registered contractor must apply for renewal of registration three months before the existing registration expires or on the sale or transfer of the contractor's business and must pay the prescribed renewal fee.

#### **1.10.19. Determination, by CIDB, of contractor grading designation**

An assessor appointed by the CIDB will evaluate the contractor on the basis of financial capacity as well as works capability. A CIDB assessment committee will then approve the evaluation of the assessor.

Details of the exact process are to be found at Section 11 of the regulations. Refer to page 17 of the regulations.

#### **1.10.20. Reporting and feedback by Elias Motsoaledi Local Municipality to CIDB**

Section 21(1) “The employer (Elias Motsoaledi Local Municipality) must in relation to a construction works contract registered in terms of these Regulations, within one calendar month of the date:

- a) of issue of a practical completion certificate;
- b) on which that contract is renewed;
- c) on which a contract is cancelled or terminated; and
- d) of settling all amounts owing to the contractor in accordance with the contract, as determined by the employer;

submit a status report to the CIDB in the format determined by the Board.

**1.10.21. Duty on the employer (Elias Motsoaledi Local Municipality) to notify the CIDB of any legal action against itself or the contractor in relation to a registered project**

Section 21(2) “Any employer (Elias Motsoaledi Local Municipality) must notify the CIDB Board of any arbitration entered into or litigation initiated in relation to a construction works contract registered in terms of these regulations, within one calendar month from the starting date of the arbitration or litigation.

**1.10.22. CIDB (Practice Note 2) covering Arithmetical errors in tenders (See Annexure D)**

This document serves as a useful tool in dealing with practical issues such as :

- 1) Arithmetical errors
- 2) Risk Analysis
- 3) Excessive pricing
- 4) Negotiation of discounts with the preferred tenderer.

It further includes Process Flow diagrams when dealing with-

- 1) Award process where lump sums are tendered and no bills of quantities are included in the pricing data.
- 2) Award process where bills of quantities are submitted together with tender offers.
- 3) Award process where bills of quantities are included in the pricing data but are not submitted together with the tender offer.

**1.10.23. Workflows and documentation requirement after acceptance of the tender by Supply Chain Manager/Tender Committee/EXCO**

A letter of acceptance (LOA) is issued by the Procurement Department (not a necessity in terms of CIDB but rather a practical measure of informing the successful tenderer of the outcome).

Elias Motsoaledi Local Municipality’s Legal Services must verify and certify all LOAs and contracts before the said documents are sent to the relevant parties for signature.

The successful tenderer and a duly authorised Elias Motsoaledi Local Municipality representative must sign the contract document.

The entire document must be signed, however the Form of Offer and Acceptance together with the schedule of deviations must be signed. The Contract Manager/responsible person must ensure that the person that signs on behalf of Elias Motsoaledi Local Municipality, does so in accordance with the correct delegation authority.

Two original signed contract documents are mandatory, one for the tenderer and one for Elias Motsoaledi Local Municipality. Elias Motsoaledi Local Municipality's original copy will be archived by the Legal Services. Any subsequent amendments must follow the same route of authorisation and annexed to the original contract documents.

**1.11. Elias Motsoaledi Local Municipality's roles and responsibilities in compliance with the CIDB Act**

**1.11.1. CIDB Planning**

The end user/project manager must determine the CIDB grade that needs to be published in the tender document. This determination is done on the estimated value of work and repetition of the said work over different financial years. The end user/project manager can obtain estimates for the more complex projects, either:

- Preferably through the Sourcing Manager or the MFST,
- Or directly from a potential supplier base, but must notify the Sourcing Manager thereof.
- For non-complex, single items use the Sourcing Manager.

The CIDB grade is calculated on the total project value. The end user/project manager must decide on the separation of a project/contract into supply only and a construction/installation only. This is particularly relevant for projects/contracts where a substantive portion of the total cost is for the supply of equipment.

**1.11.2. Setting the grade**

The project manager/end user must set the CIDB grade one grade below the estimate, as a minimum. This is to safeguard against claims by Tenderers that they were excluded because the grade was erroneously too high. The project manager/end user must ensure that the advertised tender request and associated documentation, clearly states that the tenderer must ensure that their CIDB grading is commensurate to their tendered price.

**1.11.3. Advertising the tender (Procurement).**

The project manager/end user must submit duly authorised, relevant CIDB information to the Contract Administrator in the Procurement Department in preparation to advertise the tender.

**1.11.4. Registration of tenders on the CIDB website (Procurement).**



The project manager/end user must submit the completed forms to the Contract Administrator whose responsibility it is to register tenders on the CIDB website. ( the relevant forms are accessible on the CIDB Website).

#### **1.11.5. Closing time and opening of CIDB related tenders.**

- The Procurement department must verify that the tender closing time on the closing date is accurate and consistent (phone 1026 to verify the time).
- Immediately after the closing of the tender, the project manager/end user must decide if the tender/s received is responsive or not.
- If only one tender has been received the project manager/end user has the option of not opening the tender. In this event, the tender must be returned unopened to the tenderer. Should this be the case, then the 6-month waiting period for the re-advertising of the tender does not apply. The tender closing period may be extended at this point. Extensions of tender closing periods are duly addressed in the Project Execution Guideline Manual. The CIDB has provided guidelines as to what constitutes a non-responsive tender.
- The Procurement Department must publicly read out:
  - THE PRICE.
  - DELIVERY TIME.
  - PREFERENCES CLAIMED.
  - QUALIFICATIONS.
- The project manager/end user must verify each item read out. The Procurement Department must state that the public opening of tenders is not indicative of the preferred tenderer, and that this determination will only be established upon the completion of a comprehensive evaluation and adjudication process.
- The public announcement of pricing on all tenders presents the opportunity for tenderers to adjust their prices to become the preferred tenderer. Price adjustments will not be considered after the public opening of tenders. Should a tenderer have omitted items they must either undertake the project/contract at the price tendered or withdraw their tender.
- Tenderers cannot offer discounts immediately after the tender is publicly opened. Discounts will only be negotiated with the preferred tenderer once the awarding authority agrees with the recommended tenderer.

#### **1.11.6. Adjudication process**

The CIDB has issued a best practice guide on how to undertake the adjudication process ensuring good governance and this practice must be followed. Copies are available from Procurement or on the Intranet.

MFST's should be used, where they exist.

#### **1.11.7. Grade evaluation**

The end users/MFST must undertake the evaluation of the suitability of the Tenderers grade.

Should a Tenderer's application for a CIDB grading requires "Fast Tracking", then Procurement must notify CIDB and manage the process further.

#### **1.11.8. The award of work**

This must be conducted in accordance with the delegation of authority as amended from time to time. An MFST should meet on a certain day, at a given time and have standing members.

The standard format for Tender reports must be adhered to as amended by the Tender Committee from time to time.

For reports from R300 000 (3-quote limit) to R2 million a "mini Tender Report" is sufficient. The award of work from R300,000 to R2,000,000 will be done by the Supply Chain Manager and his/her committee in accordance with the delegation of authority.

#### **1.11.9. The appointment of contractors**

Notify CIDB of appointment of a contractor (Contract Administrator).

The following CIDB Regulation 20 must be adhered to:

- (1) *The employer (Elias Motsoaledi Local Municipality) must on the approved form identify a person who acts as its representative and who is authorised to access the register of projects and the register of contractors on its behalf. - Contract Administrator*
- (2) *The employer (Elias Motsoaledi Local Municipality) must on the approved form notify the board (CIDB board) if the person identified in terms of sub-regulation (1) as its representative for any reason ceases to act as such.*
- (3) *The employer (Elias Motsoaledi Local Municipality) must ensure that his or her representative complies with the conditions of use of the register of contractors.*

#### **1.11.10. Variances**

Notify CIDB of significant variances to the contract (Contract Administrator).

The following CIDB Regulation 21 must be adhered to:

- (1) *An employer (Elias Motsoaledi Local Municipality) must notify the board (CIDB board) of any arbitration entered into or litigation initiated in relation to a construction works contract registered in terms of these Regulations, within one calendar month from the starting date of that arbitration or litigation.*

- (2) *An employer (Elias Motsoaledi Local Municipality) who awards a contract to an emerging enterprise who has a contractor grading designation lower than that required for the contract as contemplated in Part IV of these Regulations, must on the approved form notify the board of the nature of the financial or management support that is provided to the contractor concerned as contemplated in that Part and the benefit derived from such support in the development of that contractor.*

#### **1.11.11. Contractor performance**

The End user must complete the appropriate CIDB forms (Forms 1 to 5); submit it to the Contract Administrator who in turn will submit them to CIDB.

The following CIDB Regulation 21 must be adhered to:

- (1) *The employer must in relation to a construction works contract registered in terms of these regulations, within one calendar month of the date –*
- (a) of issue of a practical completion certificate;*
  - (b) on which that contract is renewed;*
  - (c) on which a contract is cancelled or terminated; and*
  - (d) of settling all amounts owing to the contractor in accordance with the contract, as determined by the employer, submit a status report to the board in the format determined by the board.*

For non-performing Contractors, the formal process must be following (place the Contractor on terms through the Legal Services etc).

Poor or non-performing Contractors must be recorded in a database.

#### **1.11.12. Project/Contract Closure**

The Project Execution Guideline Manual indicates the process to be followed for project closure, which could comprise of multiple contracts. This is not a CIDB requirement, but is an important internal process to reconcile costs, create an asset and ensure that the Operations Division takes the asset over for normal operations and maintenance.

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

#### **38.**

- (1) The Accounting Officer may –
- (a) dispense with the official procurement processes established by this Policy and 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 food for such animals and/or botanical specimens for nature and game reserves; or
    - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
  - (b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.
- (2) The Accounting Officer must record the reasons for any deviations in terms of paragraphs 38(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) Paragraph 38(2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this Policy.

#### **(a) Contract Variation**

If a variance arises and if the original tender prices are no more than 1 year old, then the original adjudication ranking order of the Tenderers can be used to initiate the additional work. If the prices are more than a year old then Procurement must test the market (confirm latest prices and check for new entrants), or an enquiry may be issued. Cognisance must be taken that *Preliminary and General (set up cost) charges* for small jobs may limit the pricing competitiveness of using another contractor.

#### **I. Variations In Scope**

Contracts are either generated from projects (one project may require multiple contracts) or from services that require to be rendered to Elias Motsoaledi Local Municipality (cleaning, security, consulting) where Elias Motsoaledi Local Municipality does not wish to, or does not have the capacity or expertise to undertake the service itself.

Scope variations occur when Elias Motsoaledi Local Municipality decides it needs additional work undertaken as part of the same contract, these variances can either be additional items or additional time spent (applicable to consulting services at fixed rates). (Variation can also occur due to price adjustment of special material or unforeseen circumstances)

Generally these items emanate from Elias Motsoaledi Local Municipality, there are occasions when Elias Motsoaledi Local Municipality may accept that the initial scope cannot be well defined and that scope variances are acceptable, in these cases there must be mutual agreement of the increased scope and *the cost thereof* by both parties before the work may proceed.

In the case of contracts for projects the percentage for contingencies is prescribed in the "Project Execution Guideline Manual". These contingency amounts are designed to be adequate for variations in the scope of work and take into account the degree of unknown factors in a project (renovation work requires a higher tolerance). The contingency amount together with the 5% tolerance on expenditure is adequate to cover variations in the scope of work.

Accounting Officer may expand or vary the contract by not more than 20 % for constructions related goods or services and infrastructure projects; 15 % for all other goods and services of the original value of the contract.

Any expansion or variation in excess of these thresholds must be dealt with in terms of the provisions of section 116 (3) of the MFMA which will be regarded as an amendment to the contract.

## **II. Variations In Quantities**

Contracts are based either on fixed quantities or variable quantities, which would be the case for a chemical contract where the volumes used are based on water sales.

