

SECTION A

**SUPPLY CHAIN MANAGEMENT
POLICY 2024-2025**



LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003

Date of adoption: [\[22 MAY 2024\]](#)

Council C1480/2024 resolves in terms of section 111 of the Local Government Municipal Finance Management Act (No. 56 of 2003), to adopt the following proposal as the Supply Chain Management Policy of KwaDukuza Municipality.

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1. Definitions

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

“B-BBEE - broad-based black economic empowerment” means the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include but are not limited to

- (a) increasing the number of black people that manage, own and control enterprises and productive assets;
- (b) facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;
- (c) human resource and skills development;
- (d) achieving equitable representation in all occupational categories and 20 levels in the workforce;
- (e) preferential procurement; and
- (f) investment in enterprises that are owned or managed by black people.

“B-BBEE status level of contributor” means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment issued in terms of paragraph 9(1) of the Broad-Based Black Economic Empowerment Act

“bid” means a written offer, in the form determined by instruction, in response to an invitation for the procurement of goods or services or other form of procurement through a price quotation, a competitive bidding process, a limited bidding process or any other method envisage in the Act

“black” have the meaning assigned to it in the codes of good practice issued in terms of paragraph 9(1) of the Broad Based Black Economic Empowerment Act

“black people” is a generic term which means Africans, Coloured's and Indians as per the definition included in the B-BBEE Act of 2003

“Broad-Based Black Economic Empowerment Act” means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)

“co-opted external specialist advisor “ any person or official contracted by the municipality or appointed by the Accounting Officer to provide technical support to the Business Unit

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

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

“Exempted micro enterprise (EME)” means any enterprise with an annual total revenue of R10 million or less, as per statement of the BBBEE codes of good practice

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

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

“functionality” means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.

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

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

“in the service of the state” means to be -

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

“Large enterprises (Generic)” with a turnover above R50 million per annum undergo a generic B-BBEE scorecard audit

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

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

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

“National Treasury” has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999)

“neutral or independent observer” independent / impartial, not directly involved in the supply chain management processes appointed by the Accounting Officer on an adhoc basis

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

- (a) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- (b) the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
and
- (c) the Construction Industry Development Board Act, 2000 (Act No.38 of 2000);
- (d) Preferential Procurement Regulations of 2022
- (e) “The White Paper on Reconstruction and Development” Published in Government Gazette notice no. 16085 of 1994.

“panel of service providers” appointed on rotational basis as per the tender process

“people with disabilities” has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998) In terms of the Code of Good Practice on the Employment of Persons with disabilities: it is persons who have a long-term or recurring physical or mental impairment, which substantially limits their prospects of entry into, or advancement in employment.

“preferential procurement policy” means a procurement policy contemplated in section 217(2) of the Constitution.

“price” includes all applicable taxes, less all unconditional discounts

“Qualifying Small Enterprise (QSE)” means a measured entity with an annual total revenue of between R 10 million and R 50 million, as per statement of the B-BBEE Codes of Good Practice

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

“rural area” means a sparsely populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or an area including a large settlement which depends on migratory labour and

remittances and government social grants for survival, and may have a traditional land tenure system

"SMMEs" means small businesses as defined in section 1 of the National Small Business Act, 1996 a separate and distinct business entity, including co-operative enterprises and non-governmental organisations, managed by one owner or more which, including its branches or subsidiaries, if any, is predominantly carried on in any sector or sub sector of the economy mentioned in column 1 of the schedule and which can be classified as a micro-, a very small, a small, or a medium enterprise by satisfying the criteria 40 mentioned in columns 3, 4 and 5 of the schedule opposite the smallest relevant size or class as mentioned in column 2 of the schedule.

"S.O.P" means standard operating procedure

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

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

"tender for income-generating contracts" means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and **"the Act"** means the Preferential Procurement Policy Framework Act, 2000

“township” means an urban living area that any time from the late 19th century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994

“transversal contracts” contracts secured by National Treasury

“Treasury” has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act no 1 of 1999)

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

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

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

“Turnkey” means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers in full end products/service required by the contract.

“municipality” means KwaDukuza Municipality

“youth” has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008) means persons between the ages of 14 and 35

CHAPTER 1

IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

Supply chain management policy

2.

- (1) All officials and other role players in the supply chain management system of the municipality must implement this Policy in a way that -
 - (a) gives effect to -
 - (i) section 217 of the Constitution; and
 - (ii) Part 1 of Chapter 11 and other applicable provisions of the Act;
 - (b) is fair, equitable, transparent, competitive and cost effective;
 - (c) complies with -
 - (i) the Regulations; and
 - (ii) any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
 - (d) is consistent with other applicable legislation;
 - (e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
 - (f) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.
- (2) This Policy applies when the municipality_-
 - (a) procures goods or services;
 - (b) disposes of goods no longer needed;
 - (c) selects contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
 - (d) selects external mechanisms referred to in section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.
- (3) This Policy, except where provided otherwise, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including -

- (a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
- (b) electricity from Eskom or another public entity, another municipality or a municipal entity.
- (4) For all technical related projects this policy must be read in line with the supply chain management policy for infrastructure procurement and service delivery.

Amendment of the supply chain management policy

3.

- (1) The Municipal Manager must -
 - (a) at least annually review the implementation of this Policy; and
 - (b) when the Municipal Manager considers it necessary, submit proposals for the amendment of this Policy to the council.
- (2) If the Municipal Manager submits proposed amendments to the council that differs from the model policy issued by the National Treasury, the Accounting Officer must -
 - (a) ensure that such proposed amendments comply with the Regulations; and
 - (b) report any deviation from the model policy to the National Treasury and the relevant provincial treasury.
- (3) When amending this supply chain management policy the need for uniformity in supply chain practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.

Delegation of supply chain management powers and duties

4.

- (1) The council hereby delegates all powers and duties to the Municipal Manager which are necessary to enable the Municipal Manager -
 - (a) To discharge the supply chain management responsibilities conferred on accounting officers in terms of -

- (i) Chapter 8 or 10 of the Act; and
 - (ii) this Policy;
 - (b) to maximise administrative and operational efficiency in the implementation of this Policy;
 - (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this Policy; and
 - (d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- (2) Sections 79 and 106 of the Act apply to the sub-delegation of powers and duties delegated to an accounting officer in terms of sub-paragraph (1).
 - (3) The Municipal Manager may not sub-delegate any supply chain management powers or duties to a person who is not an official of municipality or to a committee which is not exclusively composed of officials of the municipality.
 - (4) This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.

Sub-delegations

5.

- (1) The Municipal Manager 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 sub-paragraph (2) of this paragraph and paragraph 4 of this Policy.
- (2) The power to make a final award -
 - (a) Above R10 million (VAT included) may not be sub-delegated by the Municipal Manager;
 - (b) Above R2 million (VAT included), but not exceeding R10 million (VAT included), may be sub-delegated but only to -

- (i) a bid adjudication committee of which the Chief Financial Officer or senior manager is a member.
- (c) For a threshold exceeding R300 000 but not exceeding R2 million (VAT included) may be sub-delegated but only to -
 - (i) a bid adjudication committee.
- (3) Bid adjudication committee to which the power to make final awards has been sub-delegated in accordance with subparagraph (2) must within five days of the end of each month submit to the municipal manager a written report containing particulars of each final award made by such official or committee during that month, including-
 - (a) the amount of the award;
 - (b) the name of the person to whom the award was made; and
 - (c) the reason why the award was made to that person.
- (4) Sub-paragraph (3) of this paragraph does 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.

Oversight role of council

6.

- (1) The council of a municipality must maintain oversight over the implementation of this Policy.

- (2) For the purposes of such oversight the Municipal Manager must -
 - (a)
 - (i) Within 30 days of the end of each financial year, submit a report on the implementation of this policy, to the council of KwaDukuza Municipality; and
 - (ii) Whenever there are serious and material problems in the implementation of this policy, immediately submit a report to the council.
- (3) The Municipal Manager must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the Mayor.
- (4) The reports must be made public in accordance with section 21A of the Municipal Systems Act.

Supply chain management unit

7.

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

Training of supply chain management officials

8.

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

CHAPTER 2

SUPPLY CHAIN MANAGEMENT SYSTEM

Format of Supply Chain Management system

9.

This Policy provides systems for -

- (i) Demand Management;
- (li) Acquisition Management;
- (lii) Logistics Management;
- (lv) Disposal Management;
- (V) Risk Management; And
- (Vi) Performance Management.

Part 1: Demand management

System of Demand Management

10.

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

Part 2: Acquisition management

System of Acquisition Management

11.

- (1) The Municipal Manager must implement the system of Acquisition Management set out in this Part in order to ensure -
 - (a) That goods and services are procured by the municipality in accordance with authorised processes only;
 - (b) That expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
 - (c) That the threshold values for the different procurement processes are complied with;
 - (d) That bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
 - (e) That any Treasury guidelines on acquisition management are properly taken into account.

- (2) When procuring goods or services contemplated in section 110(2) of the Act, the Municipal Manager must make public the fact that such goods or services are procured otherwise than through the municipality's supply chain management system, including -
 - (a) Water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
 - (b) electricity from Eskom or another public entity, another municipality or a municipal entity.

Range of procurement processes

12.

- (1) Goods and services may only be procured by way of -
 - (a) petty cash purchases, up to a transaction value of R 200 (VAT included);
 - (b) two written quotations for procurements of a transaction value up to R2000 (VAT included);
 - (c) three written quotations for procurements of a transaction value of R2000 up to R10 000 (vat included)
 - (d) three formal written price quotations for procurements of a transaction value over R10 000 up to R30 000 (VAT included); and
 - (e) formal written price quotations for procurements of a transaction value over R30 000 up to R300 000 (VAT included); and
 - (f) a competitive bidding process for-
 - (i) procurements above a transaction value of R300 000 (VAT included); and
 - (ii) the procurement of long term contracts.
- (2) The Municipal Manager may, in writing-
 - (a) lower, but not increase, the different threshold values specified in subparagraph (1); or
 - (b) direct that -
 - (i) formal written price quotations be obtained for any specific procurement of a transaction value lower than R10 000; or
 - (ii) a competitive bidding process be followed for any specific procurement of a transaction value lower than R300 000.
- (3) Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the policy. When determining transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.
- (4) In respect of 12(1)(b) and 12(1)(c) a Munsoft electronic rotational system based on the registered database of suppliers or CSD will be utilized for the respective goods or services to be procured. e.g. Catering, advertising, servicing and minor repairing of air conditioners, repairs to tyres, auto electrical works, breakdown services

- (5) The following goods or services shall be procured preferably through the ward / clusters in which the goods or services are required for catering, marques, chairs and sound equipment for ward based meetings.
- (i) Catering and associated goods or services for ward based meetings
 - (ii) Transportation from relevant area based taxi associations.
 - (iii) The per unit cost as determined by council for catering shall be incremented annually in line with the CPIX as determined by the National Treasury annually in relation to the budget preparation directive for each financial year
 - (iv) The municipality will determine the prices for the above goods or services on an annual basis
- (6) No competitive bidding shall be utilized for goods or services that are price regulated e.g. fuel / gas; or provided by a manufacturing agent or RMI Accredited or AA (for all vehicles outside factory warranty) e.g. servicing / repairing vehicles
- (i) and training conducted by other organs of state
 - (ii) repairs to radios and repeaters for communication
 - (iii) fuel or gas (regulated)
 - (iv) goods or services sourced from a manufacturer or manufacturing agency e.g. vehicles and plant services; electrical equipment, repairs to emergency lights and sirens, calibrations or repairs to speed timing machines, Alco meters, meter reading, fire equipment, fire arms
 - (v) Munsoft financial system, BAUD Asset Management System, Caseware, Microsoft Software, VIP, Windeed, Intellicash, Team Mate, On Key, Digicore, Fleet Services, Radio Licenses
 - (vi) meal vouchers for standby staff

(7) **Targeted procurement in terms of Specific Goals as per KDM's Preferential Procurement Policy.**

(a) The Council has taken the decision to economically empower youth, women and people living with disabilities. This set aside approach is aimed at addressing previously disadvantaged people through economic empowerment.

(b) When the municipality applies specific goals in terms of Section (1)(d) and (e) of the Act, the municipality must advertise the tender with a specific tendering condition that only one or more of the following categories may respond. This condition is applicable for range of procurement processes in terms of paragraph 12(1)(e) and (f) of this policy.

CATEGORY	<u>DESCRIPTION</u>
	SPECIFIC GOALS APPLIED - OWNERSHIP, GENDER AND DISABILITY GOALS
1	EME or QSE which is at least 51% owned by black people
2	EME or QSE which is at least 51% owned by black people who are youth
3	EME or QSE which is at least 51% owned by black people who are women
4	EME or QSE which is at least 51% owned by black people with disabilities
5	Generic / Large Enterprise which is 51% owned by black people

(c) Should the applicable specific goals not be met, the municipality shall cancel the bid.

(d) If the municipality decides to apply the RDP criteria under the specific goal to award a bid based on locality, the municipality must advertise the tender with a specific tendering condition that only one or more of the following categories may respond: -

CATEGORY	<u>DESCRIPTION</u>
	RDP CRITERIA (SPECIFIC GOAL) - BASED ON LOCALITY
1	In the KwaDukuza Municipal Wards / Clusters in which the project will be rendered
2	The KwaDukuza Municipal area of jurisdiction,

3	The ILembe District
4	The KZN province
5	The Republic of South Africa

(i) Criteria elements in the above categories will be implemented in its order of appearance in the list in a case where there are no bids received in the category of the RDP criteria mentioned in the advert.

(ii) E.g. if the RDP criteria of category 1 is applied and there are no responsive bids in that category, a bid will be awarded to a bidder in category 2 of RDP criteria who has the capacity, capability to execute the contract and provides a cost effective financial proposal. If there are no bids which are responsive in category 2, a bid will be awarded to a bidder in category 3 and so on.

(e) Proof of address for the enterprise, by way of a municipal utility bill; or a sworn affidavit from the landlord; or a special ward councillor letter for procurement processes, or a statement from the estate management agent; which must correspond with the address on the CSD registration. This will be verified by the SCM Officials via the CSD.

(f) The specific goal applied should be considered and selected in such a way that the efficiency, effectiveness, and the economic value of service delivery is not affected.

(8) either the 80/20 or 90/10 Preference points system shall apply in terms of Regulation 3(1)(a) of the PPR of 2022 shall apply.

(9) either the 80/20 or 90/10 Preference points system shall apply in terms of Regulation 3(2) of the PPR of 2022 shall apply.

(10) for all procurement thresholds from R0 to R300 000.00 vat inclusive, the following specific goals scorecard shall be utilized:-

(a) the SCM Official shall determine the specific goal for which points may be awarded

The specific goals allocated points in terms of this bid	Number of points allocated (80/20 system)
<p>Gender (Ownership) - Persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of gender who are:</p> <ul style="list-style-type: none"> - 51% black people or - 51% black women or - 51% black disabled or - 51% black youth. <p><i>(the SCM official to choose one criteria from the list above for which points may be awarded. MBD6.1, point 4.2, table 1 to indicate the specific goals applied)</i></p>	10
Promotion of EME's	10

(11) for all procurement thresholds from R300 000.00 to R50 000 000 vat inclusive, the following specific goals scorecard shall be utilized:-

(a) the Bid Specifications Committee shall determine the specific goal for which points may be awarded

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system)	Number of points allocated (80/20 system)
<p>Gender (Ownership) - Persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of gender who are:</p> <ul style="list-style-type: none"> - 51% black people or - 51% black women or - 51% black disabled or - 51% black youth. <p><i>(the Bid Specifications Committee to choose one criteria from the list above for which points may be</i></p>	5	10

<i>awarded. MBD6.1, point 4.2, table 1 to indicate the specific goals applied)</i>		
Promotion of EME's Or Promotion of QSE's	5	10

- (12) for all procurement thresholds above R50 0000 000 vat inclusive, the following specific goals scorecard shall be utilized:-
- (a) the Bid Specifications Committee shall determine the specific goal for which points may be awarded

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system)
<p>Gender (Ownership) - Persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of gender who are:</p> <ul style="list-style-type: none"> - 51% black people or - 51% black women or - 51% black disabled or - 51% black youth. <p><i>(the Bid Specifications Committee to choose one criteria from the list above for which points may be awarded. MBD6.1, point 4.2, table 1 to indicate the specific goals applied)</i></p>	5
Promotion of Large Enterprises (Generic)	5

General preconditions for consideration of written quotations or bids

13.

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

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

Lists of accredited prospective providers

14.

- (1) The Municipal Manager must -
 - (a) keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements through formal written price quotations; and
 - (b) at least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
 - (c) specify the listing criteria for accredited prospective providers; and

- (d) disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.
- (2) The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.
- (3) The list must be compiled per commodity and per type of service.
- (4) That KwaDukuza Municipality will source goods or services directly from the Central Supplier Database which was implemented by National Treasury.

Petty cash purchases

15.

