

**REVISED 1**

**UMTSHEZI MUNICIPALITY**

**SUPPLY CHAIN MANAGEMENT**

**POLICY**

**Approved on 12 December 2008 : Res No : 406.12.08**

**MUNICIPAL SUPPLY CHAIN MANAGEMENT POLICY**  
**LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003**

Date of adoption: **[12/12/2008.....]**

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

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#### **Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Urgency and Emergency Cases**

Cases are defined as urgent or emergency when the following criteria have been met:-

- (a) The duration of invitation of bids would have a material impact on service delivery/community/public and early delivery is of critical importance;
- (b) resulted from natural disaster i.e. beyond human control; and
- (c) immediate action is required to avoid a dangerous or life threatening situation, misery or want.

Poor planning is not a justifiable cause of an emergency or urgent situation. Written motivation must be provided, detailing the reasons as to why procurement must be done under circumstances of urgency or emergency.

**“municipality”** means **Umtshezi Municipality**.

## 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 Umtshezi 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 Umtshezi 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.

### **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 Umtshezi Municipal 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 Umtshezi Municipality 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 the Umtshezi Municipality or to a committee which is not exclusively composed of officials of the Umtshezi 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 subdelegation 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 R2 million (VAT included) may not be sub-delegated by the municipal manager;
  - (b) above R500 000 (VAT included), but not exceeding R2 million (VAT included), may be sub-delegated but only to –
    - (i) Chief Financial Officer (Director Finance)
    - (ii) Departmental Directors (Director Corporate Services, Technical and Community and Social Services)
    - (iii) a bid adjudication committee of which the chief financial officer or a director is a member; or
  - (c) not exceeding R500 000 (VAT included) may be sub-delegated but only to –
    - (i) Chief Financial Officer (Director Finance)
    - (ii) Departmental Directors (Director Corporate Services, Civil and Community and Social Services)
    - (iii) an official directly accountable to the chief financial officer or a senior manager; or Deputy Director Finance or Accountant Expenditure
    - (iv) a bid adjudication committee.

(3) An official or bid adjudication committee to which the power to make final awards has been sub-delegated in accordance with subparagraph (2) must within five days of the end of each month submit to the 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 reserves its right to 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 Umtshezi 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;
  - (ii) acquisition management;
  - (iii) logistics management;
  - (iv) disposal management;
  - (v) risk management; and
  - (vi) performance management.

#### ***Part 1: Demand management***

#### **System of demand management**

**10.** (1) The municipal manager must establish and implement an appropriate demand management system in order to ensure that the resources required by Umtshezi 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 Umtshezi 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 Umtshezi 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 Umtshezi 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 R2000 (VAT included);
  - (b) written or verbal quotations for procurement transactions valued over R2000 up to R10 000 (VAT included);
  - (c) formal written price quotations for procurement transactions valued over R 10 000 up to R200 000 (VAT included); and
  - (d) a competitive bidding process for–
    - (i) procurement above a transaction value of R200 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) written or verbal quotations be obtained for any specific procurement transaction value lower than R2000;
    - (ii) formal written price quotations be obtained for any specific procurement of a transaction value lower than R10 000; or
    - (iii) a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000.
- (3) **Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the policy. When determining transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.**

### **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 written or verbal quotations and formal written price quotations; and
  - (b) at least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
  - (c) specify the listing criteria for accredited prospective providers; and



- (d) disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.
- (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.

### **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:
  - (i) Custody of cash and vouchers
  - (ii) Record keeping
  - (iii) Monthly reconciliations and balancing
  - (iv) Recording of petty cash purchases in the general ledger
  - (v) Monthly reporting
- (b) Petty cash vouchers must be authorised by the relevant head of department.
- (c) Goods and services may only be procured by way of petty cash, up to a transaction value of R2000 (VAT included).
- (d) A maximum of three petty cash purchases per month will be allowed for each departmental section.
- (e) Total petty cash may not exceed **R20 000.00** for each calendar month for the whole municipality.
- (f) Petty cash may only be used for the following types of expenditure: refreshments and other small items.

- (g) a monthly reconciliation report from 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.** The conditions for the procurement of goods or services through written or verbal quotations are as follows:
- (a) Quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the Umtshezi Municipality, provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria set out in paragraph 14(1)(b) and (c) of this Policy;
  - (b) to the extent feasible, providers must be requested to submit such quotations in writing;
  - (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the municipal manager or another official designated by the municipal manager;
  - (d) the municipal manager must record the names of the potential providers requested to provide such quotations with their quoted prices;
  - (e) if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider;
  - (f) and /or to apply Risk Management Policy, Delegation of Powers Authority, SCM Policy, Delegation of Powers MFMA, Petty Cash as well as Budgeting Policy.