### **iii. Fixed Quantity Contracts**

Any variance to the quantities as originally estimated in the tender is equivalent to a variance in scope and the tolerances as discussed above will apply.

### **iv. Variable Quantity Contracts**

In many instances we are contracting on a rate and not on a total price, these types of contracts vary from hired labour to chemical usage.

The Tender Committee will approve the rates and may set an upper limit for the tender at the time of considering the report. If the Tender Committee does not set such a limit then the upper limit will be constrained by the budget for that item or the authorised vote.

For items that are dependant on sales volumes, such as chemicals, then the additional sales volumes should pay for the additional chemicals used and the budget for that item will determine the upper limit. The control on this expenditure occurs at the PIC.

Additional chemical usage may also occur due to a sudden deterioration in the quality of the water resource and under these circumstances it is only necessary to request an increase in the Contractual value when the additional expenditure is expected to exceed 15% of the contract value.

## **V. Variations In Price**

Price variances would occur due to scope or quantity changes, changes in the rates or changes in escalation or rate of exchange.

## **VI. Fixed Price Contracts**

The expenditure may not exceed the contract value by more than 5% (there is no additional contingency); thereafter variations should be submitted to the appropriate delegated authority for approval.

## **VII. Variable Price Contracts**

This category is the same as variable quantity contracts and the same conditions will apply here.

## **VIII. Escalation And Rate Of Exchange**

Variances due to escalation and ROE are beyond our control and provided that the original tender reflects that the contract will be subject to escalation and/or ROE and that the basis of both are known (which escalation formula will apply and what rate is ROE based on) then variances for these items is acceptable.

Finance Division to review the escalation or ROE once it reaches 25% of the contract value for tenders above R10m.

### **ix. Emergencies**

Variations due to emergency situations are acceptable under certain circumstances and the approval process is covered under *clause 3.7 in the Procurement Policy*

### **x. Research And Development Contracts**

It may be necessary from time to time to try a number of different products until a satisfactory or optimum solution is found to a problem. The end user must notify SCM that the contract is an R&D contract, which must have been authorised by a Departmental Manager. There is no specific percentage tolerance on the variation but the total cost may not exceed R500 000, whereafter a General Manager must authorise the variance up to R2m.

### **xi. Authorised Vote And Budgetary Provision**

It is incumbent on the end user to ensure that the proper procedures or policies have been adhered to in terms of obtaining authorisation for a project to proceed and that there is adequate budgetary provision.

## **Unsolicited bids**

### **39.**

- (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 paragraph 39(2) of this Policy, the decision must be made public in accordance with section 21(A) of the Municipal Systems Act, together with –
  - (a) reasons as to why the bid should not be open to other competitors;
  - (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
  - (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) All written comments received pursuant to paragraph 39(3), including any responses from the unsolicited bidder, must be submitted to the National Treasury and the relevant provincial treasury for comment.
- (5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the Accounting Officer, depending on its delegations.
- (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (7) When considering the matter, the adjudication committee must take into account:
  - (a) any comments submitted by the public; and
  - (b) any written comments and recommendations of the National Treasury or the relevant provincial treasury.
- (8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the Accounting Officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.
- (9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality to the bid may be entered into or signed within 30 days of the submission.

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

### **40.**

- (1) In order to combat the abuse of the supply chain management system the Accounting Officer must –
  - (a) take all reasonable steps to prevent abuse of the supply chain management system;
  - (b) investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this Policy, and when justified –
    - (i) take appropriate steps against such official or other role player; or
    - (ii) report any alleged criminal conduct to the South African Police Service;
  - (c) check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, or any of its

directors, is listed as a person prohibited from doing business with the public sector;

- (d) reject any bid from a bidder –
  - (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality, or to any other municipality or municipal entity, are in arrears for more than three months unless satisfactory arrangements have been made to pay of the arrears or a consent to recover the arrears from all future payments to the bidder has been given; 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 wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - (iv) has been listed in the Register for Bid Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (Act No 12 of 2004).

(2) The Accounting Officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of paragraphs 39(1)(b)(ii), (e) or (f) of this Policy.

(3) **Declaration**

3.1 For purpose of establishing control measures to eliminate fraud and corruption-

- a) A declaration schedule will form an integral part of all the Municipality's bid documents;
- b) Bidders must be required to complete the schedule as a prerequisite to submission of any bid;
- c) Lack of declarations or incomplete declaration can act as a disqualification.



3.2 Declaration of interest by councilors, officials, suppliers, service providers and consultants:

1. In order to obtain the disclosure of any interests that councilors, official, supplier, service provider or consultant may have with regard to a bid, the declaration of interest schedule must be completed prior to the award of a bid.
2. The declaration of interest must be completed by the following persons:-
  - a) All councilors and officials in the evaluation or approval of a bid;
  - b) All suppliers, service providers or consultants who are involved in the preparation of bid documentation and a bid reporting; and
  - c) Any other person who played a role in the preparation, specification, evaluation and approval of a bid and who has an interest in the award thereof.
  - d) The municipality reserves the right to vet any official, councilor or supplier who they deem necessary or believe that incorrect information is being supplied.

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

#### **Logistics management**

**41.**

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 which should, where practical, incorporate the coding of items to ensure that each item has a unique number for the purposes of monitoring;
- (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;
- (d) before payment is approved, certification by the responsible officer that the goods and services are received or rendered on time and are 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**

**42.**

- (1) The Accounting Officer in conjunction with the Head of Department is responsible for the management of Council's assets which includes the disposal and maintenance thereof.

- (2) Over and above the conditions contained in this policy the processes described in the municipality's asset management policy must be adhere to by the Accounting Officer and Head of Departments.
- (3) The additional criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to section 14 of the Act, are as follows –
- (a) Movable assets:
    - (i) the asset is uneconomical to repair;
    - (ii) the asset is irreparable;
    - (iii) the relevant department has no further use for the asset; and
    - (iv) no other department requires the asset.
  - (b) Immovable assets:
    - (i) the relevant department has no further use for the asset;
    - (ii) no other department requires the asset; and
    - (iii) a member of the public wishing to acquire the asset can utilize the asset to the advantage of the community.
  - (c) Assets must be disposed of by–
    - (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
    - (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
    - (iii) selling the asset; or
    - (iv) destroying the asset.
- (4) The Accounting Officer must ensure that –
- (a) immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
  - (b) movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
  - (c) in the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment;
  - (d) in the case of the disposal of firearms, the National Conventional Arms Control Committee has approved any sale or donation of firearms to any person or institution within or outside the Republic;
  - (e) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;
  - (f) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed; and
  - (g) where assets are traded in for other assets, the highest possible trade-in price is negotiated.
- (5) The disposal of immovable assets is subject to the following principles –
- (a) Payment of the purchase price and costs:-
    - (i) A 20% deposit shall be payable upon the date of signature of the proposed Deed of Sale, which deposit shall not be refundable should the purchaser decide not to proceed with the registration of

the transfer for whatsoever reason, unless adverse soil conditions can be proven.

- (ii) A bank guarantee for the outstanding balance of the purchase price shall be submitted to the Corporate and Legal Services Department within 30 (thirty) days of the date of signing the Deed of Sale, which shall be payable upon registration of transfer of the property.
- (iii) The proceeds of the sale shall be deposited into the Land Trust Fund.
- (iv) All costs (advertising, rezoning, obtaining of a valuation, etc.) pertaining to the transaction shall be borne by the applicant/successful bidder. The applicant/successful bidder will deposit an amount equal to an estimate of the total cost to secure his obligations in this regard and undertake to pay any unforeseen excess costs. The municipality will be liable to refund the balance of the unexpended costs, should the alienation not be finalised within a reasonable time or within the time limit referred to in the bidder document or deed of sale, or should the actual deposit be less than the expenditure occurred, the applicant/successful bidder shall pay the outstanding costs.

(b) Standard Conditions:-

- (i) The purchaser shall commence with the development of the property within six (6) months after the date of transfer and shall complete the development within eighteen (18) months thereafter.
- (ii) Should the purchaser fail to commence with or complete the development as stipulated in paragraph 41(4)(b)(ii) above, the property shall revert to the municipality and be transferred back to the municipality at the discretion of the Accounting Officer.
- (iii) Should the property revert to the municipality, the municipality shall refund to the purchaser an amount equal to the amount paid by the purchaser in respect of the purchase price, less all costs attached to the retransfer of the property into the name of the municipality, which costs shall be for the account of the purchaser. The municipality will only compensate the purchaser for any improvements erected on the property after the property has been resold to another purchaser and the purchase has been paid by said purchaser.
- (iv) In order to comply with the requirements of the Deeds Office as set out in Circular No 152 dated 1997.07.03 by the Registrar of Deeds, the above conditions imposed shall not be embodied in the Title Deed to be issued to the purchaser, but instead the following conditions shall be inserted in such deed "The property shall not be transferred without the written approval of the EMLM".
- (v) The use of all immovable assets disposed of in terms of this Policy shall be in accordance with the requirements of the Spatial Development Framework as adopted by the Council by ensuring

that the conditions of sale include compliance by purchasers within the principles of the said Framework.

- (vi) All immovable assets sales will be done subject to the necessary environmental legislation being complied with by the purchaser in respect of the intended use of the property.
- (vii) Any sale of immovable assets by the municipality which is to be utilised for purposes of housing to be funded and/or subsidised from National and/or Provincial Housing funds shall be done in compliance with the principles, policies and procedures as contained in National and Provincial Housing legislation and any Housing code and/or Land Procurement Procedures prescribed under such legislation.
- (viii) The extent to which the intended disposal of the immovable property will promote the principles of integration, densification, regeneration and compact development, shall be considered in deciding whether to dispose of the property.

## **Risk management**

### **43.**

- (1) The criteria for the identification, consideration and avoidance of potential risks in the supply chain management system, are as follows –
  - (a) non compliance by the supplier to deliver within the agreed timeframes;
  - (b) supply of inferior goods or services by the supplier;
  - (c) inability of the supplier to provide goods or services as ordered;
  - (d) non adherence to the municipality's Policy with regards to utilisation of preferred suppliers; and
  - (e) procurement of goods or services at prices or of a quality not in the best interest of the municipality.
- (2) Risk management must include –
  - (a) the identification of risks on a case-by-case basis;
  - (b) the allocation of risks to the party best suited to manage such risks;
  - (c) acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
  - (d) the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
  - (e) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.
- (4) In order to reduce the risk on contract, the accounting officer must include the provision of sureties for the due performance on a contract and retention of a portion of moneys due to a contract.
- (5) Service providers should be subject to disqualification if there is sufficient evidence of consistent failure to meet the standards specified by the Municipality.
- (6) Service providers should be evaluated based on contract adherence and performance. Upon reasonable notice in writing to the service provider involved, and after a reasonable opportunity for response, a service provider should be disqualified for a period not exceeding five years from participation in a solicitation for goods and services. Service provider should be disqualified if:

- (i) Serious breach of contract indicating unwillingness to perform a contract in accordance with the terms and conditions.
- (ii) An indication of lack of business integrity or honesty which directly and serious effects the responsibility of the contractor.

### **General Points to consider during the assessment of Risk Management**

#### **1.12. Conflict of Interest**

All procurement activities must be in accordance with ELIAS MOTSOALEDI LOCAL MUNICIPALITY's Code of Ethics as amended from time to time. Any departure thereto may lead to disciplinary proceedings in terms of Elias Motsoaledi Local Municipality's Disciplinary code and Procedure.