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

- (a) The Chief Financial Officer may, in writing, delegate the responsibility to monitor Petty Cash purchases to the Accountant: Expenditure
- (b) Goods and services may only be procured by way of petty cash, up to a transaction value of R200 (VAT included).
- (c) A maximum of five petty cash purchases per month will be allowed for each departmental section.
- (d) Petty cash levels should be kept at R4500 by the Director Expenditure.
- (e) Petty cash may only be used for the following types of expenditure: refreshments, catering, gifts, wheel repairs, and other small items.
- (f) A monthly reconciliation report from the Accountant Expenditure must be submitted 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.

Written or verbal quotations

16.

**THIS SECTION IS HEREBY DELETED IN TERMS OF GOVERNMENT GAZETTE 4198 ISSUED
ON 14 DECEMBER 2023.**

Formal written quotations

17.

- (1) The conditions for the procurement of goods or services through formal written price quotations are as follows:
 - (a) quotations above R10 000 must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the municipality;
 - (b) quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria set out in paragraph 14(1)(b) and (c) of this Policy;
 - (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the Chief Financial Officer or an official designated by the Chief Financial Officer,
 - (d) the Municipal Manager must record the names of the potential providers and their written quotations, and
- (2) A designated official referred to in subparagraph (1) (c) must within three days of the end of each month report to the Chief Financial Officer on any approvals given during that month by that official in terms of that subparagraph.

Procedures for procuring goods or services through formal written price quotations

18.

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

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

- (b) all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, be advertised for at least seven days on the website and an official notice board of KwaDukuza Municipality;
- (c) the Accounting Officer must take all reasonable steps to ensure that the procurement of goods or services through formal written price quotations is not abused
- (d) offers received must be evaluated on a comparative basis taking into account unconditional discounts;
- (e) the Municipal Manager or Chief Financial Officer must on a monthly basis be notified in writing of all formal written price quotations accepted by an official acting in terms of a sub delegation;
- (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 scoring in terms of the 80/20 preference point system;
- (g) Contracts may be expanded or varied by not more than 20% for construction related goods, services and infrastructure projects and 15% for all other goods or services of the original value of contract. Anything the above mentioned thresholds must be reported to council. Any expansion or variation on excess of these thresholds must be dealt with in terms of the provisions of Section 116(3) of the MFMA which would be regarded as an amendment to the contract.
- (h) MFMA Circular 49 issued in 2009 and Section 65 (2) (e) of the Municipal Finance Management Act of 2003 states “that all monies owing by the municipality be paid within 30 days of receiving the relevant invoice or statement, unless prescribed otherwise for certain categories of expenditure. (refer SOP - Annexure A)
- (i) Validity period for construction related goods/ services and infrastructure projects is 56 days or in exceptional cases 84 days and for all other goods or services the validity period is 90 days (consecutive days).
- (j) Only those service providers who are registered with a CIDB Grading of 1 and 2 will be considered for award. This is waived for all electrical closed quotes where specialists are required.
- (k) preference for the award of goods or services must be given specifically to EME’s as per paragraph 12 (7) of this policy and paragraph 4.1 and 4.2 of the Preferential Procurement Policy of KwaDukuza Municipality.

- (l) for (k) above, the following proof shall be submitted by tenderers in order to claim preference points:-
 - i. Proof of address for the enterprise, by way of a municipal utility bill; or a sworn affidavit from the landlord; or a special ward councilor letter for procurement processes, or a statement from the estate management agent; which must correspond with the address on the CSD registration. This will be verified by the SCM Officials via the CSD.
 - ii. Gender (Ownership) - the CSD report and certified copies of Identity Documents.
 - iii. For EME's - an original certified sworn affidavit or an original certified Certificate issued by Companies and Intellectual Property Commission (CIPC) or a sworn affidavit from the bookkeeper confirming ownership and enterprise information.

Competitive bids

19.

- (1) Goods or services above a transaction value of R300 000 (VAT included) and long term contracts may only be procured through a competitive bidding process, subject to paragraph 11(2) of this Policy.
- (2) No requirement for goods or services above an estimated transaction value of R300 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.

Process for competitive bidding

20.

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

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

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

Bid documentation for competitive bids

21.

The criteria with which bid documentation for a competitive bidding process must-

- (a) take into account -
 - (i) the general conditions of contract and any special conditions of contract, if specified;
 - (iii) any Treasury guidelines on bid documentation; and
 - (iv) the requirements of the Construction Industry Development Board (CIDB), in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
 - (v) the following table indicates the CIDB grading required for the tender value range. The tender value range is reviewed periodically to stay in line with inflation and economic conditions

GRADE	Tender value range (less than or equal to)
1	R500 000
2	R1 000 000
3	R3 000 000
4	R6 000 000
5	R10 000 000
6	R20 000 000
7	R60 000 000

8	R200 000 000
9	NO LIMIT

- (b) include the preference points system to be used, specific goals as contemplated in the Preferential Procurement Regulations of 2022, Councils Preferential Procurement Policy and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish-
 - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements -
 - (aa) for the past three years; or
 - (bb) since their establishment if established during the past three years;
 - (cc) If the bidder is not required by law to submit audited annual financial statements, the bidder is required to provide unaudited financial statements for the past 3 years or from date of establishment of the business.
 - (dd) the bidder is required to provide certified proof of the calculation of the Public Interest Score in terms of the Companies Act for (cc) above.
 - (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 KwaDukuza Municipality is expected to be transferred out of the Republic; and

- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.
- (f) The prospective bidders shall make no alterations or additions to the tender documents except to comply with the instructions issued in the tender document. The prospective bidder shall ensure that the attachments of the relevant schedule is attached to the correct returnable schedule.
- (g) Failure to comply with the requirement (f) above by the bidder will result in the bid being deemed as non-responsive.

Public invitation for competitive bids

22.

- (1) The procedure for the invitation of competitive bids, is as follows:
 - (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in eTender or newspapers commonly circulating locally, the website of the municipality or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin or CIDB website); and
 - (b) The information contained in a public advertisement, must include -
 - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in eTender or a newspaper, subject to sub-paragraph (2) of this policy;
 - (ii) a statement that bids may only be submitted on the bid documentation provided by KwaDukuza Municipality ;and
 - (iii) date, time and venue of any proposed site meetings or briefing sessions.;
 - (iv) statement stating that no late bid proposal will be accepted.

- (2) The Municipal Manager 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 (refer SOP - Annexure B)

23.

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

- (a) Bids-
 - (i) must be opened only in public;
 - (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
 - (iii) received after the closing time should not be considered and returned unopened immediately.
- (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price;
- (c) No information, except the provisions in subparagraph (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
- (d) The Municipal Manager must -
 - (i) record in a register all bids received in time;
 - (ii) make the register available for public inspection; and
 - (iv) publish the entries in the register and the bid results on the website.
- (e) The above paragraph must be read in conjunction with the National Treasury MFMA Circular 102, paragraph 7.

Negotiations with preferred bidders

24.

- (1) The Municipal Manger 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.
- (3) The Municipal Manager delegates the Director Expenditure, Contract Manager, Demand Manager, Director Legal and the Head of the Business Unit or his nominee and the Budget Office (observer) to enter into negotiations in line with (1) and (2) above and report back to the Tender Adjudication Committee for a threshold not exceeding R10m.
- (4) For thresholds exceeding R10m, the Chief Financial Officer, The Head: SCM, Contract Manager, the Director Legal and the Executive Director of the Business Unit may enter into negotiations but keeping in line with (1) and (2) above.

Two-stage bidding process (refer SOP - Annexure C)

25.

- (1) A two-stage bidding process is allowed for -
 - (a) large, complex projects;
 - (b) projects where it may be undesirable to prepare complete detailed technical specifications; or
 - (c) long term projects with a duration period exceeding three years.
 - (d) When the municipality seeks to enter into a contract for the purpose of research or study or planning.
- (2) In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.
- (3) In the second stage final technical proposals and priced bids should be invited.

Committee system for competitive bids

26.

- (1) A committee system for competitive bids is hereby established, consisting of the following committees for each procurement or cluster of procurements as the accounting officer may determine:
 - (a) a bid specification committee;
 - (b) a bid evaluation committee; and
 - (c) a bid adjudication committee;
- (2) The Municipal Manager appoints the members of each committee, taking into account section 117 of the Act; and
- (3) A neutral or independent observer, appointed by the Municipal Manager, must attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.
- (4) The committee system must be consistent with -
 - (a) paragraph 27, 28 and 29 of this Policy; and
 - (b) any other applicable legislation.
- (5) The Municipal Manager may apply the committee system to formal written price quotations.

Bid specification committees

27.

- (1) A bid specification committee must compile the specifications for each procurement of goods or services by the municipality.
- (2) Specifications -
 - (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
 - (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;

- (c) must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
- (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labeling of conformity certification;
- (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word “equivalent”;
- (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2022 and the preferential procurement policy of KDM.
- (g) that for all technical projects, the tender specifications committee must indicate the methodology of evaluation to be used provided for in the CIDB Standard Conditions of Tender. This may include method 2 (financial offer and preferences) or method 3 (financial offer and quality).
- (h) must be approved by the Municipal Manager / chairperson of the tender specifications committee prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.
- (i) The following information must be submitted by the senior manager responsible for the vote to the Chief Financial Officer prior to the public advertisement of any bids in excess of R10 million (all applicable taxes included):
 - (i) Proof that budgetary provision exists for procurement of the goods, services and/or infrastructure projects;
 - (ii) Any ancillary budgetary implications related to the bid, for example, if the project is for the acquisition of a municipal asset, does budgetary provision exist for the operation of the asset, maintenance costs relating to the asset, administration costs and rehabilitation/renewal costs;
 - (iii) Any multi-year budgetary implications, for example, if a project will take more than one financial year, the estimated expenditure per financial year.
- (j) Validity period for construction related goods/ services and infrastructure projects is 56 days or in exceptional cases 84 days and for all other goods or services the validity period is 90 days (consecutive days).

- (3) A bid specification committee must be composed of:
 - (a) at least four officials of the municipality who must serve as standing members; of which one must be from the Supply Chain Management Unit
 - (b) an official to be co-opted from the end user department preferably a manager and a knowledgeable official responsible for the function involved;
 - (c) co-opted external specialist advisor .
 - (d) the quorum must be equal to 50% of the number of permanent (as opposed to co-opted) committee members, plus one other member.
- (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) That for all projects with a threshold of **R300 000.00 to R3m and for technical tenders up to a CIDB grading of 3** the following is waived:-
 - (a) Bank guarantee
 - (b) Bank rating
 - (c) NQF levels 5 and 7 for Labour Intensive
 - (e) Letter of Good Standing with Workmen's Compensation Fund

(The service provider must submit a letter from the Department of Labour indicating that they can be registered within seven days after receiving the award. The award shall be crafted in such way that the Municipality gives the service provider fourteen days to register with the Compensation Fund prior to the signing of the contract.)
- (6)
 - (a) That local labour must be employed in terms of EPWP and 80% employed from within the ward and 20% within all wards of KDM.
 - (b) That the Business Unit concerned must ensure that the line items that are to be subcontracted, must be specified in the bid specifications document.
- (7) The Accounting Officer may call on preferred bidders to form a joint venture with SMME's for projects exceeding R10m.

- (a) In the case of Consortiums, Joint Ventures, or Partnerships each individual business entity must submit the required certificates for each returnable schedule as specified in the bid document and to qualify for preferential points.
 - (b) A Business Entity who has a CIDB grading of 7 or higher may only form a JV with a business entity who has a CIDB grading of 3 and below.
 - (c) paragraph 7(a) and (b) above must be in compliance with 4.1 and 4.2 of the Preferential Procurement Policy of KDM.
- (8) Skills development program
- (a) that for all technical projects exceeding R10m, 1.00% of the project value must be allocated to skills development program for example; all graduates within KDM's jurisdiction. The co-ordination will be undertaken by HR and the Youth Business Unit. This should be ward and cluster based appointments.
- (9)
- (a) The Tender Specifications Committee shall set appropriate Local Economic Development targets in the form of Contract Participation Specific Goals, set as performance criteria within contracts, where appropriate, for the following specific goals in line with KwaDukuza's Preferential Procurement Policy of ensuring that bona-fide local businesses and emerging businesses are empowered. KwaDukuza's Preferential Procurement Policy further reinforces that the below categories shall be considered for the empowerment of local entrepreneurs:
 - i. Black people
 - ii. Women
 - iii. Youth
 - iv. Disabled
 - (b) only an EME or QSE meeting one or more of the specific goals as outlined in paragraph 4.1 and RDP Goals as outlined in paragraph 4.2 of KwaDukuza's Preferential Procurement Policy shall be considered for the provision of services or goods.
- (10) All locally based EME or QSE's who are participating on KwaDukuza Municipality initiated Supplier/ Enterprise Development Program which is run for the period of more than 1 year shall be eligible to tender as part of the procurement.

- (11) A tender that fails to meet any specific goals criteria stipulated in the advertisement of the tender documents is an unacceptable tender in terms of paragraph 4.1 of the Preferential Procurement Policy of KwaDukuza Municipality.
- (12) The Bid Specifications Committee shall ensure full compliance with KwaDukuza's Preferential Procurement Policy and 12(11) of this policy.
- (13) That the TSC checklist must be completed and signed by the chairperson and its members.
- (14) With regards to Covid 19 or any disaster procedures affecting the TSC, refer to paragraph 59 of the SCMP and annexure J.

Bid evaluation committees

28.

- (1) A bid evaluation committee must -
 - (a) evaluate bids in accordance with -
 - (i) the specifications for a specific procurement; and
 - (ii) the points system set out in terms of the Preferential Procurement Policy of KwaDukuza and paragraph 27(2)(f) of this policy.
 - (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
 - (d) In the event where the evaluation of bids received are not concluded within the validity period, the municipality must arrange to extend period of validity to all bidders before expiry date.
 - (e) Prior approval for the extension of bid validity period must be sought from Head: SCM or designated official.
 - (f) In the event where the validity period of the bids received have expired with no extension of the period of tender validity being arranged with all bidders before the expiry of the validity period, then the tender is null and void and of no force and effect.

- (g) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
 - (h) Contracts above the value of R10 million (all applicable taxes included) may only be awarded to the preferred bidder after the Chief Financial Officer has verified in writing that budgetary provision exists for the acquisition of the goods, infrastructure projects and/or services and that it is consistent with the Integrated Development Plan.
 - (i) A tenderer that fails to meet any specific goals criteria in terms of paragraph 4.1 the Preferential Procurement Policy of KwaDukuza should be deemed non-responsive.
 - (j) The secretariat shall ensure that the following information is verified at the time of the recommendation:-
 - (aa) The CSD registration
 - (bb) The tax compliance status of the bidder
 - (cc) The vat registration of the bidder (if applicable)
 - (dd) The CIDB grading validity of the bidder if applicable. Should the bidder submit proof of a CIDB grading application, it is the onus of the bidder to ensure that at the time of evaluation he is registered.
 - (ee) Validate that the service provider or its directors does not appear on the National Treasury list for tender defaulters and list of restricted suppliers.
 - (k) for all technical related projects, the evaluation must be conducted in line with the CIDB Regulations, Circulars, Practice notes and Guidelines issued by the CIDB.
-
- (2) A bid evaluation committee must as far as possible be composed of;
 - (a) at least four officials of the municipality who must serve as standing members; one from the Supply Chain Management Unit.
 - (b) an official to be co-opted from end user department preferably a manager and a knowledgeable official responsible for the function involved ;
 - (c) co- opted external specialist advisor
 - (d) the quorum must be equal to 50% of the number of permanent (as opposed to co-opted) committee members, plus one other member.
 - (4) That the TEC checklist must be completed and signed by the chairperson and its members.

- (5) With regards to Covid 19 and disaster related procedures effecting the TEC, refer to paragraph 59 of the SCMP and annexure J.
- (6) That the TEC must ensure full compliance with paragraph 21(f) and (g) of this policy.

Bid adjudication committees

29.

- (1) A bid adjudication committee must -
 - (a) consider the report and recommendations of the bid evaluation committee; and
 - (b) either -
 - (i) depending on its delegations, make a final award or a recommendation to the Municipal Manager to make the final award; or
 - (ii) make another recommendation to the Municipal Manager how to proceed with the relevant procurement in terms of S114 of the MFMA
 - (ii) the contract must be awarded to the tender scoring the highest points.
- (2) A bid adjudication committee must consist of at least four senior managers of the municipality which must include -
 - (a) Chief Financial Officer or, if the Chief Financial Officer is not available, another manager in the budget and treasury office reporting directly to the Chief Financial Officer and designated by the Chief Financial Officer.
 - (b) Executive Directors or senior managers of which one must be a senior supply chain management official
 - (c) the quorum must be equal to 50% of the number of permanent (as opposed to co-opted) committee members, plus one other member.
- (3) The Municipal Manager must appoint the chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.
- (4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.

- (5)
- (a) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid -
- (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;
 - (ii) notify the Municipal Manager.
- (b) The Municipal Manager may -
- (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
 - (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (6) The Municipal Manager may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (7) The Municipal Manager must comply with section 114 of the Act within 10 working days.
- (8) That the TAC checklist must be completed and signed by the chairperson and its members.
- (9) With regards to Covid 19 procedures effecting the TAC, refer to paragraph 59 of the SCMP and annexure J.
- (10) That the TAC must ensure that the bidder is in full compliance with paragraph 21(f) and (g) of this policy.
- (11) for all technical related projects, the adjudication must be conducted in line with the CIDB Regulations, Circulars, Practice notes and Guidelines issued by the CIDB.