### **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 R2000.00 must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the Umtshezi 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 written or verbal quotations and formal written price quotations**

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

- (a) when using the list of accredited prospective providers the accounting officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;
- (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 scored on price and targeted goals points designed in terms of the Preferential Procurement Points Framework Act (PPPFA) and its regulations and Broad Base Black Economic Empowerment 2003 and be advertised for at least seven days on the website and an official notice board of Umtshezi Municipality;

- (c) offers received must be evaluated on a comparative basis taking into account unconditional discounts;
- (d) the municipal manager or chief financial officer must on a monthly basis be notified in writing of all written or verbal quotations and formal written price quotations accepted by an official acting in terms of a subdelegation;
- (e) offers below R30 000 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;
- (f) acceptable offers, which are subject to the preference points system (Preferential Procurement Points Framework Act (PPPFA) and its Regulations and Broad Base Black Economic Empowerment 2003, must be awarded to the bidder who scored the highest points;
- (g) for proper record keeping and audit purposes, the following documentation must be kept by Finance and department procuring goods or services;
  - (i) the authorised purchase requisition produced by the department requiring goods and services.
  - (ii) formal written price quotations
  - (iii) the order authorised by the Chief Financial Officer.
  - (iv) formal signed delivery note submitted by the successful supplier.
  - (v) formal invoice or certificate of work performed submitted by the successful supplier.
  - (vi) goods received voucher, as prepared by expenditure: creditors section.
  - (vii) the cheque voucher prepared by the Accountant: Expenditure and authorised by Chief Financial Officer.
  - (viii) the authorised payment cheque.
  - (ix) Any minutes of a bid resolution by the Bid Adjudication or Awarding Committee.
  - (x) Proof of authorised direct payment (cash focus) processed for each transaction

### **Competitive bids**

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

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

### **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 contracts 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;
  - (ii) any Treasury guidelines on bid documentation; and
  - (iii) 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;
- (b) include the preference points system to be used, goals as contemplated in the Preferential Procurement Regulations and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish–
  - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
    - (aa) for the past three years; or
    - (bb) since their establishment if established during the past three years;
  - (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
  - (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;

- (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from Ingwe 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.

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

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

- (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the Umtshezi Municipality or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and
- (b) the information contained in a public advertisement, must include –
  - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to sub-paragraph (2) of this policy;
  - (ii) a statement that bids may only be submitted on the bid documentation provided by Umtshezi 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 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**

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

### **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.

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

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

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

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

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

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

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

- (a) a bid specification committee;
- (b) a bid evaluation committee; and
- (c) a bid adjudication committee;

(2) The 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 2001; and
  - (g) must be approved by the municipal manager prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.

(3) A bid specification committee must be composed of:

- (a) three senior officials of the municipality who must serve as standing members; one from the Supply Chain Management Unit who will chair and the others from Corporate Services, Technical Services and Community & Social Services.
- (b) must be appointed in writing for a period of 12 months which is in line with the financial year end of the municipality, subject to the annual reviewal of this policy;
- (c) one official to be co-opted from the end user department preferably a manager and a knowledgeable official responsible for the function involved;
- (d) co-opted external specialised expert deemed where necessary
- (e) the quorum must be equal to 50% of the number of permanent (as opposed to co-opted) committee members, plus one member referred to in (b) above.

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

### **Bid evaluation committees**

- 28.** (1) A bid evaluation committee must –
- (a) evaluate bids in accordance with –
    - (i) the specifications for a specific procurement; and
    - (ii) the points system set out in terms of paragraph 27(2)(f).
  - (b) evaluate each bidder's ability to execute the contract;
  - (c) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, and;
  - (d) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
- (2) A bid evaluation committee must as far as possible be composed of -
- (a) three senior officials of the municipality who must serve as standing members; one from the Supply Chain Management Unit who will Chair and the others from the Technical Services, Corporate Services and Community & Social Services.
  - (b) must be appointed for a period of 12 months which is in line with the financial year end of the municipality, subject to the annual reviewal of this policy
  - (c) one senior official to be co-opted from end user department preferably a responsible for the function involved;
  - (d) co- opted external specialised expert where deemed necessary;
  - (e) the quorum must be equal to 50% of the number of permanent (as opposed to co-opted) committee members, plus one member referred to in (b) above.

### **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.

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

- (a) Chief financial Officer
- (b) Executive Manager: Corporate Services
- (c) Executive Manager: Technical Services
- (d) Executive Manager: Community and Social Services
- (e) the quorum must be equal to 50% of the number of permanent (as opposed to co-opted) committee members, plus one 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

### **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 municipal manager 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 Umtshezi 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**

- 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.

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

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



### **Appointment of consultants**

**35.** (1) The 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 R200 000 (VAT included); or
- (b) the duration period of the contract exceeds one year.

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

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

(4) The 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 Umtshezi Municipality.