#### **1.13. Supplier Relations**

**1.13.1.** It is ELIAS MOTSOALEDI LOCAL MUNICIPALITY policy to conduct business in a manner that encourages good supplier relations within an environment that promotes competition and is in compliance with the law. All forms of "sharp practice" shall be avoided. ELIAS MOTSOALEDI LOCAL MUNICIPALITY will fulfil its contractual commitments to suppliers and require that suppliers meet their contractual commitments to ELIAS MOTSOALEDI LOCAL MUNICIPALITY.

**1.13.2.** Alternate sources of supply, where appropriate, shall be actively sought and developed. Consideration shall be given to all known commercially available products / services in a particular product/service category that meet the technical or performance standards of ELIAS MOTSOALEDI LOCAL MUNICIPALITY, prior to the selection of a product/service unless as otherwise stated herein.

**1.13.3.** All purchases of products / services must be effected through a legally compliant, *written* contract / order. Its purpose is to state and record all pertinent information constituting the agreement as well as contain language which establishes a uniform position and serves to protect ELIAS MOTSOALEDI LOCAL MUNICIPALITY should a problem arise. In the case of a stand alone purchase order, where no pre-existing contract governs the transaction the purchase order, which contains ELIAS MOTSOALEDI LOCAL MUNICIPALITY's pre-printed terms and conditions, becomes the contract.

It is ELIAS MOTSOALEDI LOCAL MUNICIPALITY's policy not to trade on the standard conditions of the supplier and best efforts will be made to ensure that ELIAS MOTSOALEDI LOCAL MUNICIPALITY's interests are protected through acceptable terms and conditions.

#### **1.14. Insurance Requirements**

**1.14.1.** It is the policy of ELIAS MOTSOALEDI LOCAL MUNICIPALITY for contracts with individuals or legal entities to have the appropriate insurance.

- 1.14.2.** It is the responsibility of the procuring personnel to determine if the agreement about to be entered into could place ELIAS MOTSOLEDI LOCAL MUNICIPALITY in a position of liability and to ensure appropriate insurance requirements are met, either by ELIAS MOTSOLEDI LOCAL MUNICIPALITY or the supplier.
- 1.14.3.** Any modification or waiver of the insurance requirements in standard contract language constitutes risk and requires written approval prior to the execution of the contract. Legal Services must be consulted and give their approval prior to executing the contract.

## **1.15. Financial Analysis**

- 1.15.1.** It is ELIAS MOTSOLEDI LOCAL MUNICIPALITY's policy to conduct business with suppliers that are financially sound and can provide continuity of product / service and/or service performance. Likewise, ELIAS MOTSOLEDI LOCAL MUNICIPALITY should endeavour to ensure that the supplier(s) are not exclusively dependent upon ELIAS MOTSOLEDI LOCAL MUNICIPALITY's business.
- 1.15.2.** Financial analysis (also known as credit analysis or advice) becomes part of the supplier documentation file and will be obtained/performed prior to the execution of the following transactions which exceeds an annual value of R100 000.00 (Hundred Thousand rand)
- Any agreement, contract, amendment or order. Individual orders issued under a credit approved agreement do not require individual credit reviews.
  - Any arrangement requiring progress payments or any payment prior to receipt and acceptance of the purchased goods or services.
  - Any arrangement in which a supplier holds ELIAS MOTSOLEDI LOCAL MUNICIPALITY's property, inventory or stocks on the supplier's premises or in a commercial warehouse.
  - Any cost plus arrangement.
  - Or any other, at the discretion of Elias Motsoledi Local Municipality
- 1.15.3.** When the aggregated value of a contract its' amendment(s) exceed R100 000.00 (Hundred Thousand rand) a credit analysis is required. For example, an amendment valued at R40 000,00, which is proposed for a contract already in place valued at R80 000.00 (which had not originally required credit analysis) would require credit analysis for the amendment because the result is a total value in excess of R100 000.00.
- 1.15.4.** In some cases, suppliers of substantial credit worthiness may qualify for blanket credit approval. Reference to existing blanket approval in the documentation will constitute credit approval. Blanket credit approval will be performed by the Finance

Division and will be approved at the delegated authority level. Blanket approval updates are issued upon request and are updated and reissued annually.

- 1.15.5.** Credit analysis and all financial statements, interviews, notes and information are considered ELIAS MOTSOLEDI LOCAL MUNICIPALITY proprietary information and should be safeguarded as such.
- 1.15.6.** While ELIAS MOTSOLEDI LOCAL MUNICIPALITY desires its account to be large enough to be important to a supplier, ELIAS MOTSOLEDI LOCAL MUNICIPALITY must attempt to avoid situations where a supplier becomes over-dependent upon ELIAS MOTSOLEDI LOCAL MUNICIPALITY as a client.
- 1.15.7.** Normally, a reasonable maximum dependency is considered to be 30% of a supplier's volume. There are exceptions to this guideline, which must be weighed in light of the total merits of the situation, including BEE. A supplier might also offer superior service, technology or cost savings that justify an over-dependent situation, or other factors, that ELIAS MOTSOLEDI LOCAL MUNICIPALITY deems appropriate.
- 1.15.8.** Following a policy to prevent over-dependence need not eliminate small business suppliers. Awards should be made on supplier capability. Split awards of major projects can also be used to ensure that all potential suppliers have the opportunity to participate in business that reasonably matches their capabilities.
- 1.15.9.** When situations of supplier over-dependence are discovered that indicate a reduction in business is appropriate, the impact on the supplier should be considered. Advance notice of planned purchase reductions should be provided to the supplier. In cases where it is determined that awarding a particular contract would make a supplier over-dependent, the supplier should be informed of ELIAS MOTSOLEDI LOCAL MUNICIPALITY's policy prior to the award.
- 1.15.10.** In cases where it is determined expedient, by the GSSE, to award business which results in exceeding the dependency guideline and constitutes assumption of commercial risk, the rationale for the decision to exceed the guideline, should be documented and the case monitored, to prevent a problem from occurring. The supplier should be informed of ELIAS MOTSOLEDI LOCAL MUNICIPALITY's policy on over-dependency prior to the award.

## **1.16. Quality Assurance**

- 1.16.1.** Quality assurance programs, decisions and implementation regarding quality assurance source inspection, and the acceptance or rejection of non-conforming product/services purchased through the Procurement Department, is joint responsibility of the Procurement Department and representatives of the MFST (Multi Functional Sourcing Team).
- 1.16.2.** The Procurement Department should be notified upon the identification of ELIAS MOTSOLEDI LOCAL MUNICIPALITY's need for a product / service that usually results in a contract, to allow for the supplier quality analysis, development of a

quality assurance program, preparation of quality program specifications for contracts and the implementation of source inspection where appropriate.

#### **1.17. Supplier Visits and Contact with Suppliers**

- 1.17.1.** Supplier representatives may at times have access to ELIAS MOTSOLEDI LOCAL MUNICIPALITY offices. However, offices are under *no* obligation to receive a product/service presentation from a supplier. Suppliers approaching managers / HODs to propose the use, purchase or trial of unapproved for purchase/non-standard product / services for use should be referred to the Procurement Department and to the appropriate MFST as defined in section 5.3 if applicable.
- 1.17.2.** Procurement personnel are the designated interface with suppliers for goods and services. This includes serving as the primary contact point and interface as appropriate. Procurement should therefore, be the recipient of supplier inquiries relating to procurement and ELIAS MOTSOLEDI LOCAL MUNICIPALITY's procurement policies and procedures.
- 1.17.3.** Contact with suppliers by duly authorised ELIAS MOTSOLEDI LOCAL MUNICIPALITY representatives is permitted only before a tender is issued. Contact with suppliers by any employee should not result in any expressed or implied commitments to do business without the prior written approval of the appropriate delegated authority, including duly appointed representatives of the MFSTs.
- 1.17.4.** Contact with suppliers during the tender evaluation process is restricted to duly appointed MFST representatives in conjunction with the Procurement Department.
- 1.17.5.** Suppliers who circumvent the above policies may be advised in writing that their failure to support and conform to ELIAS MOTSOLEDI LOCAL MUNICIPALITY's policy may become a definite consideration in ELIAS MOTSOLEDI LOCAL MUNICIPALITY's procurement decision.

#### **1.18. Emergency Purchases**

- 1.18.1.** Purchases made for "emergency situations" which may circumvent the established procurement policy shall be limited to the following types of situations as approved by the Portfolio Heads, in conjunction with the MFSTs:
- Disaster (e.g. damage to assets, flood, fire, etc.);
  - Essential Services;
  - System failures (including supporting items which could affect the system).
- 1.18.2.** Although the documentation for emergency purchases will likely be completed after the purchase, thorough documentation of the purchasing decision must be prepared and sign off by the relevant delegated authority or higher is required.



## **Performance management**

### **44.**

The Accounting Officer must ensure that an effective internal monitoring system is implemented in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes were followed and whether the measurable performance objectives linked to and approved with the budget and the service delivery and budget implementation were achieved.

## **Contract Management**

### **45.**

#### **(1) Service Level Agreements**

Contracts concluded for the procurement of goods and services should be made subject to the conclusion of a Service Level Agreements.

#### **(2) Extension/Expansion of Contracts**

Accounting Officer must as far as possible refrain from extending/expanding contracts and /or allowing variation orders as it increases the risks, reflects possible flaws in the planning process and it creates an uncompetitive environment, possible unfairly prejudicing other possible vendors.

Accounting Officer may expand or vary the contract by not more than 20 % for constructions related goods or services and infrastructure projects; 15 % for all other goods and services of the original value of the contract.

Any expansion or variation in excess of these thresholds must be dealt with in terms of the provisions of section 116 (3) of the MFMA which will be regarded as an amendment to the contract.

#### **(3) Orders**

Supplies should be delivered and services rendered only upon a written official order from the Municipality, and accounts should be rendered as indicated on the official order or in the contract, as the case may be.

#### **(4) Guarantees**

Unless the contract stipulates otherwise, the contractor should guarantee for a period of twelve months that no faulty material or workmanship was used in the manufacture of goods or in the execution of services and that the finish product is not defective. Should the guarantee not be compiled with, the Municipality must, without prejudice to any other rights it may have, demand that the supplies are replaced and the services repaired without cost to the Municipality.

(5) **Payment for Supplies and Services**

- (1) Subject to any instructions issued with a contract or order, a contractor should be paid for supplies delivered and services rendered in accordance with the under-mentioned provisions:
- (a) On the basis of delivery into store or to another nominated destination, only after receipt of a detailed account and after delivery has been effected.
  - (b) On the basis of delivered and erected, installed, etc., only after receipt of a detailed account supported by a certificate of satisfactory execution issued by a Municipality agent.
  - (c) Payment should normally be effected within **30 days** of receipt of all the required documentation, which should be correct in every respect. Should a contractor indicate a special discount on his/her account provided payment is made within a certain time, every effort should be made to take advantage of such discount.
  - (d) As a rule, payment is made to the contractor only. When payment is claimed by another party the latter must produce a written transfer, power of attorney or authorisation and, before payment is made, the contractor must confirm that the transfer, power of attorney or authorisation has been given by him/her and that payment may be claimed in terms thereof.

(6) **Remedies in case of death, sequestration, liquidation or judicial management**

- (a) In the event of the death of a contractor or the provision or final sequestration of his/her estate or of his/her cession or transfer of a contract without the approval of the Council or of the surrender of his/her estate or of his/her reaching a compromise with his/her creditors or of the provisional or final liquidation of a contractor's company or the placing of its affairs under judicial management, the Council must, without prejudice to any other rights it may have, exercise any of the following:
- (b) Cancel the contract and accept any of the bids, which were submitted originally with that of the contractor or any offer subsequently received to complete the contract. In such a case the estate of the contractor shall not be relieved from liability for any claim which has risen or may arise against the contractor in

respect of supplies not delivered or work not carried out by him/her under the contract, and the Council shall have the right to hold and retain all or any of the securities and retention moneys held by it at the date of the aforesaid occurrences until such claim has been satisfied; or

- (c) Allow the executor, trustee, liquidator or judicial manager, as the case may be, for and on behalf of and at the cost and expenses of the estate of the contractor to carry on with and complete the contract.