Procurement of banking services

30.

- (1) A contract for banking services -
 - (a) must be procured through competitive bids;
 - (b) must be consistent with section 7 or 85 of the Act; and
 - (c) may not be for a period of more than five years at a time.
- (2) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.
- (3) The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of paragraph 22(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

Procurement of IT related goods or services

31.

- (1) The Municipal Manager 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 disagrees with such comments, the comments and the reasons for rejecting or not following such

comments must be submitted to the council, the National Treasury, the relevant provincial treasury and the Auditor General.

**Procurement of goods and services under contracts secured by other organs of state
(refer SOP - Annexure D)**

32.

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

Procurement of goods necessitating special safety arrangements

33.

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

Proudly SA Campaign

34.

- (1) (a) KwaDukuza Municipality supports the Proudly SA Campaign to the extent that preference will be given to procuring local goods and services from entities as specified in paragraph 4.2 of the KwaDukuza's Preferential Procurement Policy

Appointment of consultants

35.

- (1) The Municipal Manager may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.
- (2) Consultancy services must be procured through competitive bids if
 - (a) the value of the contract exceeds R300 000 (VAT included); or
 - (b) the period of the contract exceeds one year.
- (3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of -
 - (a) all consultancy services provided to an organ of state in the last five years; and
 - (b) any similar consultancy services provided to an organ of state in the last five years.
- (4) The Municipal Manager 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.
- (5) All turnkey projects must be procured in terms of S12(1) of this policy.
- (6) The appointment of consultants/ turnkey appointments, shall be authorized and approved by the Accounting Officer.

Deviation from, and ratification of minor breaches of, procurement processes (refer SOP - Annexure E)

36.

- (1) The Municipal Manager may -
 - (a) dispense with the official procurement processes established by this Policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only -
 - (i) in an emergency;
 - (ii) if such goods or services are produced or available from a single provider only;
 - (iii) or the acquisition of special works of art or historical objects where specifications are difficult to compile;
 - (iv) acquisition of animals for zoos and/or nature and game reserves; or
 - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
 - (b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.
- (2) The Municipal Manager must record the reasons for any deviations in terms of subparagraphs (1)(a) and (b) of this policy and report them to the next meeting of the council and include as a note to the annual financial statements.
- (3) Subparagraph (2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this policy.
- (4) In the event of section 36 (1)(i), the application of the section 36 must be done within 7 days from date of incident

PROCEDURE TO FOLLOW

Poor planning does not constitute an emergency.

In cases where it is impractical or impossible to follow the official procurement process it must be shown where and how the market was tested, why it is impractical to go to tender, the provider chosen was undertaken in a fair manner so as not to prejudice other potential providers, etc. where it would be against the Municipality's best interest to follow the proper procurement process

All reports of this nature are to be signed by the Chief Financial Officer who will check:

- Is the motivation valid?
- Is there sufficient reason for not going out to tender?
- Is there adequate finance?
- Is the process fair, equitable, as transparent as can be, cost effective?
- Can the Municipality adequately account for making such a decision

Accounting Officer to Approve prior to implementation with the exception of an emergency

Supply Chain Unit to issue official order number.

Unsolicited bids (refer SOP - Annexure F)

37.

- (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- (2) The Municipal Manager 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 Municipal Manager decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with -
 - (a) reasons as to why the bid should not be open to other competitors;
 - (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
 - (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) The Municipal Manager must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, to the National Treasury and the relevant provincial treasury for comment.
- (5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, depending on its delegations.
- (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (7) When considering the matter, the adjudication committee must take into account
 - (a) any comments submitted by the public; and
 - (b) any written comments and recommendations of the National Treasury or the relevant provincial treasury.
- (8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the Municipal Manager 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 KwaDukuza

Municipality to the bid may be entered into or signed within 30 days of the submission.

Combating of abuse of supply chain management system

38.

- (1) The Municipal Manager 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; or
 - (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
 - (e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
 - (f) cancel a contract awarded to a person if -
 - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or

- (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
- (g) reject the bid of any bidder if that bidder or any of its directors -
 - (i) has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;
 - (ii) has been convicted for fraud or corruption during the past five years;
 - (iii) has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - (iv) has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- (h) Where any of the conditions of the contract have not been fulfilled, an organ of state must take action against a contractor; and in addition to any other contractual or other remedy that it may have against the contractor, an organ of state may:
 - (i) disqualify the contractor from the tendering process;
 - (ii) recover all costs, losses or damages it has incurred or suffered as a result of that contractor's performance;
 - (iii) cancel the contract and claim any damages which it has suffered as a result of having to make less favorable arrangements due to such cancellation;
 - (iv) restrict the contractor, its shareholders and directors from obtaining business from any organ of state for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied; and
 - (v) forward the matter for criminal prosecution
 - (vi) That the municipality must comply with MFMA Circular 43 to invoke above.
- (i) All action taken in terms of (h) above may be shared with all municipalities within the ILembe Region.
- (2) The Municipal Manager must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) of this policy.

Part 3: Logistics, Disposal, Risk and Performance Management

Logistics management

39.

The Municipal Manager must establish and implement an effective system of logistics management, which must include -

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

Disposal management (refer SOP - Annexure G)

40.

- (1) The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act, are as follows:
 - (i) An obsolescence plan must be determined for each asset to ensure that when the asset can no longer be maintained or used for its original purpose, that there is a plan to replace it.
 - (ii) A renewal plan must be determined for assets that have reached the end of its useful life.
 - (iii) Asset disposal decisions must be made within an integrated, service and financial planning framework.
- (2) Assets may be disposed of by -
 - (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
 - (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
 - (iii) selling the asset; or
 - (iv) destroying the asset.
- (3) KwaDukuza Municipality must establish a disposal strategy to determine the best mechanism of disposal for each asset and the Municipal Manager must ensure that -
 - (a) immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
 - (b) movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
 - (c) firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;
 - (d) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;

- (e) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;
- (f) where assets are traded in for other assets, the highest possible trade-in price is negotiated; and
- (g) in the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment.

Risk management

41.

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.
- (f) in terms of (b) above, the committee may not appoint a contractor to carry out works which exceeds the value of the maximum threshold enabled for their CIDB grading to mitigate its risk.
- (g) in terms of (b) above, the committee may not appoint a contractor for more than one contract for non-technical tenders to mitigate its risk.

Performance management

42.

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

Part 4: Other matters

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

43.

- (1) No award above R30 000 may be made in terms of this Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (2) Before making an award to a person the Municipal Manager must first check with SARS whether that person's tax matters are in order.
- (3) If SARS does not respond within 7 days such person's tax matters may for purposes of subparagraph (1) be presumed to be in order.
- (4) In terms of MFMA Circular 90, the following shall apply:-
 - (i) The CSD or tax compliance status PIN are the approved methods to be used to prove tax compliance.
 - (ii) The Accounting Officer may therefore, accept printed or copies of Tax Clearance Certificates submitted by bidders and verify them on e-Filing. The verification result should be filed and attached for audit purposes for that specific tender or order.
 - (iii) Where a supplier does not submit a tax compliance status PIN but provides a CSD number, the accounting officer should utilize the CSD number via its website www.csd.gov.za to access the supplier records and verify tax compliance status. A printed screen view at the time of verification should then be attached to the supplier's records for audit purposes.
 - (iv) Where the recommended bidder is not tax compliant, the bidder should be notified of their non-compliant status and the bidder must be requested to submit to the municipality, within 7 working days, written proof from SARS of their tax compliance status or proof from SARS that they have made an arrangement to meet their outstanding tax obligations. This function must be performed by the

SCM Practitioners for bids within the threshold of R30 000 and R00 000 and by the Demand Manager for all tender awards.

- (v) The proof of tax compliance status submitted by the bidder to the municipality must be verified via the CSD or e-Filing. This function must be performed by the SCM Practitioners for bids within the threshold of R30 000 and **R300 000** and by the Demand Manager for all tender awards.
- (vi) The accounting officer should reject a bid submitted by the bidder if such a bidder fails to provide proof of tax compliance status within the timeframe stated above.

Prohibition on awards to persons in the service of the state

44.

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

- (a) who is in the service of the state;
- (b) if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
- (c) a person who is an advisor or consultant contracted with KwaDukuza Municipality wherein the awarding of contract would result in a conflict of interest and put in question the integrity of the municipal systems of sound governance.

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

45.

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

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

Ethical standards

46.

- (1) A code of ethical standards is hereby established, in accordance with subparagraph (2), for officials and other role players in the supply chain management system 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 the 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;
 - (d) notwithstanding subparagraph (2)(c), must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
 - (e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the municipality
 - (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
 - (g) must be scrupulous in his or her use of property belonging to the municipality
 - (h) must assist the accounting officer in combating fraud, corruption, favoritism 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, favoritism or unfair conduct;

- (ii) any alleged contravention of paragraph 47(1) of this policy; or
 - (iii) any alleged breach of this code of ethical standards.
- (3) Declarations in terms of subparagraphs (2)(d) and (e) -
 - (a) must be recorded in a register which the accounting officer must keep for this purpose;
 - (b) by the accounting officer must be made to the mayor of the municipality who must ensure that such declarations are recorded in the register.
- (4) The National Treasury's code of conduct will 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 will be dealt with as follows -
 - (a) in the case of an employee, in terms of the disciplinary procedures of the KwaDukuza Municipality envisaged in section 67(1)(h) of the Municipal Systems Act;
 - (b) in the case a role player who is not an employee, in recognition of the severity of the breach by:
 - (i) listing in the register of defaulters by the municipality and/or
 - (ii) listing in the provincial and national treasury of defaulters and/or
 - (iii) removal from KwaDukuza Municipality's database.
 - (c) In all cases, financial misconduct will be dealt with in terms of chapter 15 of the Act and Regulations on Financial Misconduct and Criminal Proceedings issued on 30 May 2014.
- (6) A breach of the code of conduct adopted by the municipality must be dealt with in accordance with schedule 2 of the Systems Act.

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

47.

- (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant -
 - (a) any inducement or reward to KwaDukuza 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 Municipal Manager must promptly report any alleged contravention of subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
- (3) Subparagraph (1) does not apply to gifts less than R350 in value.

Sponsorships

48.

The Municipal Manager 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

49.

49.1 Persons aggrieved by decisions or actions taken in the implementation of this supply chain management policy, may lodge within 14 days of the decision or action:

- (a) A written notice of intention to appeal against the decision or action which must be accompanied by a statement setting out the grounds of appeal, and if necessary, a request for further information.
- (b) The Appellant must submit their written notice of intention to appeal to the Accounting Officer of the municipality who shall, in turn, and within 72 hours refer the appeal to an independent and impartial committee for resolution.
- (c) Only persons who submitted a bid in response to an invitation to tender and who were subsequently aggrieved by a decision or action taken in the implementation of this policy may lodge an appeal with the Accounting Officer.
- (d) A mere request for information by any aggrieved person which is not accompanied by a notice of intention to appeal, and the relevant grounds of appeal does not constitute an appeal in terms of this policy.
- (e) An aggrieved person or the Municipality may deliver any documents required in terms of this policy electronically.

Resolution of objections and complaints against procurement process

50.

- (1) The Accounting Officer must appoint an independent and impartial appeals committee which must be made up of officials from the Municipality who were not directly involved in the decision or action that is being appealed against.
- (2) If the Accounting Officer believes that expert advice must be sought or that an expert appeal panel must be appointed, he/she may source an independent

expert or constitute an independent expert appeal panel, or both, within 5 days of receipt of the notice of intention to appeal.

- (3) The Secretariat of the appeal committee must, within 5 days of receipt of any request for further information deliver such information or documentation to the Appellant.
- (4) The Appellant must supplement and deliver its additional grounds of appeal, if any, within 5 days of receipt of the requested information.
- (5) The Municipality must lodge a responding memorandum if any within 5 days of receipt of the supplementary grounds of appeal from the Appellant or within 5 days from when the supplementary grounds of appeal were due.
- (6) Once the supplementary grounds of appeal and the responding memorandum if any, have been lodged, the secretariat shall promptly ensure that the Independent Appeals Committee or Expert Appeals Panel meeting is set down no later than 5 days from lodging of the aforesaid documents, and that the Appellant receives notification of the meeting at least 3 days prior to the meeting taking place.
- (7) The Independent Appeals Committee or Expert Appeal Panel reserves the right to hold an oral meeting or to dispense with the appeal on the basis of the representations made by the parties.
- (8) The Independent Appeals Committee or Expert Appeal Panel must decide an appeal within 10 days of considering the appeal and make a recommendation to the accounting officer.
- (9) The Accounting Officer, or another official designated by the Accounting Officer, is responsible for monitoring and ensuring that members of the Independent Appeals Committee or Expert Appeal Panel effectively discharge their duties and obligations.

- (10) The Independent Appeals Committee or Expert Appeal Panel shall only accept the following forms of apologies as condonation of the Appellant's absence from the appeal meeting:-
- (a) A doctor's note
 - (b) A Court case summons notice (if applicable)
 - (c) A death certificate of a family member
- (11) Should the appellant fail to attend the Appeals meeting, the appeal shall be dismissed.
- (12) If the Independent Appeals Committee or Expert Appeals Panel referred to in paragraph 50(1) and 50(2) of this policy cannot resolve the matter within 60 days, then the Accounting officer may request the Provincial Treasury to appoint the Municipal Bid Appeals Tribunal (MBAT) to hear the appeal. The decision taken, by the MBAT is binding to both parties.
- (13) If the MBAT cannot resolve the matter within a further 60 days, in the interest of service delivery the Accounting officer may approach any court with competent jurisdiction to resolve the matter.
- (14) If upon receipt of the MBAT's decision the Accounting officer reasonably believes that another court would come to a different conclusion from that of the MBAT, the Accounting officer may take the MBAT's decision on judicial review.
- (15) The Appellant may not refer the appeal to the MBAT or approach a court for relief before the Independent Appeals Committee or Expert Appeals Panel has decided the appeal and made a recommendation to the Accounting officer.
- (16) The Accounting Officer may accept the report / resolutions of the Appeals Committee / MBAT, or refer the report / resolutions to the tender evaluation committee for recommendations.

Contracts providing for compensation based on turnover

51.

If a service provider acts on behalf of KwaDukuza 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 KwaDukuza Municipality must stipulate -

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

52. Cancellation and re-invitation of bids

- (1) A municipality may, prior to the award of a bid, cancel the bid if:
 - (a) Due to changed circumstances, there is no longer a need for the services, works or goods requested. [AOs / AAs must ensure that only goods, services or works that are required to fulfill the needs of the institution are procured]; or
 - (b) Funds are no longer available to cover the total envisaged expenditure. [AO has to ensure that the budgetary provisions exist]; or
 - (c) No acceptable bids are received. [If all bids received are rejected, the institution must review the reasons justifying the rejection and consider making revisions to the specific conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids].
 - (d) There is a material irregularity in the tender process
- (2) The decision to cancel a tender in terms of subsections must be published in the media in which the original tender was advertised.
- (3) In terms of CIDB clause F.1.5.2 The employer may not subsequent to the cancellation or abandonment of a tender process or the rejection of all responsive tender offers re-issue a tender covering substantially the same scope of work within a period of six months unless only one tender was received and such tender was returned unopened to the tenderer.

53. Award of contracts

- (a) A contract must be awarded to the bidder who scored the highest total number of points in terms of Regulation 4 (4), 5(4), 6(4) and 7(4) of the PPR of 2022.
- (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.
- (c) During competitive bidding and adjudication processes or before the award of a contract, the accounting officer may, at his or her discretion, specifically request the internal audit function to carry out audit procedures and provide an opinion on compliance of the bidding process with the Municipal Supply Chain Management Regulations. This is in terms of National Treasury MFMA Circular 62
- (d) Once the TAC has identified a successful bidder and all relevant procurement processes have been concluded, the Municipal Manager shall in writing, issue an appointment letter to the successful bidder.
- (e) the successful bidder shall not commence with work or provide the service in terms of the tender without a signed valid contract.
- (f) Contracts may be expanded or varied by not more than 20% for construction related goods, services and infrastructure projects and 15% for all other goods or services of the original value of contract. Anything the above mentioned thresholds must be reported to council. Any expansion or variation on excess of these thresholds must be dealt with in terms of the provisions of Section 116(3) of the MFMA which would be regarded as an amendment to the contract.
- (g) MFMA Circular 49 issued in 2009 and Section 65 (2) (e) of the Municipal Finance Management Act of 2003 states “that all monies owing by the municipality be paid within 30 days of receiving the relevant invoice or statement, unless prescribed otherwise for certain categories of expenditure.

54. Green procurement

1. Eco procurement, or green procurement, is procurement that takes into account environmental criteria when goods and services are purchased, so that the related environmental impact is minimised.

2. Eco procurement aims to:

- a) Encourage a decrease in energy and resource use,
- b) Promote environmental best practice in terms of waste minimisation and management, water and energy efficiency and conservation, pollution reduction and socio-economic development, and
- c) Encourage suppliers to change their behaviour and to provide for environmental issues in the design, manufacture and disposal of their products.

55. Cost Containment

1. The municipality shall annually develop cost containment measures taking into accounts its operation and cost drivers.