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

**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) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
  - (iv) acquisition of animals for zoos and/or nature and game reserves; or
  - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
- (b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.

(2) The 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.

### **Unsolicited bids**

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

(2) The 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 Municipal Manager.

(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 KZN provincial treasury for comment.

(5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the Municipal Manager, 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 KZN Provincial Treasury.

(8) If any recommendations of the National Treasury or KZN Provincial Treasury are rejected or not followed, the municipal manager must submit to the Auditor General, the KZN 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 Umtshezi 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 Umtshezi 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 Umtshezi Municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
  - (e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
  - (f) cancel a contract awarded to a person if –

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

### **39. URGENT AND EMERGENCY PROCUREMENT DELEGATION**

Should it be impractical to invite competitive bids for a specific procurement in the case of emergency and urgent cases or in case of sole supplier, the Accounting Officer may procure such required goods and services in accordance with MFMA, 2003 Municipal Supply Chain Management Regulations 36 by other means such as price quotations or negotiations. The reasons for deviating from inviting competitive bids should be recorded and approved by the Accounting Officer or the delegated officials. Poor planning is not a justifiable cause of an emergency and urgent procurement situation.

### **39.1 DELEGATED OFFICIALS TO DECLARE AND APPROVE URGENT AND EMERGENCY PROCUREMENT OF GOODS AND SERVICES**

- (a) The **Chief Financial Officer** may approve urgent and emergency procurement of goods and services up to the value of R-----.
- (b) **Accounting Officer (Municipal Manager)** has **unlimited authority** to approve urgent and emergency procurement of goods and services.

### **39.2 CONDITIONS ATTACHED TO THE URGENT AND EMERGENCY PROCUREMENT OF GOODS AND SERVICES.**

- 39.2.1 At least three (3) written quotations must be obtained.
- 39.2.2 If it is not possible to obtain three written quotations, the reasons should be recorded and approved by the Chief Financial Officer or Accounting Officer, as per 39.2.7 above, depending on value.
- 39.2.3 Where only one quotation is received and accepted, all reasonable steps must be taken to ensure that the price is fair and market related.
- 39.2.4 A comparative schedule must be compiled reflecting (80/20) preference points allocations for any bids which are more than the value of R30 000 up to R500 000 and (90:10) preference points allocations for any bids which are more than the value of R500 000.
- 39.2.5 Quotations to be evaluated by the **Bid Evaluation Committee** and therefore make recommendation to the **Bid Adjudication Committee** to approve the quotations.
- 39.2.6 A contract shall only be awarded to an acceptable supplier who scored the highest points in accordance with the predetermined criteria and registered in the Municipal Suppliers database unless exempted in terms of Supply Chain Management Regulations 11(2).
- 39.2.7 Approval of acceptance of quotations must be done by the **Chief Financial Officer or Accounting Officer (Municipal Manager)**, as per 39.2.7 above, depending on value.

39.2.8 If the lowest bid is not chosen or preferred, valid reasons must be provided and must therefore be approved by the **Chief Financial Officer or Accounting Officer (Municipal Manager)** , as per 39.2.7 above, depending on value, before such purchases may take place.

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

#### **Logistics management**

**40.** 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**

**41.** (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) Umtshezi 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**

**42.** (1) The criteria for the identification, consideration and avoidance of potential risks in the supply chain management system, are as follows:

- (a) risk management aspect must be allocated to the Chief Financial Officer, the SCM Manager, the internal audit function and the Audit Committee, each of which shall ultimately be accountable to the Municipal Manager or the Council for the discharge of their responsibilities.

(2) Risk management must include –

- (a) the identification of risks on a case-by-case basis;
- (b) the allocation of risks to the party best suited to manage such risks;
- (c) acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;

- (d) the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
- (e) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

### **Performance management**

**43.** 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**

**44.** (1) No award above R15 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.

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

**45.** 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 Umtshezi municipality.

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

**46.** 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**

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

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

(2) A breach of the code of ethics must be dealt with as follows -

- (a) in the case of an employee, in terms of the disciplinary procedures of the municipality envisaged in section 67(1)(h) of the Municipal Systems Act;

- (b) in the case a role player who is not an employee, through other appropriate means in recognition of the severity of the breach.
- (c) In all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act.

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

**48.** (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 Umtshezi 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**

**49.** 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**

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

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

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

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

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

- (3) The person appointed must –
  - (a) strive to resolve promptly all disputes, objections, complaints or queries received; and

- (b) submit monthly reports to the municipal manager on all disputes, objections, complaints or queries received, attended to or resolved.

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

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

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

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

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

**52.** If a service provider acts on behalf of Umtshezi 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 Umtshezi Municipality must stipulate –

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

### **Commencement**

**53.** This Policy takes effect on [01/01/2009.....].