(7) **Contractor's Liability**

- (a) In the event of the contract being cancelled by the Council in the exercise of its rights in terms of these conditions, the contractor should be liable to pay to Council any losses sustained and/or additional costs or expenditure incurred as a result of such cancellation and Council should have the right to recover such losses, damages or additional costs by means of set-off from moneys due or which may become due in terms of the contract or any other contract, or from a guarantee provided for the due fulfilment of the contract and, until such time as the amount of such losses, damages or additional costs have been determined, to retain such moneys or guarantee or any deposit as security for any loss which the Council may suffer or have suffered.

The contractor must be held responsible for any consequential damages and loss sustained which may be caused by any defect, latent or otherwise, in the supply or service rendered or if the supply or service as a result of such defect, latent, otherwise, does not conform to any condition or requirement of the contract.

(8) **Transfer of Contracts**

The contractor must not abandon, transfer, assign or sublet a contract or part thereof without the written permission of the Council.

***Part 4: Other matters***

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

**46.**

- (1) The Accounting Officer must ensure that, irrespective of the procurement process followed, no award above R 15 000 (VAT included) is given to a person whose tax matters have not been declared by the South African Revenue Service to be in order.

- (2) Before making an award to a provider or bidder, a tax clearance certificate from SARS must first be provided as contemplated in paragraph 13(a)(iv).

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

#### **47.**

The Accounting Officer must ensure that irrespective of the procurement process followed, no award may be made to a person –

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

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

#### **48.**

The notes to the annual financial statements must disclose particulars of any award of more than R2 000 (VAT included) to a person who is a spouse, life partner, 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**

#### **49.**

- (1) A code of ethical standards is hereby established, in accordance with paragraph 47(2), for officials and other role players in the supply chain management system of the municipality in order to promote –
- (a) mutual trust and respect; and
  - (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
- (2) An official or other role player involved in the implementation of this Supply Chain Management 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 R350.00.
  - (d) notwithstanding paragraph 47(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 the 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 48(1) of this Policy;
    - (iii) any alleged breach of this code of ethical standards.
- (3) Declarations in terms of paragraphs 47(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 adopted by the Municipality must be dealt with in accordance with schedule 2 of the Local Government: Municipal Systems Act, 2000.

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

##### **50.**

- (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 paragraph 48(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) Paragraph 48(1) does not apply to gifts less than R350.00 in value.

## **Sponsorships**

### **51.**

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

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

## **Objections and complaints**

### **52.**

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.

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

### **53.**

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

- (a) to assist in the resolution of disputes between the municipality and other persons regarding -
  - (i) any decisions or actions taken in the implementation of the supply chain management system; or
  - (ii) any matter arising from a contract awarded in the course of the supply chain management system; or
- (b) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.

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

(3) The person appointed must –

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

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

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

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

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

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

### **54.**

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

## **Payment of sub-contractors or joint venture partners**

### **55.**

The Chief Financial Officer or an official designated by the Chief Financial Officer may consent to the direct payment of sub-contractors or joint venture partners by way of -

- (a) an approved cession; or
- (b) an agreement for direct payment.

## **Extending or varying a contract**

### **56.**

- (1) Subject to paragraph 54(2), the municipality on its own initiative or upon receipt of an application from the person, body, organisation or corporation supplying goods or services to the municipality in terms of this Policy, may resolve to extend or vary a contract if –
  - (a) the circumstances as contemplated in paragraph 38(1)(a) prevail; or
  - (b) with due regard to administrative efficiency and effectiveness, the Accounting Officer deems it appropriate.
- (2) The municipality may not extend or vary a contract –
  - (a) more than once;
  - (b) for a period exceeding the duration of the original agreement; or
  - (c) for an amount exceeding the original bid value plus any adjustments in terms of the consumer price index.
- (3) Within one (1) month of the decision referred to in paragraph 54(1), the matters specified in paragraph 54(4) must be –
  - (a) published by the Municipality at least in an appropriate newspaper circulating within the boundaries of the municipality; and
  - (b) displayed at a prominent place that is designed for that purpose by the Municipality.
- (4) The matters to be published or displayed are –
  - (a) the reasons for dispensing with the prescribed procedure;
  - (b) a summary of the requirements of the goods or services; and
  - (c) the details of the person, body, organisation or corporation supplying the goods or services.
- (5) The functions of the Accounting Officer in terms of paragraph 54 may not be assigned nor delegated.

**Local Economic Development**  
**57.**

For the purpose of Local Economic Development within the municipality, any construction contract that is awarded to a company that does not reside within the municipal area will be subjected to subcontract 30% of the contract value to a local company or business.

**Short title and commencement**  
**57.**

This Policy is called the “*Supply Chain Management Policy of the EMLM*” and takes effect on approval by Council.

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## PART B

### PREFERENTIAL PROCUREMENT POLICY

#### PREAMBLE

**WHEREAS** Elias Motsoaledi Local Municipality (**EMLM**) aims to improve the quality of life of all citizens and to free the potential of each person within a framework facilitating service delivery, and effective governance; the Council recognized the need for transparent procedures in the application of preferential procurement;

**AND WHEREAS** economic development plays a crucial role in the creation of a prosperous, equitable, stable and democratic society with decent work and living standards for all in the context of equality in ownership, skills and access to opportunities;

**NOW THEREFORE** the Council of the **EMLM** resolves in terms of section 2 of the Preferential Procurement Policy Framework Act, No. 5 of 2000 to adopt the following preferential procurement policy for the municipality:

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## **SCOPE**

1. This policy applies to all contracts for the provision of goods and services to by the municipality.

## **PURPOSE**

2. The purpose of the policy is to provide a framework within which effect can be given to the principle of preferential procurement, while ensuring that fair, equitable, transparent, competitive and cost effective procurement practices are adhered to.

## **OBJECTIVES**

3. The objectives of the policy are to:
  - (a) Provide clarity on the municipality's approach to preferential procurement.
  - (b) Provide access to contracts for historical disadvantaged individuals.
  - (c) Promote EME participation.
  - (d) Promote capacity development and skills transfer
  - (e) Promote job creation.
  - (f) Create an enabling contractual environment.

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) STATUS LEVEL CERTIFICATES**

4.
  - a) Bidders are required to submit original and valid B-BBEE Status Level Verification Certificates or certified copies thereof together with their bids, to substantiate their B-BBEE rating claims.
  - b) Bidders who do not submit B-BBEE Status Level Verification Certificates or are non-compliant contributors to B-BBEE do not qualify for preference points for BBEE but should not be disqualified from the bidding process. They will score points out of 90 or 80 for price only and zero (0) points out of 10 or 20 for BBEE.
  - c) A trust, consortium or joint venture must submit a consolidated B-BBEE Status Level Verification Certificate for every separate bid.
  - d) Public entities and tertiary institutions must also submit B-BBEE Status Level Verification Certificates together with their bids.
  - e) If an institution is already in possession of a valid and original or certified copy of a bidder's B-BBEE Status Level Verification Certificate that was obtained for the purpose of establishing the database of possible suppliers for price quotations or that was submitted together with another bid, it is not necessary to obtain a new B-BBEE Status Level Verification Certificate each time a bid is submitted from the specific bidder. Such a certificate may be used to substantiate B-BBEE rating claims provided that the closing date of the bid falls within the expiry date of the certificate that is in the institution's possession. Each time this provision is applied, cross-reference must be made to the B-BBEE Status Level Verification Certificate already in possession for audit purposes.
  - f) AOs / AAs must ensure that the B-BBEE Status Level Verification Certificates submitted are issued by the following agencies:
    - **Bidders other than EMEs**
      - a) Verification agencies accredited by SANAS; or
      - b) Registered auditors approved by IRBA.

- **Bidders who qualify as EMEs**
  - a) Accounting officers as contemplated in the CCA; or
  - b) Verification agencies accredited by SANAS; or
  - c) Registered auditors. (Registered auditors do not need to meet the prerequisite for IRBA's approval for the purpose of conducting verification and issuing EMEs with B-BBEE Status Level Certificates).

## **ASSESSING THE VALIDITY OF B-BBEE STATUS LEVEL VERIFICATION CERTIFICATES**

### **5.**

ELIAS MOTSOALEDI will ensure that the B-BBEE STATUS LEVEL VERIFICATION CERTIFICATES are or have been accredited as follows:

- **Verification agencies accredited by SANAS**
  - a) These certificates are identifiable by a SANAS logo and a unique BVA number.
  - b) Confirmation of the validity of a B-BBEE Status Level Verification Certificate can be done by tracing the name of the issuing Verification Agency to the list of all SANAS accredited agencies. The list is accessible on [http://www.sanas.co.za/directory/bbee\\_default.php](http://www.sanas.co.za/directory/bbee_default.php). The relevant BVA may be contacted to confirm whether such a certificate was issued.
  - c) As a minimum requirement, all valid B-BBEE Status Level Verification Certificates should have the following information detailed on the face of the certificate:
    - The name and physical location of the measured entity;
    - The registration number and, where applicable, the VAT number of the measured entity;
    - The date of issue and date of expiry;
    - The certificate number for identification and reference;
    - The scorecard that was used (for example EME, QSE or Generic);
    - The name and / or logo of the Verification Agency;
    - The SANAS logo;
    - The certificate must be signed by the authorized person from the Verification Agency; and
    - The B-BBEE Status Level of Contribution obtained by the measured entity.
- **Registered auditors approved by IRBA**
  - a) The format and content of B-BBEE Status Level Verification Certificates issued by registered auditors approved by IRBA must –
    - Clearly identify the B-BBEE approved registered auditor by the auditor's individual registration number with IRBA and the auditor's logo;
    - Clearly record an approved B-BBEE Verification Certificate identification reference in the format required by the SASAE;
    - Reflect relevant information regarding the identity and location of the measured entity;
    - Identify the Codes of Good Practice or relevant Sector Codes applied in the determination of the scores;
    - Record the weighting points (scores) attained by the measured entity for each scorecard element, where applicable, and the measured entity's overall B-BBEE Status Level of Contribution; and
    - Reflect that the B-BBEE Verification Certificate and accompanying assurance report issued to the measured entity is valid for 12 months from the date of issuance and reflect both the issuance and expiry date.
  - b) Confirmation of the validity of a B-BBEE Status Level Verification Certificate can be done by tracing the name of the issuing B-BBEE approved registered auditor to the list of all approved registered auditors. The list is accessible on

<http://www.thedti.gov.za> and / <http://www.irba.co.za>. The relevant approved registered auditor may be contacted to confirm whether such a certificate was issued.