56. Covid 19 and other disaster related occurrences affecting SCM procurement procedures and processes

- 1. The TSC should avoid the calling of briefing sessions as far as possible during the pandemic. (during alert lockdown levels 5 - 3)
- 2. Briefing sessions should not be made compulsory unless approved by the Accounting Officer in terms of the above.
- 3. Bidders may be requested to send electronic queries, should they have any, during a specified period. All queries must be addressed a week before the closing date and questions and answers must be uploaded on the municipal website or any another means where all bidders may receive the information.
- 4. The above paragraph must be read in conjunction with MFMA Circular 102 paragraph 6.1 and 6.2 as well as Annexure J of the SCMP.
- 5. Before council goes into a contract secured by National Treasury in terms of MFMA Circular 102 paragraph 5 for any disaster or emergency related items, council

needs to first test their local market to ensure that the prices received are fair, equitable, cost effective and competitive.

6. This must be done in terms of paragraph 18 of this policy subject to the threshold value in terms of paragraph 12(1) of this policy.
7. The Accounting Officer may deviate from inviting competitors in cases of emergency in terms of Regulation 36 of the Municipal Supply Chain Management Regulations read with the Municipal Supply Chain Policy. This does not require National Treasury approval. The Covid-19 pandemic is a situation that justifies the use of emergency procurement provisions.
8. The emergency procurement provisions provide for the Accounting Officer to procure the required goods and services by other means such as price quotations or negotiations. The reasons should be recorded and approved by the Accounting Officer of his delegate.
9. During the duration of the national state of disaster, the supply of PPE items will be open to all suppliers that conform to the COVID-19 item specifications as issued by the World Health Organization, the National Department of Health, the Department of Trade and Industry and the National Treasury.
10. Municipalities may approach any supplier to obtain quotes and may procure from such suppliers on condition that:-
 - (a) The items are to the specifications as determined by the relevant authorities
 - (b) The prices are equal to or lower than the prices determined by the relevant authority
 - (c) The supplier is registered with the National Treasury CSD or any other database approved by the National Treasury
11. The above must be read in conjunction with MFMA Circular 102.

57. Subcontracting

1. That the Accounting Officer may allow for subcontracting as a condition of tender. Council has resolved that for all projects exceeding R4m, a minimum of 45% for subcontracting must apply.
2. If council applies subcontracting as contemplated in paragraph (1) above, the municipality must advertise the tender with a specific tendering condition that the successful tenderer must subcontract to advance specific goals in categories 1 to 4 (refer table 1 below) and RDP goals, categories 1 and 2 (refer table 2), of council's approved Preferential Procurement Policy.

Table 1

CATEGORY	<u>DESCRIPTION</u>
	SPECIFIC GOALS APPLIED - OWNERSHIP, GENDER AND DISABILITY GOALS
1	EME or QSE which is at least 51% owned by black people
2	EME or QSE which is at least 51% owned by black people who are youth
3	EME or QSE which is at least 51% owned by black people who are women
4	EME or QSE which is at least 51% owned by black people with disabilities

Table 2

CATEGORY	<u>DESCRIPTION</u>
	RDP CRITERIA (SPECIFIC GOAL) - BASED ON LOCALITY
1	In the KwaDukuza Municipal Wards / Clusters in which the project will be rendered
2	The KwaDukuza Municipal area of jurisdiction,

3. Proof of address for the enterprise for 2 above, by way of a municipal utility bill; or a sworn affidavit from the landlord; or a special ward councilor letter for procurement processes, or a statement from the estate management agent; which must correspond with the address on the CSD registration. This will be verified by the SCM Officials via the CSD.

4. The municipality must make available the list of all suppliers registered on a database approved by the Accounting Officer to provide the required goods or services in respect of the applicable specific goals mentioned in paragraph (2) from which the tenderer must select a supplier.
5. Subcontractors with a CIDB grading between 1 and 3 will only be accepted.

58. REMEDIES

1. If an organ of state is of the view that a tenderer submitted false information regarding a specific goal, it must—
 - (a) inform the tenderer accordingly; and
 - (b) give the tenderer an opportunity to make representations within 14 days as to why the tender may not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part.
2. After considering the representations referred to in sub regulation (1)(b), the organ of state may, if it concludes that such information is false—
 - (a) disqualify the tenderer or terminate the contract in whole or in part; and
 - (b) if applicable, claim damages from the tenderer.

Part 6: The Preference points system and calculation

59. CALCULATION OF THE PREFERENCE POINTS SYSTEM

(1) 80/20 PREFERENCE POINT SYSTEM FOR ACQUISITION OF GOODS OR SERVICES FOR A RAND VALUE UP TO R50 MILLION

- (a) The following formula must be used to calculate the points out of 80 for price in respect of a tender with a Rand value up to R50 million, inclusive of all applicable taxes:

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

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.

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

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

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

(2) 90/10 PREFERENCE POINT SYSTEM FOR THE ACQUISITION OF GOODS OR SERVICES WITH A RAND VALUE ABOVE R50 MILLION

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

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

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.

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

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

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

(3) 80/20 PREFERENCE POINT SYSTEM FOR TENDERS FOR INCOME-GENERATING CONTRACTS FOR A RAND VALUE UP TO R50 MILLION

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

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

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmax = Price of highest acceptable tender.

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

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

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

(4) 90/10 PREFERENCE POINT SYSTEM FOR TENDERS FOR INCOME-GENERATING CONTRACTS FOR A RAND VALUE ABOVE R50 MILLION

(a) The following formula must be used to calculate the points out of 90 for price in respect of a tender for income-generating contracts, with a Rand value above R50 million, inclusive of all applicable taxes:

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

Where

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmax = Price of highest acceptable tender.

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

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

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

60. CRITERIA FOR BREAKING DEADLOCK IN SCORING

(1) If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest points for specific goals.

(2) If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots. This will be done by the bid committee chairperson in the presence of bid committee members and by the Buyer in the presence of the SCM Practitioners for thresholds below R300 000.00.

Commencement

[This Policy takes effect on \[1 JULY 2024\]](#)

ANNEXURE A

STANDARD OPERATING PROCEDURE FOR GOODS RECEIVED - PART A

STEP 1: Orders issued to service provider

STEP 2: Goods received by the SCM Logistics Official who verifies invoice against goods delivered and is signed off. (dependent on nature of goods delivered e.g. premix, quarry, hire of plant and equipment etc. where delivery note/ timesheet must be forwarded to SCM Officials)

STEP 3: Good received is immediately recorded in goods received book by the official in step 2 above.

STEP 4: The departments are informed by the SCM Official in step 2 and 3 of the delivery and is requested to pick up goods from the SCM Unit and the goods received book is thereafter signed off or in some instances the SCM Senior Clerk delivers.

STEP 5: The invoice / delivery note is attached to the relevant order by the SCM Logistics Official.

STEP 6: Once the order has been invoiced the Procurement Clerk then creates the GRV after verifying that the invoice matches the order. (After various checks have been conducted)

STEP 7: The GRV's are then recorded in a register and forwarded to the various directorates for authorisation by the Procurement Clerk.

STEP 8: The GRV is then returned to the SCM Unit (3 day turnaround time and date stamped) which is then verified against the register by the Procurement Clerk.

STEP 9: GRV is then forwarded for final payment by the Procurement Clerk to the Expenditure Section.

NB: GRV's that have not been returned timeously and/or missing, an item will be submitted quarterly to MANCO by the Buyer.

STANDARD OPERATING PROCEDURE FOR SERVICES RENDERED - PART B

STEP 1: Orders issued to service provider by the SCM Practitioners.

STEP 2: Services rendered / project completed.

STEP 3: Invoice is thereafter provided by the service provider to the Business Unit.

STEP 4: The Business Unit then verifies the completion of the project and signs off the invoice.

STEP 5: The invoice is then submitted to the SCM Unit by the Business Unit and the SCM Practitioner thereafter attaches the invoice to the order.

STEP 6: Once the order has been invoiced the Procurement Clerk then creates the GRV after verifying that the invoice matches the order. (after various checks have been conducted)

STEP 7: The GRV's are then recorded in a register and forwarded to the various directorates for authorisation by the Procurement Clerk.

STEP 8: The GRV is then returned to the SCM Unit (3 day turnaround time and date stamped) which is then verified against the register by the Procurement Clerk.

STEP 9: GRV is then forwarded for final payment by the Procurement Clerk to the Expenditure Section.

NB: GRV's that have not been returned timeously and/or missing, an item will be submitted quarterly to MANCO by the Buyer.

ANNEXURE B

STANDARD OPERATING PROCEDURE FOR THE OPENING OF TENDER DOCUMENTS

1. Once advert is placed in the local newspaper or e-tender portal; councils website and notice boards; CIDB website (if applicable); the electronic advert is forwarded to the following officials:-
 - Demand Manager - Luyanda Tshonapi
 - Business Unit concerned
 - Consultants (if applicable)
2. The above officials must make themselves available at the time, date and venue for the opening of the tender documents as specified in the advert.
3. At the opening, the officials will call out the following:-
 - The name of the bidder
 - The price tendered
- 3.1 That the following mandatory documents must be stamped and signed by the KDM officials together with the bid document and the price:
 - Municipal utility bills
 - CIDB (if applicable)
 - Letter of good standing (if applicable)
 - Bank Rating (if applicable)
 - NQF levels 5 & 7 (if applicable)
 - Financial Statements (if applicable)
 - Form of Officer
4. Upon completion of the tender opening, the Business Unit will sign for the collection and receipt of all submitted documents.
5. That the Demand Manager will make a copy of the tender opening register and publish the list of tenders received on council's website.

NOTES:

- No bid documents must leave the municipal buildings.

ANNEXURE C

STANDARD OPERATING PROCEDURE - 2 ENVELOPE SYSTEM TENDER

1. The service provider must ensure that 2 separate envelopes are used.

2. Envelopes must be clearly marked as follows:-

ENVELOPE 1 - TECHNICAL PROPOSAL - TENDER NUMBER

ENVELOPE 2 - FINANCIAL PROPOSAL - TENDER NUMBER

NB: At the back of envelope 2, the service provider **MUST** clearly indicate the company name and postal address.

3. Both envelopes 1 and 2 must be placed in a separate third envelope, sealed, clearly indicating the description of the tender the service provider wishes to participate in.

4. The service provider shall place the envelope into the tender box as instructed in the tender advertisement.

5. On the day of the public opening only the technical proposal (envelope 1) shall be opened and the name of each bidder publically announced and recorded.

6. The Business Unit will then submit a pre-evaluation report on the assessment of the technical proposal. This must be duly submitted to the TEC who will then evaluate and recommend to the TAC.

NB: Evaluation to be done in accordance with criteria set bearing in mind the minimum threshold to be scored by each bidder to qualify for the opening of envelope 2.

7. The second envelope indicating the financial proposal, **MUST NOT** be opened until the evaluation and adjudication of the first envelope (technical proposal) has been concluded.

8. ONLY those bidders who have scored the minimum number of points for the technical proposals will be invited for the opening of the second envelope (financial proposal) as per the TAC resolution.
9. The Business Unit shall invite all bidders whose technical proposals were successful to the public opening of the financial proposals (envelope 2).
10. Financial proposals shall be opened, read out and recorded publically.
11. The Business Unit shall submit a report on the financial proposal to the TEC who will consider the report and thereafter make a recommendation to the TAC for final award.
12. The TAC Secretariat shall duly send out the letters to the unsuccessful bidders informing them of the outcome in terms of Section 49 of the SCM Policy, and the 14 days appeals period shall be observed / applied. All unopened financial proposals for those bidders who failed to qualify for stage 2 must be returned unopened to the bidders by Demand Manager.
13. Once the 14 days appeals period has lapsed and all objections / complaints have been resolved in terms of Section 50 of this policy, the letter of award shall be issued.

IMPORTANT NOTES

- Should envelope 1 contain pricing, the tender becomes non-responsive.
- Should the envelope not be clearly marked, the bid is rendered non-responsive.
- Should the officials at the tender opening, open both envelopes simultaneously, it renders the entire tender process flawed. The tender must be duly cancelled and be started de novo (afresh).

ANNEXURE D

STANDARD OPERATING PROCEDURE - APPOINTMENT OF SERVICE PROVIDERS IN TERMS OF SECTION 32 OF THE SCMP

In terms of Section 110(2)(c) of the MFMA which is further amplified in Regulation 32 of the Municipal Supply Chain Management Regulations, a Municipality may opt to procure goods and services under a contract secured by another organ of state, provided that the relevant supplier has agreed to such procurements and the following:-

1. The contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
2. The municipality has no reason to believe that such contract was not validly procured;
3. There are demonstrable discounts or benefits for the municipality to do so; and
4. That the other organ of state and the provider have consented to such procurement in writing

In light of the above the following SOP shall apply:-

Once the Business Unit (BU) identifies a need for a contract secured by another organ of state, the BU is to first consider the benefits and costs of savings that could be derived from such a contract. Once this has been identified, the following must be provided to the Bid Committees (TEC and TAC) in order to consider procuring in terms of Regulation 32 of the Municipal Supply Chain Management Regulations:-

1. A motivation report from the BU indicating the need for such procurement and the benefits as well as cost of savings derived from procuring such a contract.
2. A letter of intent signed by the Municipal Manager to the organ of state under which the contract has been secured requesting permission to utilize the contract.

3. A signed letter from the Municipal Manager of the organ of state agreeing to tap into the tender with the following accompanying documents;
 - 3.1 Tender advert
 - 3.2 Copy of the bid document of the awarded service provider
 - 3.3 All Bid Committee minutes (bid specifications, bid evaluation and bid adjudication)
 - 3.4 Signed appointment letter of the service provider by the Municipal Manager of the other organ of state.
 - 3.5 Contract / SLA of the appointed bidder with the organ of state
 - 3.6 Letter of acceptance from the Accounting Officer of the organ of state and confirmation that no objections were outstanding at the time of appointment
4. The following documents must be provided by the service provider;
 - 4.1 Signed letter agreeing to contract with the municipality as per the approved specifications at the same rates as agreed by the other organ of state
 - 4.2 Valid SARS Pin
 - 4.3 Three years Annual Financial Statements for contracts more than R 10 million
 - 4.4 Confirmation that service provide is not in the service of the state
 - 4.5 Confirmation that municipal rates and other charges are not in arrears
 - 4.6 MBD 4 Declaration of Interest
 - 4.7 MB 6.2 Declaration for Local Content (if applicable)
5. Once the above information has been secured by the BU, an item must be prepared to the TEC for recommendation and TAC for award. This item must ensure compliance with all requirements set out in points 1 - 4 above. A copy of a budget clearance certificate must be provided to the committees proving that funds are available for such a service in compliance with Section 15 of the MFMA.
6. Once the TAC has approved the item, any resolutions that are conditional / suspensive must be addressed by the Demand Manager.
7. An appointment letter will then be drafted by the Demand Manager for the MM's signature.

8. Once signed by MM, this letter will be forwarded to the service provider.
9. The appointment letter together with the item and accompanying documents as determined in points 3 and 4 above, TEC and TAC minutes will be forwarded to the Legal Department for the drawing up of the contract to be signed.

NB:

- It must be noted that the contract can only be secured as per the approved specifications from that organ of state. No deviations from the specifications may be allowed. For example, should the organ of state approve the procurement of a 30 page stapler, a 60 page stapler cannot be procured at a higher price by the municipality.
- A contract may only be procured in terms of Regulation 32 of the SCM Regulations if the intended contract is still valid. For example a tender which has a 3 year duration and 2 years has already lapsed, the municipality may only utilize that tender for the remainder of the contract duration.

ANNEUXRE E

SECTION 36 PROCURMENTS

The SCM Regulations allows the Accounting Officer to dispense with the official procurement process in terms of the Regulation 36. There are 5 categories in which the Accounting Officer is allowed to deviate. The Section 36 allows the Accounting Officer to deviate from the following:-

- a) Regulation 12(1) - Range of procurement processes
- b) Regulation 18(a) - Advertising of closed quotes for 7 days
- c) Regulation 22(1) - Invitation of competitive bids

Prior to the deviation being approved by the Accounting Officer, the following must be complied with;

1. Registration on the CSD
 2. SARS tax / pin
 3. MBD 4 - Declaration of interest
 4. MBD 8 - Declaration of bidders past SCM practices
 5. MBD 6.2 - Declaration for local content (if applicable)
 6. Contractors most recent utility bill (not older than 3 months)
 7. Bank guarantees (if applicable)
 8. CIDB Grading (if applicable)
 9. Certification of registration (if required registration with a professional body if applicable)
 10. MBD 5 - Declaration for procurement above R10m and all applicable taxes
- It must be noted that there must be a justifiable motivation by the Business Unit to the Accounting Officer for a Section 36 approval.
 - The utilization of a Section 36 must as far as possible be approved prior to the procurement of goods or services.

- It is the responsibility of the requester or the Executive Director to take the Section 36 book for approval so that the Municipal Manager or his delegate has a clear understanding for the reason for the deviation.
- That contracts must be drawn for any deviations exceeding R300 000.00 for all projects that require progress payments in line with the requirements of Provincial Treasury.
- A Section 36 cannot be used for the acquiring of goods or services that are repetitive in nature, for example, furniture, technical projects etc.
- No Section 36 will be approved unless the Business Unit can prove to the Municipal Manager that the SCM processes in terms of Regulation 12 has been followed.