## 5.1 VERIFICATION CERTIFICATES IN RESPECT OF EMEs

- a) In terms of the Generic Codes of Good Practice, an enterprise including a sole propriety with annual total revenue of R5 million or less qualifies as an EME.
- b) In instances where Sector Charters are developed to address the transformation challenges of specific sectors or industries, the threshold for qualification as an EME may be different from the generic threshold of R5 million. The relevant Sector Charter thresholds will therefore be used as a basis for a potential bidder to qualify as an EME. For example the approved thresholds for EMEs for the Tourism and Construction Sector Charters are R2.5 million and R1.5 respectively.
- c) EMEs are deemed to have a B-BBEE status of "level four (4) contributor". In instances where EMEs are more than 50% owned by black people, such EMEs qualify as "B-BBEE status level three (3) contributors".
- d) Sufficient evidence to confirm a qualifying EME is a certificate issued by an Accounting Officer (as contemplated in the CCA), a similar certificate issued by a Registered Auditor or a Verification Agency.
- e) When confirming the validity of a certificate in respect of an EME, the following should be detailed on the face of the certificate:
  - The Accounting Officer's or Registered Auditor's letter head with full contact details;
  - The Accounting Officer's or Registered Auditor's practice numbers;
  - The name and the physical location of the measured entity;
  - The registration number and, where applicable, the VAT number of the measured entity;
  - The date of issue and date of expiry;
  - The B-BBEE Status Level of Contribution obtained by the measured entity; and
  - The total black shareholding and total black female shareholding.
- f) Any enquiries in respect of B-BBEE Status Level Verification Certificates may be directed to the Department of Trade and Industry (dti) as follows:

Ms Makhosazana Seate

Director: Empowerment and Enterprise Development Division (EEDD)

Tel: (012) 394 1694

Fax: (012) 394 2694

E-mail: [MSeate@thedti.gov.za](mailto:MSeate@thedti.gov.za)

## INVITATION OF BIDS

### 6.

## PLANNING, STIPULATION OF PREFERENCE POINT SYSTEM TO BE UTILISED AND THE DETERMINATION OF DESIGNATED SECTORS

Prior to the invitation of bids, the AO is required to:

- a) Properly plan for the provision of services, works or goods in order to ensure that the resources that are required to fulfill the needs identified in the strategic plan of the institution are delivered at the correct time, price, place and that the quantity and quality will satisfy those needs.
- b) As far as possible, accurately estimate the costs for the provision of the required services, works or goods. This is in order to determine and stipulate the appropriate

preference point system to be utilised in the evaluation and adjudication of the bids and to ensure that the prices paid for the services, works and goods are market related.

- c) Estimated costs can be determined by conducting an industry and commodity analysis whereby prospective suppliers may be approached to obtain indicative market related prices that may be utilised for benchmarking purposes. Based on the findings, the relevant preference point system (80/20 or 90/10) to be utilized for the evaluation of the bid must be stipulated in the bid documents; and
- d) Determine whether the services, works or goods for which an invitation is to be made has been designated for local production and content in terms of Regulation 9 of the Preferential Procurement Regulations. This will entail the inclusion of a specific condition in the bid documents that only locally produced services, works or goods or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered. This will subsequently have a direct impact on the evaluation of the bid.

## **BIDS BASED ON FUNCTIONALITY AS A CRITERION**

7.

- a) In general, not all bids should be invited on the basis of functionality as a criterion. The need to invite bids on the basis of functionality as a criterion depends on the nature of the required commodity or service taking into account quality, reliability, viability and durability of a service and the bidders technical capacity and ability to execute a contract.
- b) When an institution invites a bid that will also be evaluated on the basis of functionality as a criterion, the AO must clearly specify the following aspects in the bid documents:

- *Evaluation criteria for measuring functionality*

The evaluation criteria may include criteria such as the consultant's relevant experience for the assignment, the quality of the methodology; the qualifications of key personnel; transfer of knowledge etc.

- *Weight of each criterion*

The weight that is allocated to each criterion should not be generic but should be determined separately for each bid on a case by case basis.

- *Applicable value*

The applicable values that will be utilised when scoring each criterion should be objective. As a guide, values ranging from 1 being poor, 2 being average, 3 being good, 4 being very good and 5 being excellent, may be utilised.

- *Minimum qualifying score for functionality.*

The minimum qualifying score that must be obtained for functionality in order for a bid to be considered further should not be generic. It should be determined separately for each bid on a case by case basis. The minimum qualifying score must not be prescribed so low that it may jeopardise the quality of the service required nor so high that it may be restrictive to the extent that it jeopardizes the fairness of the SCM system.

## LOCAL PRODUCTION AND CONTENT

8.

- **Designated Sectors**

- a) Bids in respect of services, works or goods that have been designated for local production and content, must contain a specific bidding condition that only locally produced goods, services or works or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered.
- b) AOs must stipulate in bid invitations that the exchange rate to be used for the calculation of local content (local content and local production are used interchangeably) must be the exchange rate published by the SARB at 12:00 on the date, one week (7 calendar days) prior to the closing date of the bid.
- c) Only the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:201x must be used to calculate local content. The following formula to calculate local content must be disclosed in the bid documentation:

The local content (LC) as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286:201x as follows:

$$LC = 1 - (x/y) * 100$$

Where

X = imported content

Y = bid price excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by the SARB at 12:00 on the date, one week (7 calendar days) prior to the closing date of the bid.

- d) The MBD 6.2 (Declaration Certificate for Local Content) must form part of the bid documentation.
- e) The Declaration Certificate for Local Content MBD 6.2 must be completed and duly signed. AO is required to verify the accuracy of the rates of exchange quoted by the bidder.

- **Non-Designated Sectors**

- a) Where there is no designated sector, the AO may decide to include a specific bidding condition that only locally produced goods, services or works or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered, on condition that such prescript and threshold(s) are in accordance with the specific directives issued for this purpose by the National Treasury in consultation with the dti.
- b) AO must stipulate in bid invitations that the exchange rate to be used for the calculation of local content must be the exchange rate published by the SARB at 12:00 on the date, one week (7 calendar days) prior to the date of closure of the bid.
- c) Only the South African Bureau of Standards approved technical specification number SATS 1286:201x as indicated in paragraph 8 c) above must be used to calculate local content.
- d) For the purpose of paragraphs 8 a) – c), above, the MBD 6.2 (Declaration Certificate for Local Content) must form part of the bid documentation.
- e) The Declaration Certificate for Local Content MBD 6.2 must be completed and duly signed. AO is required to verify the accuracy of the rate(s) of exchange quoted by the bidder in paragraph 4 of this Certificate.
- f) Any enquiries in respect of Local Production and Content may be directed to the Department of Trade and Industry (dti) as follows:

Ms Basani Baloyi  
Director: Industrial Development Division (IDD)  
Tel: (012) 394 3851  
Fax: (012) 394 2851  
E-mail: BBaloyi@thedti.gov.za

## **SERVICES RENDERED BY TERTIARY INSTITUTIONS AND PUBLIC ENTITIES**

### **9.**

- a) Based on thorough analysis of the market, the municipality may invite written price quotations for services that can only be provided by tertiary institutions from the identified tertiary institutions.
- b) Where the required service can be provided by tertiary institutions, public entities and enterprises from the private sector, institutions must invite competitive bids.

## **EVALUATION OF BIDS**

### **10.**

- **DISCOUNTS**

- a) When calculating comparative prices:
- b) Unconditional discounts must be taken into account for evaluation purposes; and
- c) Conditional discounts must not be taken into account for evaluation purposes but should be implemented when payment is effected.

## **SUB-CONTRACTING**

### **11.**

- a) A bidder must not be awarded the points claimed for B-BBEE status level of contribution if it is indicated in the bid documents that such a bidder intends subcontracting more than 25% of the contract value to any other enterprise that does not qualify for at least the same number of points that the bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- b) A contractor is not allowed to sub-contract more than 25% of the contract value to another enterprise that does not have equal or higher B-BBEE status level, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- c) In relation to a designated sector, a contractor must not be allowed to subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

## **EVALUATION OF BIDS BASED ON FUNCTIONALITY AS A CRITERION**

### **12.**

Bids invited on the basis of functionality as a criterion must be evaluated in two stages – first functionality must be assessed and then in accordance with the 80/20 or 90/10 preference point system. The evaluation must be done as follows:



- **First stage – Evaluation of functionality**

- Bids must be evaluated in terms of the evaluation criteria embodied in the bid documents. The amendment of evaluation criteria, weights, applicable values and/or the minimum qualifying score for functionality after the closure of bids is not allowed as this may jeopardise the fairness of the process.
- A bid will be considered further if it achieves the prescribed minimum qualifying score for functionality.
- Bids that fail to achieve the minimum qualifying score for functionality must be disqualified.
- Score sheets should be prepared and provided to panel members to evaluate the bids.
- The score sheet should contain all the criteria and the weight for each criterion as well as the values to be applied for evaluation as indicated in the bid documents.
- Each panel member should after thorough evaluation independently award his / her own value to each individual criterion.
- Score sheets should be signed by panel members and if necessary, written motivation may be requested from panel members where vast discrepancies in the values awarded for each criterion exist.
- If the minimum qualifying score for functionality is indicated as a percentage in the bid documents, the percentage scored for functionality may be calculated as follows:
  - a. The value awarded for each criterion should be multiplied by the weight for the relevant criterion to obtain the score for the various criteria;
  - b. The scores for each criterion should be added to obtain the total score; and
  - c. The following formula should be used to convert the total score to percentage for functionality:

$$Ps = Ms/So * 100$$

where:

Ps = percentage scored for functionality by bid under consideration

So = total score of bid under consideration

Ms = maximum possible score

- The percentage of each panel member should be added and divided by the number of panel members to establish the average percentage obtained by each bidder for functionality.

- **Second stage – Evaluation in terms of the 80/20 or 90/10 preference point systems**

- Only bids that achieve the minimum qualifying score / percentage for functionality must be evaluated further in accordance with the 80/20 or 90/10 preference point systems prescribed in Preferential Procurement Regulations. [Guidance on the evaluation of bids in terms of the 80/20 or 90/10 preference points systems is provided in paragraph 14 of this Policy].

## **EVALUATION OF BIDS BASED ON A STIPULATED MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT**

**13.**

Bids that were invited on the basis of local production and content should be evaluated by following a two-stage bidding process:

- **First stage – Evaluation in terms of the stipulated minimum threshold for local production and content**
  - Bids must be evaluated in terms of the evaluation criteria stipulated in the bid documents. The amendment of the stipulated minimum threshold for local production and content after the closure of bids is not allowed as this may jeopardise the fairness of the process.
  - A bid will be disqualified if: the bidder fails to achieve the stipulated minimum threshold for local production and content; and, the Declaration Certificate for Local Content (MBD 6.2).
  - The local content (LC) as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 201x as indicated in paragraph 8. above.
  - AO must verify the accuracy of the rates of exchange quoted by them bidder in paragraph 4 of the Declaration Certificate for Local Content (MBD 6.2)
- **Second stage - Evaluation in terms of the 80/20 or 90/10 preference point systems**
  - Only bids that achieve the minimum stipulated threshold for local production and content must be evaluated further in accordance with the 80/20 or 90/10 preference point systems prescribed in Preferential Procurement Regulations. [Guidance on the evaluation of bids in terms of the 80/20 or 90/10 preference points systems is provided in paragraph 14 of this Policy].
  - Where appropriate, prices may be negotiated only with short listed or preferred bidders. Such negotiations must not prejudice any other bidders.

## **PREFERENCE POINT SYSTEM**

**14.**

(1) The EMLM's procurement policy is constructed around the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and the Regulations of 2011. This Act and Regulations requires that the preference point system to be as follows:

- a) The 80/20 preference point system is applicable to bids\* with a Rand value equal to, or above R30 000 and up to a Rand value of R1 million (all applicable taxes included). Institutions may apply the 80/20 preference point system to price quotations with a value less than R30 000 if and when appropriate.
- b) The 90/10 preference point system is applicable to bids with a Rand value above R1 million (all applicable taxes included).
- c) The prescribed threshold values within which the AO may procure services, works or goods by means of petty cash, verbal / written price quotations or advertised competitive bids are not affected by the Preferential Procurement Regulations, 2011 which is referred to as tenders in the PPPFA and the Preferential Procurement Regulations, 2011 include advertised competitive bids, written price quotations or proposals.

- **Step 1: Calculation of points for price**

- The PPPFA prescribes that the lowest acceptable bid will score 80 or 90 points for price. Bidders that quoted higher prices will score lower points for price on a pro-rata basis.
- The formulae to be utilised in calculating points scored for price are as follows:

***80/20 Preference point system [(for acquisition of services, works or goods up to a Rand value of R1million) (all applicable taxes included)]***

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

Where

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

Pt = Comparative price of bid or offer under consideration

Pmin = Comparative price of lowest acceptable bid or offer.

***90/10 Preference point system [(for acquisition of services, works or goods with a Rand value above R1million) (all applicable taxes included)]***

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

Where

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

Pt = Comparative price of bid or offer under consideration

Pmin = Comparative price of lowest acceptable bid or offer.

- Points scored must be rounded off to the nearest 2 decimal places.

- **Step 2: 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>B-BBEE Status Level of Contributor</b>	<b>Number of points (90/10 system)</b>	<b>Number of points (80/20 system)</b>
<b>1</b>	<b>10</b>	<b>20</b>
<b>2</b>	<b>9</b>	<b>18</b>
<b>3</b>	<b>8</b>	<b>16</b>
<b>4</b>	<b>5</b>	<b>12</b>
<b>5</b>	<b>4</b>	<b>8</b>
<b>6</b>	<b>3</b>	<b>6</b>
<b>7</b>	<b>2</b>	<b>4</b>
<b>8</b>	<b>1</b>	<b>2</b>

Non-compliant contributor	0	0
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- 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.
- 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

### 15.

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

### 16.

- a) In the application of the 80/20 preference point system, if **all** bids received exceed R1 000 000, the bid must be cancelled. If one or more of the acceptable bid(s) received are within the R1 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 R1 000 000, the bid must be cancelled. If one or more of the acceptable bid(s) received are above the R1 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 15.1 or 15.2, the correct preference point system must be stipulated in the bid documents of the re-invited bid.
- d) The AO may, prior to the award of a bid, cancel the bid if:
- e) Due to changed circumstances, there is no longer a need for the services, works or goods requested. The AO must ensure that only goods, services or works that are required to fulfil the needs of the institution are procured]; or
- f) Funds are no longer available to cover the total envisaged expenditure. [AO must ensure that the budgetary provisions exist]; or
- g) 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

### 17.

- 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 and must be defensible in a court of law.

## REMEDIES, TAX CLEARANCE, BIDDING DOCUMENTS, SALE AND LETTING OF ASSETS AND TRANSITIONAL ARRANGEMENTS

### 18.

#### 18.1 REMEDIES

- a) AO must act against the bidder or person awarded the contract upon detecting that the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the contract conditions have not been fulfilled.
- b) The institution may, in addition to any other remedy that it may have against the bidder or person:
  - Disqualify the bidder or person from the bidding process;
  - Recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - Cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - Restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after applying the *audi alteram partem* (hear the other side) rule; and
  - Forward the matter for criminal prosecution.
- c) The municipality should involve its legal services when any of the remedies are applied.
- d) The details of any restrictions imposed on bidders, persons or contractors must be forwarded to the National Treasury for inclusion on the central Database of Restricted Suppliers.

#### 18.2. TAX CLEARANCE

- a) No bid may be awarded to any bidder whose tax matters have not been declared by the SARS to be in order.

#### 18.3. BIDDING DOCUMENTS

- a) The following bidding documents, which have been amended are necessary in accordance with the prescripts of the Preferential Procurement Regulations, 2011:

**Municipal Bidding Documents (MBDs)** for use by all municipalities and municipal entities to which the MFMA apply.

No.	SBD / MBD Description	Document Number
1	Invitation to Bid	MBD 1
2	Application for Tax Clearance Certificate	MBD 2
3	Pricing Schedules	MBD 3.1,3.2 and 3.3

4	Declaration of Interest	MBD 4
5	Declaration for Procurement above R10 000 000	MBD 5
6	Preference claims in terms of the Preferential Procurement Regulations, 2011	MBD 6.1
7	Declaration Certificate for Local Content	MBD 6.2
8	Formal contracts	MBD 7.1, 7.2 and 7.3
9	Declaration of Bidder's past SCM practices	MBD 8
10	Certificate of Independent Bid Determination	MBD 9

- b) The AO should customize and utilize the bidding documents (SBDs or MBDs) by incorporating the institutions name, logo and contact details.
- c) Other changes to the MBDs, such as variations necessary to address specific contract and project issues, should be kept to a minimum. The standard wording for the Application for Tax Clearance Certificates MBD 2) should not be amended. The formal contract document (MBD 7.1 to 7.3) should not form part of the bidding documents issued to every prospective bidder, but should be made applicable only to the successful bidder after adjudication and award of the bid.
- d) The relevant MBDs must be utilized for procurement by means of written price quotations, advertised competitive bids or proposals.

## **SALE AND LETTING OF ASSETS**

### **19.**

- a) The preference point systems prescribed in the PPPFA and the Preferential Procurement Regulations, 2011 are not applicable to the sale and letting of assets.
- b) In instances where assets are sold or leased by means of advertised competitive bids or written price quotations or by auctions the award must be made to the highest bidder.
- c) The tax clearance requirements referred to in paragraph 18 above applies to the sale and letting of assets as well.

## **SHORT TITLE**

- 20.** This part of the policy is called Elias Motsoaledi Local Municipality Preferential Procurement Policy.

**PART C**  
**SUPPLY CHAIN AND PREFERENTIAL PROCUREMENT GUIDELINES**

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## DEFINITIONS

1. For the purpose of this policy, unless the context indicates otherwise, any word or expression to which a meaning has been attached in the Act shall bear the same meaning and means:-
  - (1) “*acceptance of bid*” the award of a bid to a bid in response to his/her bid or price quotation;
  - (2) “*briefing notes*” update information or circular regarding the bid issued from time to time during the submission of bid phase to prospective bidders;
  - (3) “*Chief Financial Officer*” an officer of the municipality appointed as the Head of the Finance Department and includes any person:-
    - (a) acting in such position; and
    - (b) to whom the Chief Financial Officer has delegated a power, function or duty in respect of such a delegated power, function or duty;
  - (5) “*closing date*” the date specified in the bid documents for the receipt of the bid;
  - (6) “*closing time*” the time specified in the bid documents for the receipt of the bid;
  - (7) “*consortium*” any group of persons submitting a bid to provide services as required by the bid advertisement, irrespective of the existence of a formal agreement or arrangement between them or not, and consortia shall refer to the plural thereof;
  - (8) “*consultant*”: see “professional service provider”;
  - (9) “*contract*” the agreement between parties which is concluded when the Municipality accepts a bid/quotation submitted by a bidder;
  - (10) “*contractor*” any natural or legal person/company/closed corporation/firm/joint venture, whose bid has been accepted by the municipality and, for the purposes of this policy, shall include suppliers and service providers;
  - (11) “*Council*” or “*municipal council*” a municipal council referred to in section 18 of the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998) and for purposes of this policy, the municipal council of the Municipality of EMLM;
  - (12) “*delegated authority*” any person/persons/committee delegated with the authority to act for or on behalf of the municipality;
  - (13) “*formal contract*” a written contract concluded between EMLM, signed by the authorized person (in terms of the Delegation of Authority) the Board, and the successful bidder, which contract embodies the terms and conditions of the bid



- (14) *“good performance”* that the contractor’s performance was above average and that the official would have no hesitation in recommending that contractor on another project;
- (15) *“goods”* those raw materials or commodities which are available for general sale;
- (16) *“implementing agent”* the decision maker/manager mandated by the municipality to implement projects and invite bids/quotations for procurement of any nature;
- (17) *“joint venture/consortium”* an association of persons/companies/closed corporations/firms formed for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- (18) *“laws”* Includes the common law, all legislation (National, Provincial, Local and subordinate), regulations, ordinances, proclamations, guidelines and policies;
- (19) *“letter of acceptance”* the written letter indicating the acceptance of bid by EMLM;
- (20) *“local”* a Professional Service Provider with a permanent office in the area of jurisdiction of the municipality manned by a partner/director with adequate staff and resources to provide the majority of their services without outside support or assistance;
- (21) *“management”* in relation to an enterprise or business, an activity inclusive of control and performed on a daily basis by any person who is a principal executive officer of the enterprise/business, by whatever name that person may be designated, and whether or not that person is a director;
- (22) *“Municipal Manager”* the accounting officer appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998) and being the head of administration and accounting officer in terms of section 55 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) and includes any person:-  
    (a) acting in such position; and  
    (b) to whom the Municipal Manager has delegated a power, function or duty in respect of such a delegated power, function or duty;
- (23) *“panel of service providers”* the panel of service providers listed by EMLM for a specified period as preferred providers of supplies and services to EMLM;
- (24) *“preference”* the preference awarded to a bidder in the evaluation of his or her bid in accordance with the provisions of Preferential Procurement System as set out in paragraph 12;
- (25) *“principal”* a person in a firm who is a partner in a partnership, a sole proprietor, a director in a company established in terms of the Companies Act, or a member of a closed corporation registered in terms of the Closed Corporation Act;
- (26) *“prime contractor”* the legal entity with whom the municipality will contract;
- (27) *“professional services”* the provision on a fiduciary basis of services requiring knowledge based expertise;

- (28) *“professional services provider (consultant)”* any person or body corporate who is under contract to the municipality for the provision of Professional Services;
- (29) *“quotation”* a written offer which is not submitted in the form of a bid document prescribed by the municipality, but is never-the-less subject to a specification, conditions of purchase and any schedules and/or annexure such as drawings or plans, as applicable;
- (30) *“regulations”* the Preferential Procurement Regulations, 2011, pertaining to the Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000);
- (31) *“responsible agent”* those internal project managers and/or external consultants responsible for the administration of a contract;
- (32) *“responsive bid”* a bid which conforms to all the terms, conditions and specifications of the bid without material deviation or qualification;
- (33) *“service providers”* the service providers who have qualified for listing on the panel of service providers and remain to comply with the minimum requirements for listing on the panel;
- (34) *“services”* the provision of labour and/or work carried out by hand, or with the assistance of plant and equipment, including the input, as necessary, of knowledge based expertise;
- (35) *“small, medium and micro enterprises (EME’s)”* the same meaning assigned to this expression in the National Small Business Act, 1996 (Act No 102 of 1996);
- (36) *“successful bidder”* the individual, organization or consortium whose bid has been accepted by EMLM;
- (37) *“bid”* a written offer on the bid documents prescribed by the municipality in response to an invitation to bid;
- (38) *“bidder”* any natural or legal person/company/closed corporation/firm submitting a bid or price quotation;
- (39) *“bid sum”* the amount stated on the bid documents prescribed by the Municipality;
- (40) *“the Act”* the Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000); and

## **ACCESS TO BIDDING INFORMATION**

### **2.**

- (1) All potential bids must have access to bid information. A special effort must be made to ensure that bid information reaches prospective bidders.

### **Proposed process**

- (a) The procurement officer must ensure that notices of all bids shall be advertised in the local press and placed on all notice boards and pay-points throughout the municipal area.
- (b) The national press shall be used where applicable.
- (c) Notice of bids and bid documents placed on municipal notice boards shall be in English.
- (d) Bid Advice Service (TAS) points, created in the department requiring the goods or services shall assist with technical translation and related matters if requested.
- (e) The format and lay-out of bid notices used, shall regularly be reviewed, standardised and made user-friendly.
- (f) Guidelines regarding the completion of bid documentation shall accompany small and medium bids.
- (g) An official's name and contact number/address shall be included in all contract documentation and bid notices for enquiry purposes.
- (h) Upon request TAS will make bid results and awards available to bidders, to evaluate their performance and competitiveness for future bids.
- (i) For transparency, all bid documents shall provide details of the adjudication criteria.

## **BID ADVICE SERVICES**

### **3.**

- (1) TAS's must be available to all potential bidders.