ANNEXURE F

STANDARD OPERATING PROCEDURE FOR UNSOLICITED BIDS

1. A municipality is in terms of section 113 of the Act is not obliged to consider unsolicited bids received outside a normal bidding process. If a municipality or municipal entity decides in terms of section 113(2) of the Act to consider an unsolicited bid, it may do so only if:
 - The product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
 - The product or service will be exceptionally beneficial to, or have exceptional cost advantages for, the municipality or entity;
 - The person who made the bid is the sole supplier of the product or service; and
 - The reasons for not going through the normal bidding processes are found to be sound by the Accounting Officer.
2. If a municipality decides to consider an unsolicited bid that complies with Municipal SCM Regulation 37(2), the municipality must make its decision public in accordance with section 21A of the Municipal Systems Act, together with:
 - Its reasons as to why the bid should not be open to other competitors;
 - An explanation of the potential benefits for the municipality were it to accept the unsolicited bid; and
 - An invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
3. Once the municipality has received written comments pursuant to Municipal SCM Regulation 37(3), it must submit such comments, including any responses from the unsolicited bidder, to the National Treasury and the relevant Provincial Treasury for comment.

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

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

4. When considering the matter, the bid adjudication committee must take into account:
 - any comments submitted by the public; and
 - any written comments and recommendations of the National Treasury or the relevant Provincial Treasury.
5. 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.

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.

- Note: should be taken that inadequate attention given to unsolicited bidding may cause undue problems in the entire procurement process.

ANNEXURE G

STANDARD OPERATING PROCEDURE FOR DISPOSALS

1. Executive Directors shall report in writing to the Demand Manager on all assets which they wish to dispose on quarterly basis.
2. The Demand Manager shall consolidate the requests received from the various Business Units, and shall promptly report the consolidated information to the Management Committee.
3. The Business Unit is to submit an item for disposal of assets to Council for approval. Method of disposal should also be indicated on the item. E.g. public auction.
4. The Council shall ensure that the disposal of any asset takes place in compliance with Section 14 of the Municipal Finance Management Act, 2004. The Act states that the municipality may not dispose any asset required to provide a minimum level of service. The municipality may dispose any other asset, provided the municipality has considered the fair market value and the economic and community value to be received in exchange for the asset. After such considerations, Council must approve the disposal of assets.
5. The Demand Manager is to place an advertisement for public auction on newspapers
6. The Asset Management Section is to assist with collection of all assets to be disposed to SCM yard a week before the auction take place.
7. The Asset transfer form to be filled and signed (during collection of assets) by the Executive Director of each department that submitted the list of assets to be disposed.
8. The Demand Manager will take ownership of assets to be disposed which must be safe guarded until the auction is conducted.
9. Asset Management Section to reconcile a list of assets to be disposed using the initial list approved by Council with Assets Register.
10. Asset Management Section to confirm book values for assets to be disposed.
11. The Demand Manager is to organise for inspection of assets to be disposed to all bidders a day before the auction.
12. The Demand Manager is to conduct the auction process. (14 days after advert was placed on newspapers)
13. Asset Management Section to take records of all assets sold during the auction.

14. The Demand Manager is to ensure that assets sold are collected by the bidders within 24 hours.
15. The Demand Manager is to compile a report of auction and submit it to MANCO and Council at least a week after the auction.
16. Asset Management Section to ensure that assets sold are removed from the Assets Register.
17. The Demand Manager is to conduct an auction whenever deemed necessary but at least once in each reporting period.

NOTES:

- The Demand Manager may choose to appoint an auctioneer after the approval of the Accounting Officer.

ANNEXURE H

STANDARD OPERATING PROCEDURE FOR PRESENTATION OF TENDER REPORTS AND COMPLIANCE BY THE TENDER COMMITTEES

1. Once the tender has closed and tender are recorded in the tender opening register book, the delegated Business Unit representative will sign and take receipt of such documents.
2. The Business Unit concerned will compile a report to the relevant TEC within 7 days from date of closure.
3. All reports must be signed off by the Executive Director of the Business Unit.
4. The report must be forwarded to the relevant TEC Admin Officer for inclusion on the agenda.
5. The following information must be included in the report with the relevant attachments and POE's:-
 - a) The tender opening register copy
 - b) Receipt copies
 - c) Site clarification meeting register
 - d) Site clarification meeting minutes
 - e) Tender advert from newspaper
 - f) Addendums issued if any
 - g) Extension of validity letters and emails if any
 - h) Updated budget clearance certificate
 - i) Checklist of compliance
6. The original bid documents must be brought to the meeting in order to evaluate and verify the accuracy of the report.
7. The agenda will be compiled with the inclusion of the of following:-
 - a) List of restricted service providers - National Treasury
 - b) List of tender defaulters - National Treasury
 - c) Transversal contracts - National Treasury

8. The agenda must be circulated to all members 2 days before the scheduled meeting. (for TEC and TAC)
9. Hard copies must be submitted to the respective members before close of business, 2 days before the date of the meeting.
10. Tabled items must be approved by the committee and be allocated a reference number by the admin officer.
11. At the meeting of the TEC / TAC, the secretariat must ensure that the CSD and CIDB (if applicable) of the recommended / awarded bidder is downloaded and filed immediately at the time of evaluation / adjudication.

ANNEXURE I

STANDARD OPERATING PROCEDURE FOR CLOSED QUOTATIONS

In terms of Section 18 (b) of councils SCM Policy:-

“all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, be advertised for at least seven days on the website and an official notice board of KwaDukuza Municipality;”

In light of the above, the following SOP shall apply:-

1. The Business Unit identifies a project that is in excess of R30 000 vat inclusive.
2. The Business Unit compiles specifications in an unbiased manner which must be duly signed by the Business Unit representative. The signed specifications and the signed request for buying must be submitted to the SCM Practitioner allocated to that Business Unit.
3. The SCM Practitioner shall check the specifications to ensure compliance with paragraph 27(2)(a-e) of the SCM Policy.
4. The SCM Practitioner shall compile an advert for placement on council's website and notice board for advertisement of a minimum of 7 days in terms of paragraph 18(b) of the SCM Policy. (This advert shall detail the price of the document, details for payment and collection of the document, whether a site meeting is required or not and what the evaluation criteria required is, the closing date and time).
5. Closed quotations are publically opened at 12h00 on the closing date which are stamped, signed and recorded in the closed quote opening book by the SCM Officials.
6. The SCM Practitioner is required to ensure that the closed quotation checklist is completed for each quote received.
7. All bids received are checked for compliance in terms of the SCM requirements namely, CSD Registration, completion of all applicable MBD forms, proof of no outstanding monies owed to the relevant municipal authority, CIDB grading (if applicable) and any other mandatory requirements as outlined in the advert and specifications.

8. For all highly technical related projects, a technical assessment is conducted which is duly signed by the Technician, Director, Executive Director and the SCM Head. This report is submitted to the SCM Practitioner for recommendation.
9. The SCM Practitioner shall then evaluate in terms of price and report accordingly.
10. The CSD and CIDB certificate (if applicable) for the awarded bidder must be downloaded on the day of award to ensure that the tax status is compliant and that the CIDB grading is active.
11. Copies of the CQ document and its returnables and all bids received, together with copies of the site meeting register (if applicable), CSD and CIDB certificate are made.
12. The purchase requisition is captured on the Munsoft financial system against the request for buying received and all copies as alluded to in 12 above is attached.
13. The purchase requisition is forwarded to the Buyer who checks for compliance and duly authorises and signs the order.
14. The order is then forwarded to the awarded bidder by the SCM Practitioner.

NB:

- All documents must be legally purchased at the stipulated fee as detailed on the closed quotation advert.
- Documents may only be issued to service providers who provide a receipt showing proof of payment.
- The clock at the SCM Unit will be the only method used for time keeping.
- No late service providers shall be allowed to attend a compulsory clarification meeting.
- All service providers who attend a compulsory clarification meeting must be in possession of a closed quote document or valid receipt.
- No late closed quotations will be accepted by the SCM Unit.
- The approved SOP for civil related closed quotations as approved by council will be used for civil CQ's.
- Only those service providers who are registered with a CIDB Grading of 1 and 2 will be considered for award.
- This SOP is applicable for all other closed quotes.

ANNEXURE J

COMPLIANCE GUIDE FOR TENDER COMMITTEES DURING A *FORCE MAJURE* EVENT

1. All tender committees shall meet once a week as follows:-
 - a. Monday - TAC
 - b. Tuesday - TEC
 - c. Thursday - TSC
2. The notice of meeting and agenda will be circulated 2 days before the meeting takes place. The hard copy of the agenda will be provided by the relevant secretariat.
3. All tender committee meetings shall take place at the council chambers as per the instructions of the Municipal Managers request as the venue allows for social distancing.
4. The council chambers shall be sanitized the day before a tender committee meeting as the strong smell of disinfectant can be harmful. (instances of nausea and headaches have been reported which poses a risk to those all attendees and those suffering from comorbidities)
5. The doors to the venue shall be opened to prevent the touching of door handles and to ensure proper ventilation throughout the meeting.
6. All meetings should be at 90 minute intervals as approved by council.
7. All members and attendees shall not be permitted to enter the venue without a cloth face mask.
8. All those who are present at the meeting shall sign the compulsory attendance register.
9. All members and attendees shall ensure that they sanitize their hands before and throughout the meeting which will be provided by the municipality.

10. All members and attendees shall sit 2 seats apart.
11. All members and attendees shall use gloves when handling documents and immediately discard the gloves once the meeting is over.
12. There shall be NO physical contact between attendees.

NOTES:-

- a. Given the nature and structure of work surrounding bid committee meetings, it is mostly impractical to host virtual meetings should there be items to consider for approval as documents would need to be perused and signed.
- b. In instances where there are confirmation of minutes only, this can be done so electronically via email to all committee members or virtually. The approval of each member shall be printed for record purposes by the secretariat.
- c. It should be a general rule that members or attendees who have undergone testing for covid-19 and are currently awaiting results, have been in contact with a covid-19 positive person or is sick / unwell SHOULD NOT attend a meeting until cleared for duty so as to not pose a risk to all present. This will work on the basis of trust and honesty.

RISKS:- The following risks and shortcomings have been identified and need to be addressed:-

1. Given the terms of reference for each of the bid committees, the use of virtual meetings will not be possible in instances where documents need to be physically looked through and evaluated for compliance.
2. Unfortunately government has not changed the way in which the current supply chain management processes for existing tenders are to be handled and until such time the current processes are to remain.

3. MFMA Circular 102, paragraph 6, outlines the hosting of briefing sessions and public opening of tenders which the Demand Manager will have to ensure compliance with. This must be read in conjunction with the Disaster Management Act. The Demand Manager will be required to factor these amendments into the bid specifications document and advert.

ANNEXURE K

STANDARD OPERATING PROCEDURE FOR APPOINTMENT OF SERVICE PROVIDERS FROM A PANEL

Once a contract has been signed by all parties, this SOP shall apply:-

1. The BU requiring the use of any panel must forward a request for buying to the SCM Unit.
2. Attached to the request for buying must be the following:-
 - 2.1 TAC resolution listing all appointed service providers.
 - 2.2 Copy of the signed appointment letter of the identified bidder.
 - 2.3 Detailed approved specifications signed by the Director or Executive Director of what is required.
 - 2.4 Approved rates used as per BOQ / appointment.
 - 2.5 Budget clearance certificate of project for consultant appointments
3. Where there are pre-approved rates used for a project, the Buyer shall appoint a contractor in a fair manner, ensuring that contractor appointed from the panel is done so on a rotational basis.
4. Should a panel be appointed without specified rates in the tender document, the governing legislated rates shall apply, for example appointment of consultants - ECSA rates would be used.
5. All contractors shall be appointed on a rotational basis.
6. The responsible SCM Practitioner shall receive a formal quotation from the preferred contractor where there are no specified rates included in the appointment letter.
7. This quote shall be vetted by the Buyer / Business Unit against the agreed rates in terms of the appointment letter / contract.

8. The purchase requisition is captured on the Munsoft financial system against the request for buying received and all copies as alluded to in 2 above is attached.
9. The purchase requisition is forwarded to the Buyer who checks for compliance and duly authorises and signs the order.
10. The order is then forwarded to the awarded bidder by the SCM Practitioner. The Business Unit, the Demand Manager as well as the Budget and Compliance Office must be copied on this email to update the necessary registers.

OTHER IMPORTANT NOTES

11. The Buyer shall ensure that the rand value distribution of work shall be done so in an equitable manner to ensure that all those appointed in the panel receive a fair value of work.
12. NO panel member will be disregarded based on verbal or written representations made by the user department indicating poor quality of work unless the necessary processes have been instituted against the service provider in terms of MFMA Circular 43 and the approved SOP.
13. If any infrastructure assets are involved, the Assets Section of the Finance Business Unit must be involved from the start as they need to understand the scope of works, identify the area the work is to be performed and record the GIS coordinates of the project.
14. The above process must be done before the concerned business unit submits any paperwork to the SCM Unit to be actioned and the request for buying must be signed by the Assets Manager as well as the Budget Office.
15. The Demand Manager will populate the procurement plan on a daily basis.
16. An appointment done by the Accounting Officer shall take precedence over this SOP.

ANNEXURE L

STANDARD OPERATING PROCEDURE - TRANSVERSAL CONTRACTS

Regulation 32 of the Municipal SCM regulations provides that:

“A Supply Chain Management policy may allow the accounting officer to procure goods or services for the municipality or municipal entity under a contract secured by another organ of the 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) the municipality has no reason to believe that such contract was not validly procured;
- (c) there are demonstrable discounts or benefits for the municipality to do so; and
- (d) that other organ of state and the provider have consented to such procurement in writing.”

Municipalities or Municipal entities derive their mandate to participate in a transversal term contract (as a contract secured by another organ of state) facilitated by the National Treasury/relevant treasury from the above cited Municipal SCM Regulation. The National Treasury will, when considering an application to participate in a transversal contract from a municipality or municipal entity elaborate in detail if the transversal term contract in question meets the directive of Regulation 32(1) (a) to (d).

PROCEDURE TO PARTICIPATE IN TRANSVERSAL TERM CONTRACT

a) Institutions wishing to participate in transversal term contracts may forward their applications to the National Treasury for consideration.

b) Institutions must utilise Transversal Term Contracts Participation Template to request participation in a transversal term contract and indicate the contract, items or services they are interested in. This participation letter may be downloaded from the below link:-

<http://www.treasury.gov.za/divisions/ocpo/ostb/contracts/Annexure%20A%20Request%20for%20participation%20docx.pdf>

c) A list of transversal contracts is published on the National Treasury website from time to time which is accessible at the link below

<http://www.treasury.gov.za/divisions/ocpo/ostb/contracts/default.aspx>

In light of the above the following SOP shall apply:-

Once the Business Unit (BU) identifies a need for a contract secured by another organ of state, the BU is to first consider the benefits and costs of savings that could be derived from such a contract. Once this has been identified, the following must be provided to the Bid Committees (TEC and TAC) in order to consider procuring through a transversal contract:-

1. A motivation report from the BU indicating the need for such procurement and the benefits as well as cost of savings derived from procuring such a contract.
2. An application letter to the National Treasury requesting participation in a transversal term contract indicating the contract, items or services they are interested in
3. The downloaded contract and other applicable information published for that transversal contract from the National Treasury website.
4. Once the above information has been secured by the BU, an item must be prepared to the TEC for recommendation and TAC for award. This item must ensure compliance with all requirements set out in points 1 - 3 above. A copy of a budget clearance certificate must be provided to the committees proving that funds are available for such a service in compliance with Section 15 of the MFMA.
5. Once the TAC has approved the item, any resolutions that are conditional / suspensive must be addressed by the Demand Manager.
6. An appointment letter will then be drafted by the Demand Manager for the MM's signature.

7. Once signed by MM, this letter will be forwarded to the service provider.
8. The appointment letter together with the item and accompanying documents as determined in points 1-3 above, TEC and TAC minutes will be forwarded to the Legal Department for the drawing up of the contract to be signed.

NB: Please refer to the attached documents for further guidance

Annexure L1 - Guide to participate in transversal contracts

Annexure L2 -Participation letter



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Guide to Participation in Transversal Term Contracts Facilitated by National Treasury

**National Treasury
Transversal Contracting**

March 2017

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DEFINITIONS

1) In this guidelines, unless the context otherwise indicates-

“Institution” means an organ of state participating or intending to participate in a transversal term contract facilitated by the National Treasury;

“MFMA” means the Municipal Finance Management Act;

“PFMA” means the Public Finance Management Act;

“Transversal Term Contract” means a centrally facilitated contract arranged by the National Treasury for goods or services that are required by one or more than one institution.

PART ONE

1. PURPOSE

This guide is intended to assist accounting officers and accounting authorities with roles, responsibilities and procedure for participation in transversal term contracts.

2. APPLICABILITY

This guidelines are applicable to all national and provincial departments, constitutional institutions, public entities listed in schedules 2 and 3 to the PFMA and municipalities and municipal entities to which the MFMA apply who wish to participate in transversal term contracts.

3. LEGISLATIVE MANDATE

National and Provincial departments, constitutional institutions and public entities listed in schedule 3A and 3C to the PFMA

- a) Treasury Regulations 16A6.5 provides that

“The accounting officer or accounting authority may opt to participate in transversal term contracts facilitated by the relevant treasury. Should the accounting officer or accounting authority opt to participate in a transversal contract facilitated by the relevant treasury, the accounting officer or accounting authority may not solicit bids for the same or similar product or service during the tenure of the transversal term contract.”

- b) National and Provincial departments, constitutional institutions, schedule 3A and 3C public entities derive their mandate to participate in a transversal term contract facilitated by the National Treasury/relevant treasury from the above cited Treasury Regulation.

Public entities listed in schedule 2, 3B and 3D to the PFMA

- c) As Treasury Regulations 16A6.5 is not applicable to Public entities listed in schedule 2, 3B and 3D to the PFMA, these set of institutions may participate through approval from their accountings authorities.

Municipalities and Municipal entities to which the MFMA is applicable

- d) Regulation 32 of the Municipal SCM regulations provides that:
- “A Supply Chain Management policy may allow the accounting officer to procure goods or services for the municipality or municipal entity under a contract secured by another organ of the 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) the municipality has no reason to believe that such contract was not validly procured;*
- (c) there are demonstrable discounts or benefits for the municipality to do so;*
and
- (d) that other organ of state and the provider have consented to such procurement in writing.”*
- e) Municipalities or Municipal entities derive their mandate to participate in a transversal term contract *(as a contract secured by another organ of state)* facilitated by the National Treasury/relevant treasury from the above cited Municipal SCM Regulation.
- f) The National Treasury will, when considering an application to participate in a transversal contract from a municipality or municipal entity elaborate in detail if the transversal term contract in question meets the directive of regulation 32(1) (a) to (d).

PART TWO

4. PROCEDURE TO PARTICIPATE IN TRANSVERSAL TERM CONTRACT

- a) Institutions wishing to participate in transversal term contracts may forward their applications to the National Treasury for consideration.
- b) Institutions must utilise **Transversal Term Contracts Participation Template** attached as **Annexure A** to request participation in a transversal term contract and indicate the contract, items or services they are interested in.

5. ROLES AND RESPONSIBILITIES OF INSTITUTIONS

- a) For purposes of a transversal term contract, institutions are responsible for the following:
 - i. Requirements identification and committing expenditure through demand and procurement planning,
 - ii. Ensure that participation in a transversal term contract is adequately budgeted for.
 - iii. Submission of accurate procurement plans,
 - iv. Determination and designing of technical specifications and estimated quantities,
 - v. Where necessary determination of special conditions of contract,
 - vi. Other relevant requirements for the compilation of bidding documentation,
 - vii. Appointment of departmental representatives to various bid committees,
 - viii. Where applicable, managing service level agreements
 - ix. Managing the contract post-award and inventory management,
 - x. Managing supplier relationships, monitoring supplier performance and report any non-compliance to the National Treasury for corrective action, and

- xi. Order placement, goods or service receipt and on-time supplier payment

6. ROLES AND RESPONSIBILITIES OF THE NATIONAL TREASURY

- a) The role and responsibility of the National Treasury is to facilitate the processes of putting together a transversal contract as summarized below:
 - i. Setting the policy, norms and standards for facilitation of transversal contracts,
 - ii. Coordination of the establishment/constitution of bidding committees, their conduct, their powers and functions, meeting procedures, tenure and delegations,
 - iii. Regulating the entire public procurement system to ensure uniformity in policy application,
 - iv. Coordinate the composition of cross-functional teams for transversal contracts
 - v. Facilitates the acquisition and bidding processes through invitation and receiving of bids at closing dates and time and ensuring that due process is observed,
 - vi. Coordinate and provide secretariat service to the bidding committees during specification, evaluation and adjudication meetings,
 - vii. Award contracts and publish results on the website,
 - viii. Administer transversal contracts post award by managing contract amendments and attending to complaints,
 - ix. Supplier development and monitoring supplier performance in conjunction with institutions.
 - x. Facilitate the processing of cases of non-compliance and corrective action, and
 - xi. Coordinates and takes lead in litigation processes.

7. DEMAND AND PROCUREMENT PLANNING

- a) Institutions must undertake a thorough analysis of their requirements for goods and services over the medium term in line with their strategic objectives. Goods to be procured through transversal contracts must be identified.
- b) Once the requirements for goods and services have been established it is imperative to secure the necessary funds in terms of the budget process.
- c) In order to ensure that specifications for transversal contracts are generic and unbiased central specification meetings, which are attended by the cross-functional team, are arranged before the drafting of bid documents. The cross-functional team may, at its discretion, decide to obtain expert technical advice from relevant stakeholders and industry should a need to do so arise.
- d) Technical specifications must promote the broadest possible competition, while assuring that critical elements of performance or other requirements for the goods or services being procured are achieved.

8. CROSS-FUNCTIONAL TEAMS AND BID COMMITTEES

- a) The bidding process is managed through cross functional teams and bidding committees responsible for development and compilation of specifications, evaluation of bids and adjudication of bids.
- b) The **cross-functional team** is constituted from officials of various participating institutions and is responsible for among others, the drafting of terms and conditions of contracts, industry and end user analysis through strategic sourcing and compilation of the bid documentation.
- c) A **Bid Specification Committee (BSC)** is constituted from officials of various participating institutions. An institution may appoint officials with the necessary technical expertise and external advisors to serve on the BSC. The role of this committee is to compile bid specifications.

- d) The **Bid Evaluation Committee (BEC)** is constituted from officials of various participating government institutions duly appointed by their respective institutions. External advisors may be appointed to offer expert advice but are prohibited from participating in the final decision making. This committee is responsible for the evaluation of all bids received.
- e) The **Bid Adjudication Committee (BAC)** is constituted from officials of various government institutions, duly appointed by their respective institutions. It has a status of a standing committee with appointed members serving as permanent members. The BAC is responsible for the adjudication of bids.

9. LIST OF TRANSVERSAL TERM CONTRACTS

- 1) The list may be accessed under supplier's area- finalised contracts on the OCPO website: <http://ocpo.treasury.gov.za>

ANNEXURE L2 – PARTICIPATION LETTER

An official, signed letter should be send to National Treasury for participation.

NB: Department/Institution Letterhead
Contact person and details

National Treasury
Chief Director: Contract Management
Private Bag X115
PRETORIA
0001

By Email:

By Fax: 012 315-5058

For attention: <Contract Manager,

see <http://www.treasury.gov.za/divisions/ocpo/ostb/contracts/default.aspx>

**INVITATION TO PARTICIPATE ON TRANSVERSAL CONTRACT RTxx-20xx:
SUPPLY AND DELIVERY OF <DESCRIPTION> TO THE STATE FOR THE PERIOD
DD MMM YYY TO DD MMM YYY**

For and on behalf of

_____ (Department/Institution name)

☐

YES, we herewith accept the invitation to participate on the above mentioned Transversal Term Contract.

The department/institution has an estimated budget of R_____ for the procurement of items on RTxx-20xx for the period (as stipulated in the contract – <http://www.treasury.gov.za/divisions/ocpo/ostb/contracts/default.aspx>)

ANNEXURE M

STANDARD OPERATING PROCEDURE FOR CONTRACT MANAGEMENT

PREAMBLE

The Municipal Finance Management Act No. 56 of 2003 provides in section 116 as follows:

“116. Contracts and Contract Management.

- (1) A contract or agreement procured through the supply chain management system of a municipality or municipal entity must -
 - (a) be in writing,
 - (b) stipulate the terms and conditions of the contract or agreement, which must include provisions providing for -
 - (i) The termination of the contract or agreement in the case of non- or under-performance,
 - (ii) Dispute resolution mechanism to settle disputes between the parties,
 - (iii) A periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years, and
 - (iv) Any other matters that may be prescribed.
- (2) The accounting officer of a municipality or municipal entity must -
 - (a) Take all reasonable steps to ensure that a contract or agreement procured through the supply chain management policy of the municipality or municipal entity is properly enforced,
 - (b) Monitor on a monthly basis the performance of the contractor under the contract or agreement,
 - (c) Establish capacity in the administration of the municipality or municipal entity-
 - (i) To assist the accounting officer in carrying out the duties set out in paragraphs (a) and (b), and
 - (ii) To oversee the day- to - day management of the contract or agreement, and

- (d) Regularly report to the council of the municipality or the board of directors of the entity, as they may be appropriate, on the management of the contract or agreement and the performance of the contract.
- (3) A contract or agreement procured through the supply chain management policy of a municipality, or municipal entity, may be amended by the parties, but only after-
 - (a) The reasons for the proposed amendments have been tabled in the council of the municipality or, in the case of a municipal entity, in the council of its parent municipality, and
 - (b) The local community-
 - (i) Has been given reasonable notice of the intention to amend the contract or agreement, and
 - (ii) Has been invited to submit representations to the municipality or municipal entity.”

PURPOSE:

The purpose of this Standard Operating Procedure (SOP) is to ensure compliance with the requirements of Contract Management as per National Treasury and the Municipal Finance Management Act No. 56 of 2003.

The Standard Operating Procedure is as follows:

A. SOP FOR CONTRACT MANAGEMENT - SERVICE LEVEL AGREEMENTS EMANATING FROM TENDERS

Executive Directors, Directors, Senior Managers, Managers, Demand Management, Contract Management and all officials within the KwaDukuza Municipality must follow the procedure as set out hereunder in respect of tenders that have been awarded to successful bidders.

1. Upon completion of the procurement process, and upon the letter of award being sent to the successful bidder, the Demand Manager and his team shall forward the following documents to the Contract Management Section within a period of 1 working day:

- i. the Tender Document of the successful bidder,
- ii. minutes of the Tender Specification Committee,
- iii. minutes of the Tender Evaluation Committee,
- iv. minutes and resolutions of the Tender Adjudication Committee,
- v. updated budget clearance certificate,
- vi. minutes and resolutions of Appeals (if any),
- vii. minutes and resolutions of Negotiations (if any) and
- viii. the letter of Appointment to the successful bidder.
- ix. All updated certificates of the successful bidder.
- x. Checklist marked as Annexure A.

NOTES:

- a) The item and resolved minutes of the Tender Adjudication Committee sent to the Contract Management Section, shall clearly detail all expenditure (fees, rental, remuneration, VAT, contingencies etc.) involved in terms of the project for which an agreement needs to be compiled.
- b) The Business Unit must ensure that updated Budget Certificates accompany the TAC Resolutions.
- c) It is the responsibility of each Business Unit and Demand Management, to ensure that the Contract Management Section receives all documents as per paragraph 1 (tender documents and all other documents, minutes etc.) prior to the commencement of work on a particular project. This will facilitate the drafting and signing of the Service Level Agreement, together with the tender document, prior to the service provider commencing work on any particular project.

2. A general Service Level Agreement will be incorporated in all technical tender documents which is subject to amendment by Contract Management after the successful tenderer receives the final Letter of Award.

NOTE:

This is in consideration of decisions made by bid committees regarding the final contract price, and specific details like the performance monitoring and reporting on the contract, commencement and termination date of the contract and to cover legalities like breach and termination amongst other clauses.

3. For all non-technical tenders the General Conditions of Contract issued by National Treasury is utilised as it is applicable to all bids, contracts and orders as per the requirements of National Treasury. Accordingly, Special Conditions of Contracts will be drafted by Contract Management for each non- technical contract as per the nature of the Project.
4. Contract Management Section will ensure that a Contract/Service Level Agreement is compiled and signed within a period of 10-14 working days, subject to all information being provided to the Section as per paragraph 1, and all queries are answered to the satisfaction of the Section.
5. The relevant Business Unit must ensure that the appointed Service Provider provides the Municipality with a Bank/ Performance Guarantee, in respect of tenders with a value above R4 000 000.00 (four million rands) inclusive of VAT. Such Performance Guarantee must be delivered to the Contract Management Unit for safekeeping within 21 days after the contract has been signed.

NOTE

The Bank Guarantee is waived for all projects with a threshold of R300 000-00 to R 4 000 000.00 as per Section 27 of the Supply Chain Management Policy of KwaDukuza 2022/23.

6. The following Annexures must be compiled and sent to Contract Management as per the requirement of National Treasury:

ANNEXURE	TITLE	RESPONSIBLE PERSON	IMPLEMENTATION TIME FRAME
ANNEXURE B	LEGAL REVIEW	DIRECTOR LEGAL	PRIOR TO CONTRACTOR SIGNING THE CONTRACT
ANNEXURE C	CONFIRMATION OF CONTRACT PARTICULARS	BUSINESS UNIT	PRIOR TO CONTRACTOR SIGNING THE CONTRACT
ANNEXURE D	SERVICE PROVIDER PERFORMANCE	BUSINESS UNIT	DURATION OF CONTRACT.
ANNEXURE E	FINANCIAL REVIEW	DIRECTOR EXPENDITURE	DURATION OF CONTRACT.

NOTES:

- a) The draft Contract or Service Level Agreement will be sent to Legal Services and Finance who will conduct an independent Legal Review (Annexure B) of the contract.
- i. The Legal Review must be conducted and returned to Contract Management within a period of 48 hours after been submitted to Legal Services. This must be done prior to the contract being signed.
- ii. The Financial Review (Annexure E) of each contract is an ongoing process and must be conducted for the entire duration of the contract.
- iii. The Business Unit must assist Contract Management to ensure that this process is followed to completion and documents are returned to Contract Management Section timeously.

- b) All Business Units are to ensure that upon finalisation of the draft contract, Annexure C (confirmation of contract particulars) is completed and signed accordingly within 24 hours. Annexure C will then be sent to the Municipal Manager, together with the Service Level Agreement and its annexures, for his signature on behalf of the Municipality.

7. Once the agreements are signed by both parties, the Contract Management Section will scan all contract documents and Annexures and upload the file onto the National Treasury Contract Register within a period of 72 hours.

NOTES

- a) It must be noted that only a Service Level Agreement that is signed by both parties to a contract creates a relationship between the parties that is legally binding.
- b) The tender document contains pertinent information of the contract; such as the Bill of Quantities, a detailed Scope of Work and other submissions required by law. Consequently, the entire bid document and Annexures thereto, must be initialled by both parties to the Contract. This will protect the Municipality from prospective legal disputes and will ensure that the entire bid forms part of the binding Agreement between the parties.
- c) The rights and obligations of each party cannot be effectively enforced without a signed Agreement and this could lead to serious consequences which may place the Municipality in a compromising situation and in turn disturb effective service delivery and departmental targets.
- d) It further covers the Municipality from a legal perspective, in that the successful bidder, who is now a contractor, binds himself to the performance of his duties and obligations in terms of the tender and contract.

8. The original tender document and contract file is then returned to Demand Management. Demand management must file the documents in the strong room of the SCM building within a period of 24 hours.
9. The respective Business Unit, will attend to the performance and monitoring of each Contract. The respective Business Unit must ensure that they report to their relevant portfolios on a monthly basis on the performance of the Service Provider.
 - 9.1 The performance reports to the relevant portfolios, together with the “Performance of Service Providers” document (Annexure D), shall be sent to Contract Management Section to be filed with all documents pertaining to the particular contract.
 - 9.2 This must be done on a monthly basis in respect of contracts for a period of 6 months or less and on a quarterly basis in respect of contracts longer than 6 months.

NOTE:

In the event of poor performance/ unsatisfactory performance/ default on the part of the Service Provider, the “Performance of Service Provider” document must be immediately populated with details and forwarded to Contract Management Section with an action plan in place on how to remedy the default or poor performance.

B. EXTENSION OR AMENDMENTS OF CONTRACT:

Section 116 (3) of the Municipal Finance Management Act no. 56 of 2003 provides as follows:

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

(a) The reasons for the proposed amendments have been tabled in the council of the municipality or, in the case of a municipal entity, in the council of its parent municipality, and

(b) The local community-

(i) Has been given reasonable notice of the intention to amend the contract or agreement, and

(ii) Has been invited to submit representations to the municipality or municipal entity.”

1. Contracts may only be extended or amended with good reason set out in an item to council. Contracts can only be extended or amended prior to the termination of the contract.
2. The best practice of our Municipality should be that business units may not extend or amend a contract more than once.
3. The Business Unit must take an item to council 3 months prior to the termination or amendment of a contract, in accordance with section 116 of the MFMA.
4. In respect of amendments to existing contracts, the procedure set out in section 116(3) of the Municipal Finance Management Act No. 56 of 2003 must be followed by the relevant Business Unit.

5. The Business Unit must ensure that an advert is placed in a local Newspaper circulating the jurisdiction of KwaDukuza for public comments. The advert must be placed for a period of 21 days. This must be done within the original duration of the contract.
6. All items to council and resolutions in respect of amendments or extension of contracts, requested by Business Units, must include the new or updated rates or price and this must be in accordance with the Business Unit's budget.
7. Once the procedure as per section 116 (3) of the MFMA has been followed, the Business Unit must submit the item and resolution of council to the Contract Management Section within 48 hours.
8. Extension of contracts in respect of time with no financial implications as per the General Conditions of Contract for Construction Work, must also be reported to Contract Management Section so that the Contract Register may reflect the correct termination date of the Contract. This will assist in ensuring that payments on these contracts do not reflect as irregular expenditure.