#### **Proposed process**

- (a) TAS shall be established within each department responsible for issuing and administering bids.
- (b) The function of these TAS's, *inter alia*, will be to:
  - (i) Provide general information on all matters related to Municipal bids as well as specific information relating to individual bids.
  - (ii) Where applicable, convene pre-bid site meetings to explain bid requirements and answer questions from prospective bidders.
  - (iii) Assist bidders in preparing bid submission forms, excluding pricing of bids.
  - (iv) Provide language interpretation.
- (c) Introduce or co-ordinate training sessions for prospective bidders regarding general matters related to municipal bids. Training sessions shall be held on a needs basis and adequate measures shall be taken to inform prospective bidders of such sessions.
- (d) Departments should interact and make use of other services and facilities offered by existing national TAS's, and should additionally identify national and local organisations and institutions that focus on the support and growth of small businesses, and establish a co-operative relationship.
- (e) Departmental TAS will not be full-time structures and will only react to requests for assistance. At minimum, departments shall make standing arrangements for access to necessary personnel as and when required.

## **DEVELOPMENT OF DATA-BASE AND SKILLS LIST**

### **4.**

- (1) A data-base (categorised list with details of business activity and location) of existing and prospective suppliers/bidders shall be established.

#### **Proposed process**

- (a) The data-base within the procurement division must be established under the control of the chief financial officer and shall be used to identify potential bidders.
- (b) Based on work done the data-base shall be updated on a regular basis, and shall be made available to all user-departments and to neighbouring municipalities/municipal entities.
- (c) The information contained on the data-base shall be accessible to any organisation/institution outside the municipality upon request to promote the potential opportunities for PDI's and EME's.
- (d) A monitoring system shall be implemented by the municipal manager to evaluate progress made regarding opportunities afforded to PDI's and EME's, and to evaluate/adjust the use of the data-base, within the municipality.
- (e) Details of all supplier's and service provider's bids received, adjudication points, bids awarded and completed must be recorded on the database.
- (f) Advertisements reflecting the municipality's intention to establish a database and inviting potential suppliers and service providers to register on the municipal database must be placed in national and local newspapers.

## **EVALUATION PROCEDURES FOR SUPPLIERS OR SERVICE PROVIDERS**

### **5.**

- (1) All applications of potential suppliers or service providers will be evaluated.
- (2) The purpose of the evaluation process is to assist as many possible suppliers to be placed on the database.

#### **Proposed process**

- (a) The evaluation of applications, received from suppliers or service provider to be placed on the municipality's database, will be done by the department requiring the goods or services.
- (b) Each department will establish an evaluation panel consisting of not less than three members of which one must be a senior manager.
- (c) All suppliers and service providers will be evaluated before being placed on the municipality's database.
- (d) The criteria contained in annexure "C" will be used to determine whether a supplier or service provider qualifies to be placed on the supply or service provider database.
- (e) All successful applicants will be informed of the outcome.
- (f) Unsuccessful applicants must be assisted to complete the application form correctly to qualify.

## **PROCUREMENT OF GOODS OR SERVICES WITH A VALUE BETWEEN R1 AND R2000.00**

### **6.**

- (1) The following procedures for the acquisition of goods and services with a value between R1 and R1000 must be followed.

#### **Proposed process**

- (a) A Head of department must apply to the Chief Financial Officer for a petty cash float.
- (b) Once approved the Chief Financial Officer will issue a cheque to a person nominated by the head of the department which will be responsible for petty cash transactions.
- (c) The responsible person will cash the cheque and keep the cash in a safety box which must be locked away in a safe at the end of each working day.
- (d) Sundry requirements to a maximum value of R1000.00 may be purchased from the petty cash float.

- (e) The responsible person will obtain verbal quotes and do the purchases.
- (f) The responsible person must at all times ensure that the municipality received values for money spend.
- (g) A monthly reconciliation report from each manager must be provided to the chief financial officer, including –
  - (i) the total amount of petty cash purchases for that month; and
  - (iii) receipts and appropriate documents for each purchase.
- (h) On receipt of the petty cash reconciliation the chief financial officer will issue a new cheque to the value of the amount already spent.

## **PROCUREMENT OF GOODS OR SERVICES WITH A VALUE BETWEEN R1001 AND R300 000**

### **7.**

- (1) The following procedures for the acquisition of goods and services with a value between R1001 and R30 000 must be followed.

#### **Proposed process**

- (a) Heads of departments or their delegates must complete and submit an official requisition form, to the official tasked with the procurement of goods and services in the department, indicating the estimated value of the goods or services,.
- (b) If the Head of Department is of the opinion that not enough suppliers are going to respond he/she may request the procurement official to phone suppliers to respond after obtaining the permission of the accounting officer.
- (c) The official will ensure that the requisition is valid and advertise the requirements on the municipal notice board and website.
- (d) At least three quotations must be obtained.
- (e) The official will summarise the quotations received and submit it to the head of the department for acceptance.
- (f) If the lowest quotation in terms of price is not accepted the head of the department must submit reasons for the non-acceptance and report the matter to the municipal manager who must make a final ruling.
- (g) An official order will be placed for all goods or services obtained.
- (h) On receipt of the goods a goods received note must be completed and signed by the head of department or his/her delegate.
- (i) After services have been performed the head of the department must certify that the service was performed satisfactory and value for money was obtained.
- (j) All invoices required must be submitted to the creditors department which will attach it to the original requisition, order and goods received document where after it will be submitted for approval by the head of department and payment.

## **PROCUREMENT OF GOODS OR SERVICES WITH A VALUE BETWEEN R30 001 AND R200 000**

**8.**

- (2) The following procedures for the acquiring of goods and services with an estimated price between R30 001 and R200 000 must be followed.

### **Proposed process**

- (a) Heads of departments or their delegates must complete and submit an official requisition form, to the official tasked with the procurement of goods and services in the department, indicating the estimated value of the goods or services.
- (b) If the Head of Department is of the opinion that not enough suppliers are going to respond he/she may request the procurement official to phone suppliers to respond after obtaining the permission of the accounting officer.
- (c) The official will ensure that the requisition is valid and advertise the requirements on the municipal notice boards and website.
- (d) At least three written quotations must be obtained from suppliers listed on the municipal database.
- (e) The quotations must be sealed and opened in the presence of the evaluation committee.
- (f) This invitation to quote must be in writing and advertised in the local press.
- (g) Only suppliers or service providers which previously have completed a preference certificate for quotations may be used.
- (h) The preference claimed must be applied for all quotations greater than R30 000.
- (i) Details of the quotations will be summarised on a summary sheet and submitted to the adjudication committee.
- (j) If the lowest quotation in terms of price and preference claimed is not accepted the adjudication committee must submit reasons for the non-acceptance and report the matter to the municipal manager who must make a final ruling.
- (k) An official order will be placed for all goods and services.
- (l) On receipt of the goods a goods received note will be compiled and signed by the head of department or his/her delegate.
- (m) After services have been performed the head of the department must certify that the service was performed satisfactory and value for money obtained.
- (n) All invoices will be submitted to the procurement department which will attach it to the original requisition, order and goods received documents where after it will be submitted for approval by the head of department and payment by the creditors section of the treasury department.

## **PROCUREMENT OF GOODS OR SERVICES WITH A PRICE VALUE OF MORE THAN R200 000**

**9.**

- (3) The following procedures for the acquiring of goods and services with an estimated price above R200 000 must be followed:

### **Proposed process**

- (a) A formal bid must be prepared.
- (b) The following guidelines in the preparation of bid documents must be followed:

### **LANGUAGE**

- (i) Bid documentation must be prepared in English.

## STANDARD DOCUMENTATION

### 10.

#### BIDDING DOCUMENTS

- a) The following bidding documents, which have been amended are necessary in accordance with the prescripts of the Preferential Procurement Regulations, 2011:

**Municipal Bidding Documents (MBDs)** for use by all municipalities and municipal entities to which the MFMA apply.

No.	SBD / MBD Description	Document Number
1	Invitation to Bid	MBD 1
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4	Declaration of Interest	MBD 4
5	Declaration for Procurement above R10 000 000	MBD 5
6	Preference claims in terms of the Preferential Procurement Regulations, 2011	MBD 6.1
7	Declaration Certificate for Local Content	MBD 6.2
8	Formal contracts	MBD 7.1, 7.2 and 7.3
9	Declaration of Bidder's past SCM practices	MBD 8
10	Certificate of Independent Bid Determination	MBD 9

- b) The AO should customize and utilize the bidding documents (SBDs or MBDs) by incorporating the institutions name, logo and contact details.
- c) Other changes to the MBDs, such as variations necessary to address specific contract and project issues, should be kept to a minimum. The standard wording for the Application for Tax Clearance Certificates MBD 2) should not be amended. The formal contract document (MBD 7.1 to 7.3) should not form part of the bidding documents issued to every prospective bidder, but should be made applicable only to the successful bidder after adjudication and award of the bid.
- d) The relevant MBDs must be utilized for procurement by means of written price quotations, advertised competitive bids or proposals.

#### DRAFTING OF BID DOCUMENTATION

### 11.

- (c) Irrespective of by whom the proposal to bid for supplies or services was initiated, the head of department with responsibility in relation to the required supplies or services, must prepare or oversee the preparation of the bid documentation.
- (d) The head of department must also prepare or oversee the preparation of a bid advertisement .
- (e) Bid documents must be available when bid advertisements are placed, but bid documents may not be issued prior to the placing of the bid advertisements.

#### Site inspections or explanatory meetings

- (f) Should it be a condition of the bid that a site inspection or explanatory meeting be attended by prospective bidders, this requirement as well as the place and time must be clearly stated in the bid advertisement.
- (g) Proper minutes must be taken of all information disclosed during the site inspection or explanatory meeting, and copies of these minutes should be made available to all interested parties that attended the relevant meeting.
- (h) Where the attendance of the site inspection or explanatory meeting is compulsory to the bid, bidders must be required to certify that they attended the site meeting or explanatory meeting and that they are fully aware of the scope of the bid.

#### **Costs and prices**

- (i) Bid prices must include delivery costs.
- (j) Prices should be fixed, but in the event of non-fixed prices being bided, the prices must be ascertainable and reasonable.
- (k) Unless otherwise determined, the costs of packing materials are for the account of the bidder and must be included in the bid price.

## **EVALUATION PROCEDURES FOR BIDS**

### **12**

#### **General principles**

- 7.(1) In the evaluation of any bid, general constitutional principles and the requirements of administrative justice regulate and determine the validity of any process followed.
- (2) Section 217 of the Constitution of South Africa, Act 108 of 1996, sets out the basic criteria which applies to the procurement of supplies or services by the state, and requires it must do so in accordance with a system which is **fair, equitable and transparent, competitive and cost-effective**, and provides for categories of **preference** in the allocation of contracts, and the protection or advancement of persons, or categories of persons, **disadvantaged** by unfair discrimination.
- (3) From the provisions of section 217 specific criteria are easily ascertainable. It is also clear that these criteria require two distinct, yet inseparable legs to be present in any procurement process. The first leg, requires that fairness, equitability, transparency, competitiveness and cost-effectiveness be incorporated into any evaluation process. The second leg requires that the process make provision for preferential procurement.
- (4) The above accordingly requires that for any procurement process to be fair and equitable, the bid process must be open and transparent and the evaluation of bids must take place in accordance with identified criteria which are applied in an impartial and unbiased evaluation. In evaluating and applying the bid criteria to bids, the following considerations must be kept in mind:



## Fairness

- (a) The concept of fairness is not an immutable one and may change with the passage of time. Fairness is the generic umbrella concept under which all the other considerations reside as specific aspects of the element of fairness. Fairness however remains a creature of context, requiring consideration of all surrounding aspects to determine its presence or not. Despite its reluctance to be firmly grasped, basic requirements or examples of fairness can be identified.
- (b) The element of 'fairness' requires that bid documents have been fairly compiled and supplied to all bids. The parties involved in the evaluation process must deal fairly and justly with each bid submitted – i.e. what applies to the one, applies to the other.
- (c) The principle of fairness also incorporates the right to administrative justice into the evaluation process, requiring the absence of *mala fides*, fraud, bribery and other illegalities in the total procurement process.
- (d) Fairness further requires that the norms, criteria or weighting used in the evaluation process are objective and defensible and do not exclude or prejudice any bidder unfairly or unreasonably.
- (e) The value-orientated spirit of the Constitution should therefore pervade the whole process ensuring the fair and equitable treatment of all bidders. Administrative justice requires not only no bias in the process, but also demands that each bidder, successful or not, and where requested, be provided with reasons for the specific outcome.