C. BREACH AND TERMINATION OF CONTRACTS

1. In respect of breach and terminations of contracts, the relevant business unit is required to ensure that proper procedure has been followed in terms of the General Conditions of Contract if applicable or the General Conditions of Contract for Construction Works, in conjunction with the MFMA Circular No. 43 if applicable, and ensure that warning letters are issued to the Contractor in default, followed by breach letters and then termination letters. Breach and termination notices will be compiled by Contract Management in consultation with Legal Services together with the Business Unit.

2. In light of clause 1 above, the service provider must be restricted on the National Treasury's website and councils register of restrictions subject to MFMA Circular 43 being applicable.
3. The performance guarantee must be called for in relation to projects that exceed R4 million.

CONCLUSION:

1. All tenders, closed quotations and Regulation 36 appointments must have a Contract/ Service Level Agreement.
2. Such contract will only be drafted by the Contract Management Section.
3. A successful bidder will not be permitted to commence with any project prior to the signing of a contract.
4. Contract Management will be reporting to Council on the Status of Contracts on a quarterly basis.
5. Compliance with this Standard Operating Procedure facilitates the Municipality's compliance with National Treasury.

ANNEXURE'S

ANNEXURE A

The checklist herein below must be compiled and signed by the Demand Management and handed over to the Contract Management Unit together with instructions to draft an agreement or contract.

All tender documents or other documents to be used in support of drafting an agreement submitted for signature must be accompanied by the following checklist:

CHECKLIST TO BE COMPLETED/ COMPILED AND SENT TO CONTRACT MANAGEMENT TOGETHER WITH NECESSARY DOCUMENTS REQUIRED PRIOR TO DRAFTING THE CONTRACT.

NO.	DOCUMENT DETAILS	TICK
1.	Bid Document	
1.1	Technical Proposal	
1.2	Financial Proposal	
2.	Signed Letter of Award	
3.	Letter of Acceptance	
4.	Minutes of tender specification committee	
5.	Minutes of Tender Evaluation Committee	
6.	Minutes and resolution of Tender Adjudication Committee	
7.	Minutes and outcome of Negotiations (if applicable)	
8.	Minutes and outcome of Appeals (if applicable)	
9.	Subsequent Letters to successful bidder regarding outcome of Appeal/ Negotiations (if applicable)	

SIGNED BY:

DEMAND MANAGER: _____

DATE: _____

RECEIVED
CONTRACT
MANAGEMENT

ANNEXURE B: LEGAL REVIEW

Objective: *To Ensure that Government's Interest is Protected!*

This document has been reviewed and signed by: _____

Date: _____

Signature: _____

No.	Category	Question	Informative / Actionable	Yes	No	N/A	Evidence	Comments	Action Plan
1.	Classification	1.1 Is the Contract clearly classified?	I						
		1.2 If yes, what type of Contract?	I						
2.	Parties	2.1 Are the parties clearly defined?	I						
		2.2 Is a resolution confirming contractual capacity of the supplier attached to the contract?	I						
		2.1 Has the applicable regulatory authority the supplier subscribes to been identified in the contract? E.g. CIDB, Law Society, etc.?	I						
3.	Duration	3.1 Commencement date?	I						
		3.2 Date of completion?	I						
		3.3 Any renewal period?	I						
		3.4 Any extension mechanism?	I						
4.	Subject matter: goods and services	4.1 Description of goods/services?	I						
		4.2 Quantities?	I						

No.	Category	Question	Informative / Actionable	Yes	No	N/A	Evidence	Comments	Action Plan
		4.3. Scope of services?	I						
		4.4 Contract price?	I						
5.	Performance by Supplier	5.1 Specifications?	A						
		5.2 Service standards?	A						
		5.3 Delivery dates?	A						
		5.4 Performance monitoring method?	A						
		5.5 Responsible contact person?	I						
6.	Performance by government	6.1 Are the terms of payment defined?	A						
		6.2 Are there any milestones defined?	A						
		6.3 Are the obligatory actions clearly defined?	A						
		6.4 Are the dates clearly stipulated for 6.3?	A						
		6.5 Responsible official?	I						
7.	Contract Suspension	7.1 Is there a suspension clause?	A						
		7.2 Grounds for suspension?	A						
8.	Termination	8.1 Any provision for early termination by either party?	A						
		8.2 Grounds for early termination?	A						
		8.3 Remedies upon early termination?	A						

No.	Category	Question	Informative / Actionable	Yes	No	N/A	Evidence	Comments	Action Plan
9.	Penalties	9.1 Is there a penalty clause?	A						
		9.2 Are there penalty triggers?	A						
		9.3 Are there penalty consequences?	A						
		9.4 Penalty remedies for government?	A						
10.	Breach	10.1 Is there a breach clause?	A						
		10.2 Are there breach events?	A						
		10.3 Are breach events clearly defined (enforcement of the terms and conditions/ claim for damages)?	A						
11.	Dispute Resolution	11.1 Is there a dispute resolution clause?	I						
		11.2 What type of dispute resolution?	I						
12.	Variation	12.1 Is there a variation clause?	A						
		12.2 Does the clause set parameters for purposes of variation?	A						
13.	Warranties	13.1 Are there any warranties that the supplier provides?	I						
		13.2 Is there a monitoring mechanism of warranties?	I						
		13.3 Are the warranties adequately covered (e.g. under the General Conditions of Contracts and or Special Conditions of Contract) ?	I						
14.	Indemnities	14.1 What indemnities does the supplier give?	I						

No.	Category	Question	Informative / Actionable	Yes	No	N/A	Evidence	Comments	Action Plan
		14.2 Are the indemnities adequately covered (e.g. under the General Conditions of Contracts and or Special Conditions of Contract)?	I						
15.	Guarantees	15.1 Are guarantees and other securities provided?	I						
		15.2 Are those guarantees and securities adequately covered (e.g. in compliance General Conditions of Contracts and or Special Conditions of Contract)?	I						
		15.3 Is there a due date for provision of guarantees specified?	I						
		15.4 Is there a monitoring mechanism created for guarantees?	I						
16.	Insurance	16.1 Is there an insurance clause?	I						
		16.2 Party responsible for insurance?	I						
		16.3 Is there a monitoring mechanism created to monitor the insurance?	I						
17.	Limitation of liability	17.1 Is there a limitation of liability clause?	I						
		17.2 Is the limitation on penalties and or damages appropriate? (in compliance with the General Conditions and or Special Conditions of Contract.)	I						
18.	Conditions: Suspensive and	18.1 Are conditions of the Contract properly defined?	I						
		18.2 Action by supplier?	I						

No.	Category	Question	Informative / Actionable	Yes	No	N/A	Evidence	Comments	Action Plan
	Resolutive	18.3 Action by government?	I						
19.	Ownership of IP	19.1 Is there an ownership of IP clause?	I						
20.	Conflict of Interest	20.1 Is there a conflict of interest clause ?	I						
21.	Confidentiality	21.1 Is there a confidentiality clause ?	I						
22.	Risk	22.1 Is there a risk management clause?	i						
		22.2 Does the clause refer to a Risk Management Plan. e.g. GAS Risk Management Plan, ENATIS, etc.?	I						
		22.3 Is there a monitoring mechanism created to monitor compliance with the risk management plan?	I						
23.	Validity and Enforceability	23.1 Does the agreement comply with all statutory formalities?	I						
24.	Addendums/ appendixes	24.1 Are there any addendums attached to the contract? If yes, what are the addendums?	I						
25.	Standardisation	25.1 Could the agreement / or any clause be standardised?	I						
26.	General Comments	26.1 Contract biasness (i.e Government, neutral, supplier?)	I						
		26.2 Are there any conflicting terms and blanks?	I						
		26.3 Is there any reliance or relationship to other agreements?	I						

No.	Category	Question	Informative / Actionable	Yes	No	N/A	Evidence	Comments	Action Plan
		26.4 Is there any recommendation for further investigation?	A						

ANNEXURE C: CONFIRMATION OF CONTRACT PARTICULARS

This document must be completed and submitted to Contract Management Unit for onward submission to the Municipal Manager or authorised signatory of the Municipality for his signature to be appended on all contracts and agreements.

KWADUKUZA MUNICIPALITY

The following document is submitted to the Municipal Manager for signature.

DIRECTORATE:

.....

The undersigned Director and Executive Director hereby confirms that the Contract has been checked and correctly reflects the scope of work, duration, pricing and budget allocated to this Project as per the resolution of the Tender Adjudication Committee.

MN: _____

DESCRIPTION:

NAME OF CONTRACTOR:

Business Unit	Director	Signature	Date
_____	_____	_____	_____
	Executive Director	Signature	Date
	_____	_____	_____
Exco/Council/ TAC Resolution Number: _____			

ANNEXURE D – PERFORMANCE OF THE SERVICE PROVIDER
QUARTERLY PERFORMANCE ASSESSMENT REPORT

General Information												
Contract Number				Department								
Service Provider's name												
Sector				Unit								
Contract description												
Contract Duration (months)				Contract Commencement date								
Original Due date for practical completion												
Reason for report	Financial Year :											
Practical Completion <input type="checkbox"/>	Assessment Report											
Quarterly Assessment	Quarter 1			Quarter 2			Quarter 3			Quarter 4		
Monthly assessment	J <input type="checkbox"/>	A <input type="checkbox"/>	S <input type="checkbox"/>	O <input type="checkbox"/>	N <input type="checkbox"/>	D <input type="checkbox"/>	J <input type="checkbox"/>	F <input type="checkbox"/>	M <input type="checkbox"/>	A <input type="checkbox"/>	M <input type="checkbox"/>	J <input type="checkbox"/>
Contract Progress												
Extended date for practical completion				Total Extensions of time approved (days)			(Calculated)					
Percentage of work completed at report date				Actual date of practical completion								
Contract sum as verified at report date												

Service Provider's performance			
	Poor	Accepted	Outstanding
Assessment criteria	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
KPI's	Achieved <input type="checkbox"/>	Not achieved <input type="checkbox"/>	
Overall comments (attach separate sheets if necessary)			
Reporting Official			
In my opinion :			
Name (please print)		Contact Number	
Signature		Date	
Reviewing Official			
I concur <input type="checkbox"/> I do not concur <input type="checkbox"/> with the reporting officials assessment detailed in the report			
The report has been forwarded to the Service Provider <input type="checkbox"/> Yes <input type="checkbox"/> No			
Recommended for further work (to be answered on completion of contract)		<input type="checkbox"/> Yes <input type="checkbox"/> No	
If the recommendation is No, the unsatisfactory performance aspects have been discussed with :		Notes :	
Minutes of meeting and service provider's response attached			
<input type="checkbox"/> Yes <input type="checkbox"/>			
Name of Service Provider's Representative (Please print)			
Contact number:		Date of discussion :	
Signature :		Date :	

ANNEXURE E: FINANCIAL REVIEW

Objective: **To Ensure Government Uses Contract Management to Achieve Economy, Efficiency and Effectiveness!**

This document has been reviewed and signed by: _____

Date: _____

Signature: _____

No.	Category	Question	Yes	No	N/A	Amount	Evidence	Comments	Action Plan
1.	Procurement Plan	1.1 Were the goods / services / works included in the Procurement Plans for the relevant years and at correct amounts?							
2.	Budget	2.2 Were the goods / services / works budgeted for in the approved budget of the Department/ Municipality for the financial year in which the contract was awarded?							
		2.3 Enter the budget amount for the baseline year.							
3.		3.1 If it is a multi-year contract, has the contract been included in the MTEF budgets?							

No.	Category	Question	Yes	No	N/A	Amount	Evidence	Comments	Action Plan
		3.2 Enter the budget amount for subsequent years.							
		3.3 Total budgeted amount for the contract.				Automatic sum of 2.2 and 3.2			
4.	Escalations	4.1 Are there any price inflation/escalation clauses and/or exchange rate fluctuations in the contract?							
		4.2 If the answer to 4.1 above is yes, what is escalation based on (i.e. CPI Index or % based)?						CPI / %	
5.	Contract Value	5.1 Contract value.				Amount as per the contract register.			
		5.2 Value of variations.				Amount as per the contract register.			
		5.3 Value of price inflation / escalations / exchange rate fluctuations.							

No.	Category	Question	Yes	No	N/A	Amount	Evidence	Comments	Action Plan
		5.4 Perform a recalculation of the total contract value (i.e. sum of the original contract awarded + variations + escalations etc.) and correct the contract register, if necessary.				Sum of 5.1, 5.2 and 5.3.			
		5.5 Compare the total contract value to the total budgeted for this contract.				Equal to 5.4 less 3.3 – If result is a positive amount, an exception should be raised to indicate that “Contract awarded exceeds budgeted amount”.			
6.	Payments made	6.1 Total payments to date.				Amount (need to obtain report of all payments from commencement of contract to date).			

No.	Category	Question	Yes	No	N/A	Amount	Evidence	Comments	Action Plan
		6.2 Compare the total value of the contract awarded (i.e. sum of the original contract awarded + variations + escalation etc.) to the total amount paid to date to determine if any over expenditure has been incurred (i.e. unauthorised expenditure).				5.4 – 6.1 – If the result is a negative amount, an exception should be raised to indicate that “Contract over expenditure has incurred”.			
		6.3 By discussion with the Contract Manager, determine/establish the level of completion of the project (percentage).							
		6.4 Corroborate to the best extent possible 6.3 through minutes of project meetings or documentation attached to inter alia the last payment made on this contract.							
7.	Payment milestones	7.1 Are payment milestones specified in the contract (could be progress or delivery based)?							

No.	Category	Question	Yes	No	N/A	Amount	Evidence	Comments	Action Plan
		7.2 If the answer to 7.1 above is yes, have the payments made to date been made in terms of these milestones (select latest payment and test)?							
8.	Payments in terms of contract	8.1 Is a purchase order raised in relation to the contract value?							
		8.2 Are the purchase orders aligned to the values of the deliverables?							
		8.3 Have payments been made in terms of the contract? [i.e. evidence of delivery, unit price and quantity per invoice agree to amounts and quantities specified in the contract] (select latest payment and test).							
		8.4 If answer to 8.2 above is no, provide details of exceptions.						Details	

No.	Category	Question	Yes	No	N/A	Amount	Evidence	Comments	Action Plan
9	Supporting documentation	9.1 Does the contract specify what the required supporting documents are that need to be included and submitted with the invoice, in order for payments to be effected?							
10.	Penalty Clauses	10.1 Are there any penalty clauses specified in the contract relating to non-performance?							
		10.2 If the answer to 10.1 above is yes, are the penalty clauses specific? (i.e. do they detail the amount / percentage to be recovered and under what circumstances the penalty clause is to be implemented.)							
		10.3 Include details of penalty clauses under the comments section.						Details	

No.	Category	Question	Yes	No	N/A	Amount	Evidence	Comments	Action Plan
		10.4 By discussion with the Project Manager, determine whether the penalty clause been implemented and the amounts due withheld from the subsequent payment to the supplier?						If the answer is no, raise an exception "Penalty clause not implemented"	
		10.5 If answer above is yes, then enquire from the Project Manager the amount of penalty recovered.							
11.	Discount Clause	11.1 Is there a discount clause in the contract?							
		11.2 If Yes, has this been effected?							
12.	Termination of contract	12.1 If for whatever reason the contract is terminated for default, is there a clause that considers all financial obligations?							
		12.2 Details of the clause.						Details	

No.	Category	Question	Yes	No	N/A	Amount	Evidence	Comments	Action Plan
		12.3 If the answer to 12.1 above is yes, has the clause been implemented? (e.g. Performance guarantee claim or excess costs of procuring the goods claimed from the original supplier.)							
		12.4 What are the reason(s) for termination?						Details	
		12.5 If the contract was terminated, what of the total amount paid, if any, COULD be considered to be fruitless and wasteful expenditure? (e.g. Construction contract terminated after design stage results in the expenditure relating to the design being fruitless and wasteful)							
13.	Expired contracts	13.1 If the contract has expired, have any payments been made for services/goods/works performed subsequent to the expiry of the contract?							
		13.2 Details of work performed and amount.						Details	

No.	Category	Question	Yes	No	N/A	Amount	Evidence	Comments	Action Plan
14.	Expired contracts still in use	14.1 Has the contract expired and been extended on a month-to-month basis for more than 6 months?							
		14.2 If the answer to 14.1 above is yes, then include the number of months the contract has been extended for.						No of months extended for	
		14.3 Obtain the reasons for the above contract not going out to tender in a timely manner.						Details	

ANNEXURE N

STANDARD OPERATING PROCEDURE FOR THE ONLINE VERIFICATION OF DOCUMENTS DURING TEC / TAC

The following SOP shall apply for the online verification of documentation during all TEC and TAC meetings:-

1. The TEC shall evaluate all bids in accordance to the conditions of tender and in line with councils approved SCMP, MFMA and all other applicable legislations.
2. Once a responsive bid or bids has been identified, the TEC secretariat shall verify the following documentation at the meeting:-
 - a. CSD - this shall be utilized to verify tax compliance status, business status, directors / owners in the service of the state, restricted directors / owners. (Csd.info@csd.gov.za)
 - b. CIDB (www.cidb.org.za)
3. The above documentation must be verified in real time at the time of the meeting and printed immediately for filing. It is important that the date of verification is indicated on the certificate. Should the certificate not indicate a date, the TEC secretariat shall take a screenshot and print and file the screenshot with the verified certificate.
4. Should the relevant verification systems be offline, the TEC secretariat shall screenshot and file as proof. Verification should take place the very next day and printed as per 3 above.
5. Should any of the compulsory returnables be verified and a suspended or non-compliant status is verified, the bidder shall be deemed as non-responsive in line with the conditions of the tender document. The TEC shall then make the necessary recommendations to the TAC.