## Equitability

- (f) Equitability incorporates the element of equality into procurement. Each bid should therefore, taking into account the acceptability and compliance of the bid, be treated equally and equitably.
- (g) This requires that evaluation criterion, weighting system and the measurement of compliance with the bid documentation to be applied equally in the evaluation of each bid. Failure to do so opens the door to unequal treatment and an actionable violation of the equitability principle.
- (h) Risks of infringement of the equitability principle can also be found in the provision of an unequal opportunity to certain bidders to amend or vary a bid, inequality being present in the failure to afford a similar opportunity to other bidders who could potentially amend their bids to a competitive level.

## Transparency

- (i) Transparency relates to the general principle of administrative justice requiring any bid evaluation process to be open and transparent. Section 195 of the Constitution also underwrites this principle by requiring a sound public administration where the principle of openness and transparency are advanced.
- (j) Accordingly, the evaluation process must be sufficiently open to bidders, to afford bidders where required, sufficient feedback regarding the bid evaluation, short

listing of bidders, reasons for disqualification, and the awarding of the bid. This approach is in line with the important fundamental right of access to information.

### **Competitiveness**

- (k) Any competition between bidders must be open and competitive. The procurement process should accordingly encourage effective competition through procurement methods suited to facilitate competition and provide EMLM with the best value for money.
- (l) Competition may however be influenced by preferences relating to the advancement of persons, or categories of persons, disadvantaged by unfair discrimination, locally based contractors or EME's. Such variation from the principle of open competition is justifiable as a remedial step towards the rectification and empowerment of persons previously disadvantaged, the strengthening of local suppliers and providers and the establishment of capacity for EME's.
- (m) Open competition may further be enhanced by ensuring that the potential pool of bidders is not arbitrarily restricted, unless such restriction is due to providing bid advertisements to service providers listed on the service provider panel only. Competition should further be enhanced by providing bidders with reasonable notification of bid opportunities and adequate time within which to bid. Costs involved in bidding should also not be so high as to deter potential bidders.

### **Cost-effectiveness**

- (n) Cost-effectiveness relates to the 'value for money'-analysis. Price alone is not always the best or most reliable indicator of value for money. Price as a norm can lead to rigid and inflexible consideration of bids, with the lowest bid more often than not, not being the best. The inherent challenge therefore, is to achieve affordability and a net benefit to EMLM by considering all relevant costs and benefits involved in the bid.
- (o) However, where lower bids are passed over, the reasons for doing so must be reasonable and accountable, and may require deviations from the bid specifications or shortcomings in quality, availability or compatibility to be highlighted. This though will be deemed necessary only in very exceptional circumstances and strictly in accordance with the PPPFA's regulation 9.

### **Ultra vires**

- (p) An important aspect and incorporated in the general principle of legality of all bids is that of *ultra vires*, which requires that the calling of the bid be duly authorized. The bid process must take place within the Policy framework and be conducted with the necessary approvals by the authorized bodies or officials having been obtained.

- **DISCOUNTS**

- d) When calculating comparative prices:
- e) Unconditional discounts must be taken into account for evaluation purposes; and
- f) Conditional discounts must not be taken into account for evaluation purposes but should be implemented when payment is effected.

## **SUB-CONTRACTING**

13

- d) A bidder must not be awarded the points claimed for B-BBEE status level of contribution if it is indicated in the bid documents that such a bidder intends subcontracting more than 25% of the contract value to any other enterprise that does not qualify for at least the same number of points that the bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- e) A contractor is not allowed to sub-contract more than 25% of the contract value to another enterprise that does not have equal or higher B-BBEE status level, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- f) In relation to a designated sector, a contractor must not be allowed to subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

## **EVALUATION OF BIDS BASED ON FUNCTIONALITY AS A CRITERION**

14.

Bids invited on the basis of functionality as a criterion must be evaluated in two stages – first functionality must be assessed and then in accordance with the 80/20 or 90/10 preference point system. The evaluation must be done as follows:

- **First stage – Evaluation of functionality**

- Bids must be evaluated in terms of the evaluation criteria embodied in the bid documents. The amendment of evaluation criteria, weights, applicable values and/or the minimum qualifying score for functionality after the closure of bids is not allowed as this may jeopardise the fairness of the process.
- A bid will be considered further if it achieves the prescribed minimum qualifying score for functionality.
- Bids that fail to achieve the minimum qualifying score for functionality must be disqualified.
- Score sheets should be prepared and provided to panel members to evaluate the bids.
- The score sheet should contain all the criteria and the weight for each criterion as well as the values to be applied for evaluation as indicated in the bid documents.
- Each panel member should after thorough evaluation independently award his / her own value to each individual criterion.
- Score sheets should be signed by panel members and if necessary, written motivation may be requested from panel members where vast discrepancies in the values awarded for each criterion exist.
- If the minimum qualifying score for functionality is indicated as a percentage in the bid documents, the percentage scored for functionality may be calculated as follows:

- d. The value awarded for each criterion should be multiplied by the weight for the relevant criterion to obtain the score for the various criteria;
- e. The scores for each criterion should be added to obtain the total score; and
- f. The following formula should be used to convert the total score to percentage for functionality:

$$Ps = Ms/So * 100$$

where:

Ps = percentage scored for functionality by bid under consideration

So = total score of bid under consideration

Ms = maximum possible score

- The percentage of each panel member should be added and divided by the number of panel members to establish the average percentage obtained by each bidder for functionality.

- **Second stage – Evaluation in terms of the 80/20 or 90/10 preference point systems**

- Only bids that achieve the minimum qualifying score / percentage for functionality must be evaluated further in accordance with the 80/20 or 90/10 preference point systems prescribed in Preferential Procurement Regulations. [Guidance on the evaluation of bids in terms of the 80/20 or 90/10 preference points systems is provided in paragraph 14 of this Policy].

## **EVALUATION OF BIDS BASED ON A STIPULATED MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT**

15.

Bids that were invited on the basis of local production and content should be evaluated by following a two-stage bidding process:

- **First stage – Evaluation in terms of the stipulated minimum threshold for local production and content**
  - Bids must be evaluated in terms of the evaluation criteria stipulated in the bid documents. The amendment of the stipulated minimum threshold for local production and content after the closure of bids is not allowed as this may jeopardise the fairness of the process.
  - A bid will be disqualified if: the bidder fails to achieve the stipulated minimum threshold for local production and content; and. the Declaration Certificate for Local Content (MBD 6.2).
  - The local content (LC) as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 201x as indicated in paragraph 8. above.
  - AO must verify the accuracy of the rates of exchange quoted by them bidder in paragraph 4 of the Declaration Certificate for Local Content (MBD 6.2)
- **Second stage - Evaluation in terms of the 80/20 or 90/10 preference point systems**
  - Only bids that achieve the minimum stipulated threshold for local production and content must be evaluated further in accordance with the 80/20 or 90/10 preference point systems prescribed in Preferential Procurement Regulations. [Guidance on the evaluation of bids in terms of the 80/20 or 90/10 preference points systems is provided in paragraph 14 of this Policy].
  - Where appropriate, prices may be negotiated only with short listed or preferred bidders. Such negotiations must not prejudice any other bidders.

## PREFERENCE POINT SYSTEM

### 16.

(1) The EMLM's procurement policy is constructed around the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and the Regulations of 2011. This Act and Regulations requires that the preference point system to be as follows:

- d) The 80/20 preference point system is applicable to bids\* with a Rand value equal to, or above R30 000 and up to a Rand value of R1 million (all applicable taxes included). Institutions may apply the 80/20 preference point system to price quotations with a value less than R30 000 if and when appropriate.
- e) The 90/10 preference point system is applicable to bids with a Rand value above R1 million (all applicable taxes included).
- f) The prescribed threshold values within which the AO may procure services, works or goods by means of petty cash, verbal / written price quotations or advertised competitive bids are not affected by the Preferential Procurement Regulations, 2011 which is referred to as tenders in the PPPFA and the Preferential Procurement Regulations, 2011 include advertised competitive bids, written price quotations or proposals.

- **Step 1: Calculation of points for price**

- The PPPFA prescribes that the lowest acceptable bid will score 80 or 90 points for price. Bidders that quoted higher prices will score lower points for price on a pro-rata basis.
- The formulae to be utilised in calculating points scored for price are as follows:

***80/20 Preference point system [(for acquisition of services, works or goods up to a Rand value of R1million) (all applicable taxes included)]***

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

Where

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

Pt = Comparative price of bid or offer under consideration

Pmin = Comparative price of lowest acceptable bid or offer.

***90/10 Preference point system [(for acquisition of services, works or goods with a Rand value above R1million) (all applicable taxes included)]***

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

Where

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

Pt = Comparative price of bid or offer under consideration

Pmin = Comparative price of lowest acceptable bid or offer.

- Points scored must be rounded off to the nearest 2 decimal places.

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

- 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.
- 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**

### **17.**

- d) 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.
- e) If two or more bids have equal points, including equal preference points for BBEE, the successful bid must be the one scoring the highest score for functionality, if functionality is part of the evaluation process.
- f) 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**

### **18.**

- h) In the application of the 80/20 preference point system, if **all** bids received exceed R1 000 000, the bid must be cancelled. If one or more of the acceptable bid(s) received are within the R1 000 000 threshold, all bids received must be evaluated on the 80/20 preference point system.
- i) In the application of the 90/10 preference point system, if **all** bids received are equal to or below R1 000 000, the bid must be cancelled. If one or more of the acceptable bid(s) received are above the R1 000 000 threshold, all bids received must be evaluated on the 90/10 preference point system.

- j) If a bid was cancelled in terms of paragraph 15.1 or 15.2, the correct preference point system must be stipulated in the bid documents of the re-invited bid.
- k) The AO may, prior to the award of a bid, cancel the bid if:
- l) Due to changed circumstances, there is no longer a need for the services, works or goods requested. The AO must ensure that only goods, services or works that are required to fulfil the needs of the institution are procured]; or
- m) Funds are no longer available to cover the total envisaged expenditure. [AO must ensure that the budgetary provisions exist]; or
- n) 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**

### **19.**

- c) A contract must be awarded to the bidder who scored the highest total number of points in terms of the preference point systems.
- d) 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 and must be defensible in a court of law.

## **REMEDIES, TAX CLEARANCE,**

### **20.**

#### **20.1 REMEDIES**

- b) AO must act against the bidder or person awarded the contract upon detecting that the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the contract conditions have not been fulfilled.
- c) The institution may, in addition to any other remedy that it may have against the bidder or person:
  - Disqualify the bidder or person from the bidding process;
  - Recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - Cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - Restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after applying the *audi alteram partem* (hear the other side) rule; and
  - Forward the matter for criminal prosecution.
- d) The municipality should involve its legal services when any of the remedies are applied.
- e) The details of any restrictions imposed on bidders, persons or contractors must be forwarded to the National Treasury for inclusion on the central Database of Restricted Suppliers.

#### **20.2 TAX CLEARANCE**

- b) No bid may be awarded to any bidder whose tax matters have not been declared by the SARS to be in order.

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