6. At TAC, the risk document (preferred bidder) only shall be re-looked at and documentation verified by the TAC secretariat as per points 2 to 4 above.

IMPORTANT NOTES:-

- It is the responsibility of the relevant Secretariat to ensure that the above documentation is verified, printed and filed with the minutes as well as the bid documents for audit trail purposes.
- Should the tax status of a bidder be non-compliant at the time of evaluation, the Demand Manager must notify the bidder in writing of the non-compliant status in terms of Section 43(4)(iv) of the SCM Policy.

That in terms of Section 27(5)(e) all projects with a threshold of R300 000.00 to R4m the letter of Good standing with Workmen's Compensation Fund is waived however, the awarded service provider must submit a letter from the Department of Labour indicating that they can be registered within 7 days after receiving the award. The award shall be crafted in such a way that the municipality gives the service provider 14 days to register with the Compensation Fund prior to the signing of the contract.

Part 7: Special ward councillor letter for procurement processes

COMMITTED TO SERVICE DELIVERY



FOR SUPPLY CHAIN MANAGEMENT PROCUREMENT SUBMISSIONS ONLY!

Postal Address: P.O. Box 72, KwaDukuza, 4450
Street Address: 14 Chief Albert Luthuli Street, KwaDukuza 4450
Telephone: (032) 437 5000
Fax: 032 437 5098

Date		
DD	MM	YY

PROOF OF RESIDENCE FOR PROCUREMENT SUBMISSIONS ONLY. (CONFIRMATION OF EXEMPTION FROM RATES).

To whom it may concern,

I, Cllr....., of Ward , KwaDukuza Municipality hereby confirm that the bidder is a resident of and or conducts business from Ward I further confirm that the bidder resides in a non-rated area and as such, the bidder is exempt from paying rates and municipal taxes. The details of the Bidder are as follows:

Name of Business Entity	
Business Registration number	
Contact Number	
Residential Address	
Name of Company Representative.	

Yours Faithfully

.....
Cllr.....

Councillor, Ward, KwaDukuza Local Municipality

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SECTION B



PREFERENTIAL PROCUREMENT POLICY

TABLE OF CONTENTS

Council **C1480/2024** resolves in terms of section 111 of the Local Government Municipal Finance Management Act (No. 56 of 2003), to adopt the following proposal as the Preferential Procurement Policy of KwaDukuza Municipality.

1. Definitions
2. Application, objectives & general requirements
3. Identification of preference point system for specific goals and points scored for specific goals
4. Specific goals for preferential procurement
5. Scorecard for the determination of a specific goal
6. 80/20 Preference Point System for acquisition of goods or services for a rand value equal to or below R50 million inclusive of all applicable taxes
7. 90/10 Preference Point system for the acquisition of goods or services with a rand value above R50 million inclusive of all applicable taxes
8. 80/20 Preference Point system for tenders for income-generating contracts for a rand value equal to or below up to R50 million inclusive of all applicable taxes
9. 90/10 Preference Point system for tenders for income-generating contracts for a rand value above R50 million
10. Criteria for breaking deadlock in scoring
11. Award of contracts to tenderers not scoring highest points
12. Negotiations with the awarded bidder
13. Remedies
14. Circulars and guidelines

1. DEFINITIONS

In this Policy, unless the context indicates otherwise:

1.1 "Act" means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)

1.2. "B-BBEE - broad-based black economic empowerment" means the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include but are not limited to

- (a) increasing the number of black people that manage, own and control enterprises and productive assets;
- (b) facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;
- (c) human resource and skills development;
- (d) achieving equitable representation in all occupational categories and 20 levels in the workforce;
- (e) preferential procurement; and
- (f) investment in enterprises that are owned or managed by black people.

1.3. "B-BBEE status level of contributor" means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act

1.4. "bid "means a written offer, in the form determined by instruction, in response to an invitation for the procurement of goods or services or other form of procurement through a price quotation, a competitive bidding process, a limited bidding process or any other method envisage in the Act

1.5. "black" have the meaning assigned to it in the codes of good practice issued in terms of section 9(1) of the Broad Based Black Economic Empowerment Act

1.6. "black people" is a generic term which means Africans, Coloured's and Indians as per the definition included in the B-BBEE Act of 2003

1.7. "Broad-Based Black Economic Empowerment Act" means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)

1.8. "Exempted micro enterprise (EME) means any enterprise with an annual total revenue of R10 million or less, as per statement of the BBBEE codes of good practice

1.9. "functionality" means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents

1.10. "Historically Disadvantage Individual" (HDI) means a South African citizen, who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act No. 110 of 1983) or the Constitution of

the Republic of South Africa, 1993, (Act No. 200 of 1993) (“the Interim Constitution); and/or who is a female; and/or who has a disability; providing that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not to be a HDI

1.11. “highest acceptable tender” means a tender that complies with all specifications and conditions of tender and that has the highest price compared to other tenders;

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

1.13. “National Treasury” has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999)

1.14. “people with disabilities” has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998) In terms of the Code of Good Practice on the Employment of Persons with disabilities: it is persons who have a long-term or recurring physical or mental impairment, which substantially limits their prospects of entry into, or advancement in employment.

1.15. “preferential procurement policy” means a procurement policy contemplated in section 217(2) of the Constitution.

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

1.17. “Qualifying Small Enterprise (QSE)” means a measured entity with an annual total revenue of between R 10 million and R 50 million, as per statement of the B-BBEE Codes of Good Practice

1.18. “Rand value” means the total estimated value of a contract in Rand, calculated at the time of the tender invitation

1.19. “rural area” means

1.19.1. a sparsely populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or

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

1.20. “SMMEs” means small businesses as defined in section 1 of the National Small Business Act, 1996 a separate and distinct business entity, including co-operative enterprises and non-governmental organisations, managed by one owner or more which, including its branches or subsidiaries, if any, is predominantly carried on in any sector or sub sector of the economy mentioned in column 1 of the schedule and which can be classified as a micro-, a very small, a small, or a medium enterprise by satisfying the criteria 40 mentioned in columns 3, 4 and 5 of the schedule opposite the smallest relevant size or class as mentioned in column 2 of the schedule.

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

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

1.23. “tender for income-generating contracts” means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and “the Act” means the Preferential Procurement Policy Framework Act, 2000

1.24. “the Preferential Procurement Regulations” means the Preferential Procurement Regulations of 2022.

1.25. “The White Paper on Reconstruction and Development” Published in Government Gazette notice no. 16085 of 1994.

1.26. “township” means an urban living area that any time from the late 19th century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994

1.27. “treasury” has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999)

1.28. “youth” has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008) means persons between the ages of 14 and 35

2. APPLICATION, OBJECTIVES & GENERAL REQUIREMENTS

2.1 This Policy complies with the framework of the Preferential Procurement Policy Framework Act 5 of 2000, The White Paper on Reconstruction and Development, Section 10(b) of the Broad-Based Black Economic Empowerment Act, 2003 and The Constitution of the Republic of South Africa, Act 108 of 1996, section 217, subsection 2 (1)(a) and (b).

2.2 This Policy was developed in terms of the Preferential Procurement Regulations, 2022.

2.3 This Policy applies to the KwaDukuza Municipality and the objectives are to:

2.3.1 Provide clarity on the municipality's approach to procurement, particularly with regards to requirements of preferential procurement;

2.3.2 Provide access to contracts for persons or categories of persons ; historically disadvantaged by unfair discrimination on the basis of race, gender or disability; implementing the programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994.

2.3.3 Promote participation by SMMEs;

2.3.4 Promote local economic development and SMME support and development;

2.3.5 Promote joint venture opportunities between HDP owned enterprises and SMMEs, and other business entities. These opportunities are encouraged, and opportunity exists within the bid requirements for such entities to bid.

2.4 GENERAL REQUIREMENTS

2.4.1 Any specific goal (for which a point may be awarded and the number of points that will be awarded to each goal, and proof of claim of such goal) required for consideration in the bidding process must be clearly determined by the Bid Specification Committee and be defined in the bid documentation, taking into account prescriptions of the Construction Industry Development Board [CIDB] in respect of construction related contracts.

2.4.2 Outputs required will be quantified and will form part of the contractual arrangement upon awarding of the contract.

2.4.3 In the case of Consortiums, Joint Ventures, or Partnerships each individual must submit the required certificates for each returnable schedule as specified in the bid document and to qualify for preferential points.

3. IDENTIFICATION OF PREFERENCE POINT SYSTEM FOR SPECIFIC GOALS AND POINTS SCORED FOR SPECIFIC GOALS

3.1 The municipality must;

3.1.1 determine and stipulate in the tender documents

3.1.1.1 the applicable preference point system as envisaged in regulations 4, 5, 6 or 7;

3.1.1.2 the specific goal/s in the invitation to submit the tender for which a point/s may be awarded, and the number of points that will be awarded to each goal, and proof of the claim for such goal.

3.1.2 If it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

3.1.2.1 an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or

3.1.2.2 any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system.

3.1.3 determine whether objective criteria are applicable to the tender as envisaged in Section 2(1)(f) of the Act.

4. SPECIFIC GOALS FOR PREFERENTIAL PROCUREMENT

4.1 When the municipality applies specific goals in terms of Section 2(1)(d) and (e) of the Act, the municipality must advertise the tender with a specific tendering condition that only one or more of the following categories may respond:-

CATEGORY	<u>DESCRIPTION</u> SPECIFIC GOALS APPLIED - OWNERSHIP, GENDER AND DISABILITY GOALS
1	EME or QSE which is at least 51% owned by black people
2	EME or QSE which is at least 51% owned by black people who are youth
3	EME or QSE which is at least 51% owned by black people who are women
4	EME or QSE which is at least 51% owned by black people with disabilities
5	Generic / Large Enterprise which is 51% owned by black people

4.1.1 Should the applicable specific goals not be met, the municipality shall cancel the bid.

4.2 If the municipality decides to apply the RDP criteria under the specific goal to award a bid based on locality, the municipality must advertise the tender with a specific tendering condition that only one or more of the following categories may respond: -

CATEGORY	<u>DESCRIPTION</u> RDP CRITERIA (SPECIFIC GOAL) - BASED ON LOCALITY
1	In the KwaDukuza Municipal Wards / Clusters in which the project will be rendered
2	The KwaDukuza Municipal area of jurisdiction,
3	The ILembe District
4	The KZN province
5	The Republic of South Africa

- a) Criteria elements in the above categories will be implemented in its order of appearance in the list in a case where there are no bids received in the category of the RDP criteria mentioned in the advert.
- b) E.g. if the RDP criteria of category 1 is applied and there are no responsive bids in that category, a bid will be awarded to a bidder in category 2 of RDP criteria who has the capacity, capability to execute the contract and provides a cost effective financial proposal. If there are no bids which are responsive in category 2, a bid will be awarded to a bidder in category 3 and so on.

4.3 Proof of address for the enterprise, by way of a municipal utility bill; or a sworn affidavit from the landlord; or a special ward councilor letter for

procurement processes, or a statement from the estate management agent; which must correspond with the address on the CSD registration. This will be verified by the SCM Officials via the CSD.

4.4 The specific goal applied should be considered and selected in such a way that the efficiency, effectiveness, and the economic value of service delivery is not affected.

5. SCORECARD FOR THE DETERMINATION OF A SPECIFIC GOAL

5.1 In terms of paragraph 2.4.1 of this policy, any specific goal required for consideration in the bidding process must be clearly determined by the Bid Specification Committee for all projects exceeding R300 000.00 vat inclusive or the relevant SCM Official for procurements below R300 000.00 vat inclusive and be defined in the bid documentation, taking into account prescriptions of the Construction Industry Development Board [CIDB] in respect of construction related contracts.

5.2 In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the relevant procurement process followed. For the purposes of all procurement, the tenderer will be allocated points based on the goals stated in table 1 below.

5.3 In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
- (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system, then the Bid Specifications Committee or SCM Official must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

5.4 The-Specific goals for the relevant procurement process will be identified as follows:-

Table 1.

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)
Gender (Ownership) - Persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of gender who are black people or black women or black disabled or black youth.	5	10
Promotion of EME's Or Promotion of QSE's Or Promotion of Large Enterprises (Generic)	5	10

5.5 The Bid Specifications Committee or the relevant SCM Official must determine the specific goal(s) set for each procurement process followed. For example, the specific goal for ownership may be women owned in which 5 or 10 points may be awarded and for enterprises a QSE may be targeted for either 5 or 10 points depending on the preference points system utilized. MBD 6.1 of the bid document must be amended accordingly.

5.6 The following proof shall be submitted by tenderers in order to claim preference points:-

5.6.1 Gender (Ownership) - the CSD report and certified copies of Identity Documents.

5.6.2

- (a) For EME's and QSE's - an original sworn affidavit or a originally certified Certificate issued by Companies and Intellectual Property Commission (CIPC) confirming ownership and enterprise information
- (b) For Generic or Large Enterprises - an originally certified copy of the B-BBEE Verification Certificate issued by SANAS Accredited B-BBEE Rating Agencies which must contain the unique SANAS Accreditation Symbol to ensure that the B-BBEE Verification Certificate is Valid as well as corresponding signed management account
- (c) For Joint Ventures between Generic or large enterprises - a consolidated JV B-BBEE certificate confirming ownership and enterprise information

5.7 It is the onus of the service provider to ensure that the required proof is provided in the bid document to validate the indicated scoring. Failure to provide the relevant proof will result in no scoring allocated.

6. 80/20 PREFERENCE POINT SYSTEM FOR ACQUISITION OF GOODS OR SERVICES FOR A RAND VALUE UP TO R50 MILLION

6.1 The following formula must be used to calculate the points out of 80 for price in respect of a tender with a Rand value up to R50 million, inclusive of all applicable taxes:

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

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.

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

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

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

7. 90/10 PREFERENCE POINT SYSTEM FOR THE ACQUISITION OF GOODS OR SERVICES WITH A RAND VALUE ABOVE R50 MILLION

7.1 The following formula must be used to calculate the points out of 90 for price in respect of a tender with a Rand value above R50 million, inclusive of all applicable taxes:

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

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.

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

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

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

8. 80/20 PREFERENCE POINT SYSTEM FOR TENDERS FOR INCOME-GENERATING CONTRACTS FOR A RAND VALUE UP TO R50 MILLION

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

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

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmax = Price of highest acceptable tender.

8.2 A maximum of 20 points may be awarded to a tenderer for the specific goal/s specified for the tender.

8.3 The points scored for the specific goal/s must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

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

9. 90/10 PREFERENCE POINT SYSTEM FOR TENDERS FOR INCOME-GENERATING CONTRACTS FOR A RAND VALUE ABOVE R50 MILLION

9.1 The following formula must be used to calculate the points out of 90 for price in respect of a tender for income-generating contracts, with a Rand value above R50 million, inclusive of all applicable taxes:

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

Where

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmax = Price of highest acceptable tender.

9.2 A maximum of 10 points may be awarded to a tenderer for the specific goal/s specified for the tender.

9.3 The points scored for the specific goal/s must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

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

10. CRITERIA FOR BREAKING DEADLOCK IN SCORING.

10.1 If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest points for specific goals.

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

11. AWARD OF CONTRACTS TO TENDERERS NOT SCORING HIGHEST POINTS

11.1 A contract may be awarded to a tenderer that did not score the highest points only in accordance with section 2(1)(f) of the Act.

11.2 If the municipality intends to apply objective criteria in terms of section 2(1) (f) of the Act, the municipality must stipulate the objective criteria in the tender documents.

12. NEGOTIATIONS WITH THE AWARDED BIDDER

12.1 The Municipal Manger 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.

12.2 Minutes of such negotiations must be kept for record purposes.

12.3 The Municipal Manager delegates the Head: SCM, Director Legal and the Head of the Business Unit or his nominee and the Budget Office (observer) to enter into negotiations in line with (1) and (2) above and report back to the Bid Adjudication Committee for a threshold not exceeding R10m (all taxes included).

13. REMEDIES

13.1 If an organ of state is of the view that a tenderer submitted false information regarding a specific goal, it must—

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

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

- (a) disqualify the tenderer or terminate the contract in whole or in part; and
- (b) if applicable, claim damages from the tenderer.

14. REVIEW OF THE POLICY

14.1 This Preferential Procurement Policy is the sole preferential procurement policy in the municipality. The Municipal Council must approve any reviews to this policy on an annual basis.

14.2 Whenever the Minister of Finance or the National Treasury requires changes to the policy by means of legislation or requests, it should be reviewed promptly in accordance with such requirements, giving full details of the reasons for the revision.

Commencement

[This Policy takes effect on \[1 JULY 2024\]](#)